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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 772

[Docket No. 220901–0180]

RIN 0694–AI06

Authorization of Certain ''Items'' to Entities on the Entity List in the Context of Specific Standards Activities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to authorize the release of specified items subject to the EAR without a license when that release occurs in the context of a ''standards-related activity,'' as defined in this rule. BIS is revising the terms used in the EAR to describe the actions permissible under the authorization rather than defining the organizations to which it applies. The scope of the authorization is revised to include certain ''technology'' as well as ''software'' and applies to all entities listed on BIS's Entity List. The uncertainty of not knowing whether other entities listed on the Entity List are participants in standards organizations and whether a BIS license is required to release low-level technology for legitimate standards activities has caused U.S. companies to limit their participation in standards-related activities in areas that are critical to U.S. national security. This authorization only overcomes licensing requirements imposed as a result of an entity's inclusion on the Entity List; other EAR licensing requirements, including additional end-use or end-user based licensing requirements may continue to apply. This final rule does not change the assessment of whether ''technology'' or ''software'' is subject to the EAR. BIS is making these revisions to ensure that export controls and associated compliance concerns as they relate to the Entity List do not impede the leadership and participation of U.S. companies in national and international standards-related activities

DATES:

Effective date: This rule is effective September 9, 2022.

Comment date: Comments must be received by BIS no later than November 8, 2022.

ADDRESSES: You may submit comments, identified by docket number BIS–2020–0017 or RIN 0694–AI06, through the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. You can find this interim final rule by searching for its *regulations.gov* docket number, which is BIS–2020–0017.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and also provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a ''BC'' or ''P'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce. Phone: (202) 482–2440; Email: *Susan.Kramer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Entity List Actions and the Temporary General License

Effective May 16, 2019, the Bureau of Industry and Security (BIS) added Huawei Technologies Co., Ltd. (Huawei) and sixty-eight of its non-U.S. affiliates to the Entity List (see 84 FR 22961 (May 21, 2019)). The Entity List (supplement no. 4 to part 744 of the Export Administration Regulations (EAR) (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to entities on the Entity List. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the availability of license exceptions is described in the relevant **Federal Register** notice adding the entity to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The addition of Huawei and its non-U.S. affiliates to the Entity List imposed a licensing requirement under the EAR regarding the export, reexport, and transfer (in-country) of most items subject to the EAR to the listed Huawei entities. On May 22, 2019 (84 FR 23468), BIS published a Temporary General License (TGL) which temporarily authorized engagement in certain transactions of items subject to the EAR with Huawei and its listed non-U.S. affiliates, including (but not limited to) engagement as necessary for development of 5G standards by a duly recognized standards body. Effective August 19, 2019 (84 FR 43493 (August 21, 2019)), an additional 46 non-U.S. affiliates of Huawei were placed on the Entity List with the same licensing requirements and TGL eligibility as Huawei and the initial sixty-eight non-

U.S. affiliates. The TGL was also extended and amended (see 84 FR 43487 (August 21, 2019)) to remove the provision addressing engagement as necessary for development of 5G standards by a duly recognized standards body, on the basis of the BIS determination that existing provisions of the EAR sufficed for such engagement. In parallel with the publication of the August 21, 2019 rule, BIS posted a General Advisory Opinion on the BIS website, later rescinded and removed, that addressed the applicability of § 734.7 of the EAR (Published) (15 CFR 734.7) to certain types of releases to Huawei and its listed affiliates. TGL eligibility was subsequently continued through a series of extensions (see 84 FR 64018 (November 20, 2019), 85 FR 8722 (February 18, 2020), 85 FR 14416 (March 12, 2020) and 85 FR 29610 (May 18, 2020)). BIS allowed the TGL to expire on August 13, 2020, at which point the TGL was replaced with a more limited authorization to better protect U.S. national security and foreign policy interests, as implemented in a final rule effective August 17, 2020 (85 FR 51596, (August 20, 2020)). The August 17, 2020 rule also added thirty-eight additional non-U.S. affiliates of Huawei to the Entity List and revised General Prohibition Three (found in part 736 of the EAR).

2. Authorization for Release of Technology in the Context of Standards Organizations in the June 18, 2020 IFR

In response to the addition of Huawei and its non-U.S. affiliates to the Entity List, and the related amendments, BIS received questions regarding the applicability of the EAR in the context of standards setting or development. On June 18, 2020 (85 FR 36719), BIS published an interim final rule, *Release of ''Technology'' to Certain Entities on the Entity List in the Context of Standards Organizations* (the June 18th IFR) with a request for comment, to clarify and amend the scope of license requirements imposed by the Entity List listing specific to exchanges of certain EAR-controlled technology in a standards organization environment for Huawei and its specified affiliates.

The June 18th IFR removed certain license requirements imposed by the original Entity List listings by revising the Entity List to authorize certain releases of ''technology'' without a license within the context of contributing to the revision or development of a standard in a standards organization. As a result of these revisions, ''technology'' subject to the EAR and designated as EAR99 or controlled on the Commerce Control List (CCL) only for anti-terrorism (AT) reasons could be released to members of a standards organization, including Huawei, without a license, if released for the purpose of contributing to the revision or development of a standard. To effectuate this change, BIS modified the Entity List entries for Huawei and its listed non-U.S. affiliates by revising the text in the Licensing Requirement column for these entries to authorize the release of certain technology to Huawei and its affiliates on the Entity List without a license if such release is made for the purpose of contributing to the revision or development of a ''standard'' in a ''standards organization.'' The June 18th IFR also added definitions of ''standard'' and ''standards organization'' to § 772.1 of the EAR (Definitions). These definitions were derived from Office of Management and Budget (OMB) Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (81 FR 4673 (January 27, 2016)), available at *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf.*

3. Summary of Public Comments Received Regarding the June 18th IFR

The public comment period for the June 18th IFR regarding the release of technology to certain entities on the Entity List in the context of standards organizations closed on August 17, 2020. In response to the request for comments on the impact of the changes promulgated in the June 18th IFR, BIS received 22 relevant comments: one by an individual, three by companies, and 18 by associations and industry organizations, including several standards organizations. All commenters were generally supportive of the changes implemented in the June 18th IFR. Several commenters acknowledged that the June 18th IFR was intended, in part, to address the confusion created by the 5G exception from the TGL and noted that the changes in the June 18th IFR went beyond the 5G exception. However, the majority of the commenters advised that the June 18th IFR did not resolve the uncertainty of U.S. industry regarding participating in standards organizations that include Entity Listed entities; limiting the scope of the standards exemption to only Huawei and its non-U.S. affiliates and not to other listed entities has created an environment of uncertainty for industry and companies. They noted that additional actions were needed to maintain and ''restore the ability of U.S.-based standards organizations to develop international standards and of these U.S. organizations and their U.S. members to participate fully in international standards development.''

BIS agrees with the commenters that additional actions are needed to protect U.S. technological leadership without discouraging, and indeed supporting and promoting, the full participation of U.S. actors in international standards development efforts. The national security threat that results from ceding U.S. participation and leadership in standards development and promulgation outweighs the risks related to the limited release of certain low-level technology and software to parties on the Entity List in the context of a ''standards-related activity.'' Participation in standards-related activities is imperative in allowing the United States to continue to participate and lead in global standards settings environments. BIS is making the following revisions to ensure that export controls and associated compliance concerns as they relate to the Entity List do not impede the leadership and participation of U.S. companies in standard activities. Any impediment to U.S. influence in standards development forums is a national security threat to the United States because not only does it limit U.S. leadership in standards development, but other countries are already racing to fill this vacuum with their own leadership and standards. In many cases, this ceding of U.S. leadership not only undermines democratic values and U.S. national security and foreign policy interests, but it also contributes to a potential future global standards environment that actually works to oppose U.S. interests.

B. Changes to Licensing Requirements in the Context of Specific Standards Activities

After review of the public comments from the June 18th IFR, consultation with the interagency, and in consideration of the U.S. national security and foreign policy interests at stake, this final rule amends the EAR to revise the standards authorization by:

(1) Clarifying the scope and application of standards activities covered by the authorization;

(2) Including EAR99 and AT-only controlled ''software'' in the scope of the authorization;

(3) Authorizing the release of specified ''software'' and ''technology'' when specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality; and

(4) Applying the scope of the authorization to all entities listed on the Entity List.

To implement these changes, this interim final rule revises parts 744 and 772 of the EAR. Note that even when a license requirement does not apply, items that are ''subject to the EAR'' are still subject to recordkeeping and other applicable EAR requirements (see, *e.g.,* § 762.1 of the EAR).

As set forth in § 744.11, the scope of the standards authorization is tied to the ''release'' of certain ''technology'' or ''software'' when such a release is for a ''standards-related activity,'' as defined in § 772.1 of the EAR, and where there is an intent for the resulting standard to be ''published,'' as defined in § 734.7 of the EAR. A ''standards-related activity'' includes activities required for the development, adoption or application of a standard, where there is an intent to publish the resulting standard. In order to qualify for the standards authorization, the following must be true:

(1) The technology or software must be designated as EAR99; controlled for AT reasons only on the CCL; or specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality;

(2) The ''release'' of technology or software must be made in the context of a ''standards-related activity;'' and

(3) There must be intent to ''publish'' the resulting standard.

If there is no intent to publish the resulting standard, then even if the software or technology is designated EAR99, controlled for AT reasons only, or specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality, a license would be required for the release of that technology or software to an entity on the Entity List (if required by the License requirement column for the entity on the Entity List).

As described in Note 1 to the definition of ''technology,'' ''technology'' may be 'in any tangible or intangible form, such as written or oral communication.' Release of technology subject to the EAR outside of the ''standards-related activity'' would continue to require a license. Similarly, one-on-one (individual to individual) discussions that are not related to a ''standards-related activity'' would not be included in the scope of the authorization and a license would be required for such a release.

This authorization only overcomes the license requirement imposed as a result of an entity's listing on the Entity List. If you determine that other EAR licensing requirement apply, including any of the other end-use or end-user-based licensing requirements in part 744 of the EAR, you must comply with the terms of those licensing requirements

1. Changes to Part 744 Control Policy: End-User and End-Use Based

In this interim final rule, BIS is revising §§ 744.11 (License Requirements That Apply To Entities Acting Contrary To The National Security Or Foreign Policy Interests Of The United States) and 744.16 (Entity List), as well as supplement no. 4 to Part 744. The language regarding standards activities is added, as described below, to §§ 744.11 and 744.16 of the EAR. Additionally, BIS is removing the existing standards exception language from the ''Licensing Requirement'' column of the Entity List for all entries where it currently is stated and adding revised language to the introductory paragraph of supplement no. 4 to Part 744 as it now applies to all entities on the Entity List.

BIS is revising paragraph (a) in § 744.11 to specify that a license would not be required for certain ''software'' or ''technology,'' when released in the context of a ''standards-related activity.''

In addition, BIS is revising paragraph (a) in § 744.16 by adding a sentence in the first paragraph to refer to the standards related authorization in § 744.11(a)(1). While three commenters suggested BIS amend § 744.16 of the EAR to state that the license requirement does not apply to standards development activity or standards-related activity, the same commenters also mentioned that ''amending the [existing] individual Entity List entries would result in an extremely confusing structure for members of standards organizations to have to sort through to determine compliance.'' BIS agrees that there is potential for confusion and compliance issues if all existing entries on the Entity List were modified. BIS also recognizes that many companies and individuals refer to the Consolidated Screening List when screening the parties to their transaction. The majority of existing entries on the Entity List reference § 744.11, and none reference § 744.16; therefore, to limit confusion, BIS is adding a reference to § 744.11(a)(1) in § 744.16(a).

Similarly, BIS is adding a cross reference to § 744.11 in the introductory paragraph of supplement no. 4 to Part 744. Additionally, BIS is modifying the text in the Licensing Requirement column for all of the entries of Huawei and its listed non-U.S. affiliates to remove the standards language and instead reference specific sections in Parts 736 and 744.

2. Changes to Part 772 Definitions of Terms

This interim final rule adds a definition for ''standards-related activity'' to § 772.1 of the EAR (Definitions) and removes the definitions for ''standards'' and ''standards organizations.''

For purposes of the EAR, BIS is defining a ''standards-related activity'' to include the development, adoption or application of any standard, with the intent that the resulting standard will be ''published'' (as described in § 734.7). A standards-related activity would include an action taken for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, implementing or otherwise maintaining or applying such a standard. For purposes of the EAR, a standard would be any document or other writing that provides, for common and repeated use, rules, guidelines, technical or other characteristics for products or related processes and production methods, with which compliance is not mandatory. As stated in the definition, there must be intent to publish the resulting standard.

C. Request for Additional Public Comments for This Interim Final Rule

BIS is requesting comment on the revisions promulgated in this interim final rule. Instructions for submission of comments, including comments that contain business confidential information, are found in the **ADDRESSES** section of this interim final rule. In particular, BIS seeks comments in the following areas:

Industries involved in standards development: BIS is requesting comments and additional information on whether the current scope of this authorization is adequate for the United States to retain its participation and lead in other areas that are important to the United States Government and industry, such as energy, artificial intelligence (AI), biotech, aerospace, and transportation. Does the current scope of the authorization hinder U.S. participation and leadership in standards development in industries where there is or may be participation by listed entities? Interested parties should provide specific examples of industries and commercial sectors which are or would be adversely affected by the current scope of the standards authorization as stated in this final rule.

Impact of other end use/end user controls: BIS is requesting comment on whether there are other provisions of the EAR that may negatively impact U.S. national security by limiting

leadership and participation in standards-related activities, such as licensing requirements for other end use or end user-based controls listed in part 744 of the EAR. Commenters are asked to provide specific examples of how U.S. participation and/or leadership has (or will be) impacted by the limited application of this authorization to the license requirements in § 744.11.

Compliance burden: BIS is requesting comment from interested parties on industries and commercial sectors that are actively involved in standards development, including information on how they are affected by compliance burdens resulting from the changes promulgated in this and the previous rule.

International participation and scope of standards-related activities: BIS is requesting comment on whether the definition of ''standards-related activities'' promulgated in this interim final rule allows for full and open participation by U.S. companies in the development of standards. Are there aspects of the definition that should be better-defined or excluded?

D. Response to Comments Received Regarding the June 18th Standards Interim Final Rule

The summary and response to the comments BIS received from the June 18th IFR has been separated and discussed as the following two sections: (1) Policy Considerations and (2) Requests for expansion and clarification of scope and definitions.

1. Policy Considerations

As BIS acknowledged in the June 18th IFR, international standards serve as the building blocks for product development and help ensure the functionality, interoperability, and safety of products, both domestically and internationally. Many commenters stated that it is essential to U.S. technological leadership that U.S. companies are able to work with foreign companies and participate fully in standards development organizations. Many also noted that it is a national security concern when U.S. standards proposals are limited by non-participation of U.S. companies in standards development activities. U.S. regulations must ensure that U.S. standards proposals are given full consideration for adoption by the international standards community.

One commenter noted, and BIS agrees, that ''enabling U.S.-based standards organizations to lead global collaboration and dialogue ultimately benefits U.S. industry and consumers.'' As another commenter mentioned, the issue addressed in the Entity List additions is a serious one: ''technology transfers to entities involved in activities that may be contrary to U.S. national security interests. However, they also noted that ''by their very nature, open global standards organizations are engaged in activities that enable U.S. economic growth and do not involve technology transfers contrary to U.S. national security interests.''

a. U.S. Government Priorities and Unilateral Action

Three commenters referenced Executive Order 13859, *Maintaining American Leadership in Artificial Intelligence* (84 FR 3967 (Feb. 14, 2019)), the National Strategy for Secure 5G, and the Secure 5G and Beyond Act of 2020 (Pub. L. 116–129, 134 Stat. 223–227). As one commenter stated, ''Active participation in global standards forums . . . directly aligns with the stated policy objectives of the U.S. government'' but that ''[t]he goals of these policies cannot be achieved if U.S. companies are limited and constrained in their ability to participate in and lead standards development activities.'' Another commenter stated that the restrictions imposed by regulations that limit U.S. participation in standards development activities run counter to the purpose of the U.S. policies and legislation and are at odds with the Department of Commerce's commitment to ''fully engage and advocate for U.S. technologies to become international standards.'' BIS does not agree and notes that the U.S. Government recognizes the importance of protecting sensitive and leading-edge U.S. technology while ensuring that export controls do not unnecessarily limit U.S. participation or hinder U.S. leadership in international standards setting activities.

One commenter noted that a single country imposing unilateral requirements on global standard settings organizations sets a dangerous precedent: ''the U.S. does not have the power to unilaterally compel an SSO [Standards Setting Organization] to change its rules, and . . . such actions exacerbate anti-U.S. sentiments already resulting from the difficulty of some SSO members to enter the U.S. to participate in SSO meetings. Normalizing such impositions invites retaliation by other countries at worst, and ongoing disruption at best.'' Another commenter opined that Entity List considerations should not eclipse other national initiatives and that restricting certain foreign adversaries' access to American technology should not contradict other ''national imperatives, including maintaining U.S. leadership in the global development of information and communications technologies (ICT).'' BIS acknowledges and recognizes that the U.S. Government needs to apply U.S. export controls and maintain U.S. technological leadership, particularly in light of efforts by adversarial countries to coordinate, subsidize, and promote activities in international standards bodies for the benefit of their own enterprises and their own industry leadership. For this reason, BIS works closely with the Administration and other U.S. Government agencies as well as with the private sector, through its advisory groups and public comment process, to discuss and gather feedback on its regulatory actions.

b. Effects on U.S. Participation and Leadership in the Standards Arena

Seventeen commenters highlighted concerns regarding reduced U.S. participation and leadership in the standards arena caused by unilateral export control limits and the resulting industry fragmentation. As one commenter stated, ''limitations on standards engagement vis-à-vis entities included on the Entity List create a very real risk of fragmentation in international standardization, increased compliance costs for industry, and reduced credibility of U.S.-based standards development organizations (SDOs) as open global standards organizations. Furthermore, such fragmentation can introduce security risks and vulnerabilities and affect both U.S. economic security and national security.'' The same commenter also noted that it may be difficult for U.S. participants to know the company affiliation of all participants in international standards organizations: ''In national body-based organizations, individuals are required to declare the country with which they are affiliated but are not required to disclose which organization employs them. In practice, some disclose their employer and some do not. Further, the disclosures are often not available to participants at the start of the meeting. This uncertainty could stifle U.S. participation in these standards organizations.'' Another commenter noted that ''Uncertainty regarding how the EAR impact standards setting is causing U.S companies to harbor reservations about participating fully in the standards development process, threatening to undermine U.S. technological leadership in multiple sectors.'' According to several of the commenters, hesitancy to fully participate in

standards discussions limits the U.S. role in global standards development. Reduced U.S. participation is encouraging other countries to develop their own national proprietary standards, which may result in a global environment with many competing standards instead of one global standard. For example, one commenter stated that this fragmentation could provide countries such as China with a reason to develop separate standards and exclude U.S. technology. Another stated, ''If China moves to its own indigenous benchmark, most of the current influence by American companies will be lost because Chinese OEMs and the Chinese government . . . will specify all the testing details. This will create a significant disadvantage for American OEMs when competing with Chinese OEMs in China.'' Another specifically noted that ''The unilateral controls create incentives for Chinese organizations to (i) set up barriers to full participation by non-Chinese entities in their Chinese standards and (ii) create ''Chinese-first'' standards that, because of their huge market, require other countries to adopt or modify existing standards.'' One commenter addressed the development of 5G standards, stating that if ''international companies cannot participate in the development of Wi-Fi standards and certification . . . [there] is the potential [for] development of regional or fragmented certification programs, which will fracture the market and disadvantage consumers and companies alike.''

One commenter noted an additional issue regarding patents and intellectual property: ''The creation of standards inevitably creates monopoly powers in the hands of the owners of standards essential patents. The time-honored way of avoiding the abuse of such rights is to bring together all interested owners of such rights in an effort to create standards that can be implemented under RAND licenses provided by participating member/patent owners.'' RAND terms are ''reasonable and non-discriminatory'' voluntary licensing commitments that SSOs often request from patent owners when sharing information that may become part of a technical standard. As the commenter further stated, ''where an SSO decides to exclude [certain members], these companies are given both the opportunity and incentive to ''weaponize'' any patent claims they own that become essential under the standards of that SSO.''

BIS recognizes that an environment of competing national standards or the exclusion of U.S. companies in international standards development is not advantageous to U.S. interests. As one commenter noted, ''U.S. and international business interests can best be served by facilitating rather than restricting the participation of Huawei and its affiliates in vital 5G SSOs and other important standards development organizations.'' Therefore, in this final rule, BIS is expanding the authorization for the release, in specific standards settings, of certain ''technology'' and ''software'' that is subject to the EAR to all entities on the Entity List. BIS understands that much of standards development occurs using such ''technology'' and ''software;'' therefore, this expansion should assist U.S. companies in maintaining a leadership position in the global standards community.

c. Standard Development Activities Subject to the EAR

Several commenters requested additional clarity with respect to standards development activities and the interpretation of § 734.7 of the EAR (Published). One commenter stated that ''discussions with representatives of listed entities in the context of legitimate standards-setting activities are not [to] be subject to the EAR as they are made in the context of an open and transparent process with the intent to publish a standard.'' Another commenter requested confirmation that unclassified ''technology'' or ''software'' is ''published'' and thus not subject to the EAR when made available to the public without restriction. Additionally, one commenter pointed out that ''the Treasury Department's Office of Foreign Assets Control (OFAC) application of sanctions pursuant to the Specially Designated Nationals and Blocked Persons List (SDN List) specifically did not apply restrictions to participation in standards development activities because such interactions were public and intended to result in published standards.''

While the application of OFAC regulations is outside the scope of this rule, the EAR currently provide that ''published'' unclassified technology or software is not subject to the EAR, and therefore does not require a license to be exported, reexported or transferred (in country), even to an entity on the Entity List, provided the technology or software is available to the public without restriction as set forth in § 734.7 of the EAR. Many instances of the release of technology or software in the standards environment would be considered published and not subject to the EAR. Excluded from the scope of § 734.7 is ''technology'' or ''software'' that is not available to the public without restriction, as well as certain encryption software and certain firearm-related software or technology. Such technology or software remains subject to the EAR and requires a license for transactions involving entities on the Entity List. Therefore, BIS does not agree with the general interpretation that transfer or release of ''technical data'' within the context of international standards activities would necessarily be considered ''Published'' under § 734.7 and therefore not subject to the EAR in all circumstances.

d. Public Dialogue and Outreach

Commenters suggested a number of ways in which BIS could assist industry with the interpretation and application of the authorization in the context of standards organizations. Three commenters pointed to additional dialogue and engagement with the private sector. One commenter ''strongly recommend(ed) extensive engagement with the private sector and with the National Institute of Standards and Technology (NIST), which has statutory responsibilities for coordinating federal government standards engagement and also federal engagement with the private sector . . . in order to develop smarter and more targeted policies *vis-à-vis* standards.'' Another suggested that BIS ''explore opportunities to educate the industry during the rollout of new rules pertaining to standards development''; ''develop more formal mechanisms and processes for engaging with the U.S. technology companies that are active in the standards setting community''; and ''take steps to educate the industry on its positions on interpretation of the IFR and what to expect in the future.'' BIS appreciates these comments and will continue to identify additional ways to conduct industry and public outreach. BIS has been working with other government agencies, including NIST, on interpretations and EAR amendments specific to standards, and will continue to do so to ensure that the United States maintains a leadership position in standards development, while also preventing unauthorized foreign access to sensitive U.S. technology.

Two commenters also made suggestions regarding BIS's Technical Advisory Committees (TAC). One commenter suggested the establishment of a standards industry technical advisory committee focused on standards development and standards-development activities. The other commenter suggested modifying the charter for the Information Systems TAC (ISTAC) to enable it to gather and address specific inputs related to

standards development and to recruit participants that can provide such inputs. BIS notes that the ISTAC is only one of BIS's six existing TACs and that the information systems sector is not the only industry sector involved in standards development. The representatives on BIS's TACs have diverse backgrounds in many different industries affected by the standards issue and are able to provide BIS with information on how their industries are involved in and impacted by standards development. Therefore, because BIS will continue to seek input from its TAC membership on this and related issues, the establishment of a standards-focused TAC is not warranted at this time.

2. Requests for Expansion and Clarification of Authorization From Public Comments

The remainder of the comments can be categorized into three main issues and suggested areas of expansion. BIS discusses the comments, suggestions, and as necessary, subsequent actions under three sections in the background of this rule: (A) Expand the EAR99 and AT-only authorization to all entities listed on the Entity List; (B) Expand the scope of authorization to additional ''software'' and ''technology'' that is widely available; and (C) Clarify and expand the definitions of ''standards'' and ''standards organizations'' used by BIS to more accurately reflect current industry practices and regular activities conducted by standards organizations.

(A) Expand the EAR99 and AT-Only Authorization to All Entities Listed on the Entity List

Almost all commenters recommended extending the authorization to share technology for the purpose of contributing to the development or revision of a standard to other entities on the Entity List. While one commenter suggested that the exemption be expanded to companies involved in artificial intelligence (AI), other commenters expressed that the standards-related authorization should apply to all entities on the Entity List. Eight commenters highlighted that, in addition to Huawei, there are other entities listed on the Entity List that are members of standards bodies or have historically participated in standards development activities, and should also be included in the authorization. As one commenter noted, ''the unpublished technology that needs to be shared within standards organizations is generally not sensitive from an export control perspective [as it] is generally AT-only and EAR99 technology.'' As another commenter stated, if the U.S. government has determined that ''a standards-related carve-out for Huawei advances U.S. national security, foreign policy, and economic security objectives . . . then [allowing the] carve-out for all other listed entities would also advance the same objectives.'' A third commenter noted that ''Applying that same policy to standards activities that include any listed entities also will advance the U.S. government objective of ensuring U.S. technological leadership.''

Thirteen commenters expressed concern that the uncertainty regarding licensing requirements for currently listed entities as well as future additions to the Entity List creates an increased regulatory burden on U.S. industry. As one commenter stated, allowing all ''entities [on the Entity List] to participate in standards setting activities also prevents unintended consequences that could irreparably harm U.S. industry and U.S. competitiveness.'' Six commenters pointed to the increased regulatory and compliance burden of needing to constantly screen changes to the Entity List against standards organizations' membership lists. One commenter stated that the ''current standards setting environment is plagued by uncertainty that U.S.-based standards bodies or U.S.-based participants will be unable to complete their important work when . . . a non-U.S. standards setting member [is added] to the Entity List.'' Three other commenters highlighted that extending the authorization to all entities listed on the Entity List would level the playing field for U.S. standards participants; as one noted, ''with an increasing number of non-US companies and multi-national, global organizations spanning multiple continents, creating technological advances in a range of connected technologies, it is critically important that their contributions be considered for the development of standards and specifications that can be used around the world . . . By extending the exemption to [all] companies on the Entity List, BIS will be leveling the playing field for U.S. companies because single standards developed with input from participants around the world will open more markets for U.S. companies and reduce artificial market barriers in other countries . . . The rapid pace of standards development, particularly for digital technologies is completely at odds with the time that is typically required for applying for exemptions [licenses] to work with organizations that are on the Entity List, and for the applications to be adjudicated. As these standards development activities routinely involve dozens of US companies, it is neither practical, nor reasonable to expect all of the participating US companies . . . to apply for such exemptions.'' In summary, as one commenter noted, innovation and U.S. technological leadership is promoted by ''clarity and simplicity regarding the Entity List and standards processes.''

BIS agrees with the commenters that the standards-related authorization should be applied to all entities on the Entity List. The uncertainty created by not knowing whether a BIS license is required to release low level technology for legitimate standards activities has undermined U.S. participation in these activities. The basis for the authorization for low level, non-sensitive, and widely available items to Huawei is also valid for all other entities on the Entity List. Extending a standards authorization to all listed entities on the Entity List will reduce the regulatory burden for industry and mitigate unintended consequences that could harm U.S. industry leadership and competitiveness in the telecommunications and information technology sector.

(B) Expand the Scope of the Authorization To Include Additional ''Technology'' and ''Software''

(1) Expand the Scope of the Authorization To Include ''Software'' Designated EAR99 or Controlled for AT Reasons Only

Eleven commenters suggested that in addition to ''technology,'' ''software'' should be included in the authorization because the sharing of software is increasingly important in standards development. According to the commenters, software must be regularly released for standardized benchmarks and technology standards commonly include software code as part of the standards development process. As one commenter highlighted, ''Standards bodies' participants exchange software executables and/or source code as part of their work.'' Commenters asserted that while some software may be publicly available and therefore not subject to the EAR, software subject to the EAR and designated EAR99 or controlled for AT reasons only that is shared in the ordinary course of standards development activities should be authorized to the same extent that ''technology'' that is designated EAR99 or controlled for AT reasons only is authorized under the EAR. Commenters concurred that including ''software'' in

the scope of the authorization will not harm national security.

BIS agrees with commenters that the scope of the authorization should be extended to include certain ''software.'' BIS appreciates the specific examples provided in the comments that reflect the need to share software (*e.g.,* as part of developing codecs, reference software implemented as part of the standard). One commenter noted that ''software allows members to incorporate ideas from many into a design the standards body is developing so that the other members can see how the idea would work. Such software is not ''production code,'' *i.e.,* that which is needed to produce the product. Rather, it is that which is designed to show performance aspects of a proposed standard.'' BIS acknowledges that the release of certain software is a usual, customary, and necessary part of standards activities.

In response to the public comments, BIS is revising the EAR to expand the scope of the authorization to include ''software'' subject to the EAR and designated as EAR99 or controlled for AT reasons only, or specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality, when such ''software'' is released in the context of a ''standards-related activity'' (see 772.1 of the EAR—Definitions).

(2) Expand the Scope of the Authorization to ''Technology'' and ''Software'' Beyond EAR99 and AT-Only Controlled Items

BIS received fourteen comments requesting that the authorization be extended beyond EAR99 and AT-only controlled ''technology'' to include additional ''technology'' and ''software.'' One commenter suggested that technology ''ranging from hardware and chips to software and source code [should be added] to the exemption for standards processes.'' Another commenter mentioned that ''the EAR should not interfere with U.S. leadership in standards organizations, except with respect to truly sensitive military and dual-use technologies that are controlled for release to foreign person[s] generally.'' Six commenters noted that some standards activities related to encryption, so the authorization should be expanded to include information security software and technology classified under ECCNs 5D002 and 5E002. One commenter also noted that, ''(i)nformation security is a critical element of 5G technology. 5G poses an elevated security threat . . . Information security must be incorporated from the outset into 5G standards, in order to ensure that the expected benefits of 5G networks can be achieved and the attendant risks minimized. Adding information security technology classified under ECCN 5E002 and related software classified under ECCN 5D002 to the list of technologies that may be shared in the context of standards organizations is the bare minimum required in order to permit standards organizations to address the elevated threat presented by 5G networks.''

BIS recognizes that neither an environment of competing national standards nor the exclusion of U.S. companies in international standards development is advantageous to U.S. interests. In the case of software and technology that is designated EAR99, controlled for AT reasons only, BIS is allowing the release, without a license, of software and technology that is already widely available on the global market. In addition, BIS agrees with commenters that information security is an important part of standards work, including in the development of 5G standards. BIS is allowing for the release in standards environments of software and technology specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality; without proper standardization in encryption functionality, vulnerabilities and issues in 5G security will pose a national security threat to the United States.

Therefore, in this final rule, BIS is revising the authorization for the release, in ''standards related activities,'' to include specific ''technology'' and ''software'' that is widely available and is subject to the EAR, to all entities on the Entity List. The authorization is revised to include software that is designated EAR99, software that is controlled for AT reasons only, and software that is classified only in ECCN subparagraphs 5D002.b and 5D002.c.1 (only for equipment specified in ECCNs 5A002.a and 5A002.c). The authorization continues to include the release of technology that is designated EAR99, or controlled for AT reasons only, and is revised to include technology classified under ECCN 5E002, only for equipment specified in ECCN subparagraphs 5A002.a, .b and .c, and technology classified under ECCN 5E002 for software controlled under ECCN 5D002.b and .c.1, (only for equipment specified in ECCN subparagraphs 5A002.a and .c) when the release is for a ''standards-related activity'' and specifically for the ''development,'' ''production,'' and ''use'' of cryptographic functionality.

These specific ECCN subparagraphs that are included in the expanded authorization allow the release of software and technology for functionality but not for other types of information security functions that remain controlled in Category 5 Part 2 of the CCL. Included in the expanded authorization are software and technology that encrypts and decrypts data that is regularly used in the development and production of many commonplace products that use cryptography (*e.g.,* smart phones, printers/scanners; toys; etc.). The specific software and technology authorized include only cryptographic functions needed to assist the development of security in a 5G network, not to develop 5G products or capacity. No other cryptanalytic items or products that use cryptographic techniques are included in the authorization. BIS understands that much standards development occurs using this widely available ''software'' and ''technology'' covered by the expanded authorization and this should assist U.S. companies in maintaining a leadership position in the global standards community.

(C) Clarify and Expand the Definitions of ''Standards'' and ''Standards Organizations'' Used by BIS To Reflect Current Industry Practices

Eighteen commenters requested additional clarification or expansion of the ''standards'' and ''standards organizations'' definitions added to the EAR in the June 18th IFR. The general consensus of the comments was that the ''standards'' and ''standards organizations'' definitions derived from the Office of Management and Budget (OMB) Circular A–119 were not the appropriate definitions for this context and created uncertainty and questions regarding which U.S. companies and organizations in the standards setting community are subject to the licensing requirements. As one commenter stated, OMB Circular A–119 ''emphasizes the role of the U.S. government in the development and use of standards'' while the exception from the license requirement in the June 18th IFR is ''intended to reduce barriers for U.S. companies in their participation and leadership in the development of standards.''

(1) Comments Regarding ''Standards''

BIS received thirteen comments regarding the OMB Circular A–119 definition of ''standards.'' Eight commenters requested additional clarification or confirmation regarding the ''standards'' definition while six commenters suggested revisions and expansions to the definition.

(a) Clarification and Confirmation of Definition

A number of commenters requested confirmation from BIS that certification and conformance activities were included in the definition of ''standards.'' One commenter noted that the OMB Circular mentions that: ''Certification programs are conformity assessment activities . . . The definition of 'conformity assessment' in the OMB Circular states that certification, as well as the accreditations of the competence of these activities, is included . . . [In addition], OMB Circular A–119 recognizes that conformity assessment activities are part of, and integral to, much of standards development . . . Finally, federal law explicitly recognizes standards development activities to include conformity assessment activities. The National Cooperative Research and Production Act of 1993 uses the same definition of a 'voluntary consensus standard' used in OMB Circular A–119 and further defines a 'standards development activity.' ''

Another commenter requested confirmation that ''the scope of standards development activities permitted by the Final Rule includes any action taken by an SDO for the purpose of developing, promulgating, revising, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, including standard conformity testing and assessment activities.''

(b) Revision and Expansion of Definition

One commenter requested that ''standardized benchmarks'' be included as part of the standards definition and defined as ''measurement software developed by an organization of relevant industry companies to evaluate the performance or energy consumption of a computing system. Without such an amendment, American companies will be excluded from the development of standardized benchmarks which are critical for selling computers.''

Several commenters referenced the Standards Development Organization Advancement Act of 2004 (SDOAA) (15 U.S.C. 4301–4306) and suggested the addition of and adherence to its ''standards development activity'' definition, which is commonly accepted by industry and extends beyond production to include post-production activities. One commenter stated that the ''EAR defines ''development'' to include all stages prior to an item's being in ''production,'' *e.g.,* no longer being modified. However, ''standards development activities'' are clearly defined in U.S. standards law (the SDOAA) as including activities [in] all stages of a standard's promulgation, such as its maintenance and conformity assessment.'' A separate comment noted that even applying a restrictive (but definitive) EAR definition of ''development'' to the standards carve-out would resolve uncertainty about whether ordinary promulgation and standards related activities are within the scope of the authorization.

Several commenters suggested that BIS define ''standards-related activities'' by referencing the existing definition from the Trade Agreements Act (TAA) of 1979 (19 U.S.C. 2501–2582). Several commenters also requested guidance on whether ''standards'' include important ancillary aspects of a standard, such as reference implementations, interoperability testing, conformance testing results, and other related technology development that helps to foster adoption, implementation, and improvement of the underlying standard. The commenters suggested that if these actions are not considered ''standards'' under the June 18th definition, the definition should be ''broadened to apply to encompass these activities of standards bodies that facilitate widespread adoption of technical standards.'' The comments also emphasized that allowing the full set of activities undertaken by a standards-setting body would enable U.S. companies to lead throughout the lifecycle of standards development.

(2) Comments Regarding ''Standards Organization''

BIS received twelve comments regarding the OMB Circular A–119 definition of ''Standards Organization.'' As one commenter noted, ''uncertainty regarding whether a standards organization meets the characteristics of a ''standards organization'' as defined [by Circular A–119] could cause U.S. companies to limit, withdraw, or delay their involvement in standards organizations . . . Participation rates in standards development is a key factor in the success and adoption of those standards.'' Seven comments requested additional clarification or confirmation regarding BIS's ''standards organization'' definition while five comments included suggested revisions and expansions to the definition.

A number of comments requested clarity or confirmation regarding what types of organizations met the equivalent ''voluntary consensus standards body'' (VCSB) definition as defined by OMB Circular A–119. One commenter requested clarification as to whether the June 18th IFR applies only to international voluntary consensus standards bodies or ''if it also applies to national standard setting organizations. OMB Circular No. A–119, which the rule refers to, notes that standard setting organizations are both domestic and international, although the language of the rule seems to contemplate the rule applying to international standard setting.'' Four commenters requested that BIS confirm that consortia or alliances are considered ''standards organizations'' for the purposes of the June 18th IFR. Two commenters requested confirmation that entities that develop certification programs would also be considered VCSBs. One commenter requested further clarification on SSO's and whether U.S. persons are permitted to work with Huawei and its affiliates in standards development activities or not.

A number of commenters suggested revisions to BIS's definition of ''standards organizations.'' Several commenters opined that OMB Circular No. A–119 and the definition of VCSBs is not a suitable definition for purposes of the EAR. One commenter recommended amending the definition to remove the ''appeals process'' required by OMB Circular No. A–119. Another commenter suggested that paid membership model organizations not be excluded from the scope of the VSCB definition. One commenter suggested that BIS should state that ''U.S. companies may safely participate in any SSO formed with the intention of creating global standards and which admits all interested parties as members on a non-discriminatory basis. Failing that, providing an SSO-specific exception referencing only the Openness and Consensus elements of the VCSB definition, tailored to ICT SSO realities, would provide a next-best solution.'' The same commenter endorsed the use of ''industry-accepted objective criteria, such as the ISO/IEC JTC–1 PAS Submitter process as well as other industry-established criteria or processes that would recognize legitimate standards organizations as qualifying as ''standards organizations''.''

(3) Removal of Definitions for ''Standards'' and ''Standards Organization;'' Addition of Definition for ''Standards-Related Activity''

BIS appreciates the insight and suggestions provided in the public comments to the June 18th IFR regarding the definitions, as well as the explanations of the issues that companies face on a practical level with regard to standards and information

sharing in the context of standards organizations. BIS understands and acknowledges that the ''standards'' and ''standards organizations'' terms, as defined by the OMB Circular No. A–119, do not adequately address the breadth of activities and issues that companies run into while participating in standards organizations.

Therefore, based on this input derived from public comments and interagency discussions, this final rule removes the definitions of ''standards'' and ''standards organization'' from the EAR. BIS considered the definitions found in the TAA and SDOAA and incorporated the relevant and applicable elements of the definitions into a ''standards-related activity'' definition. BIS is adding this term to § 772.1 of the EAR (Definitions). The scope of the standards authorization now reflects activities as defined and in the context of a ''standards-related activity.'' Use of the ''standards-related activity'' definition appropriately focuses export controls on activities that are important to United States technological leadership rather than the type of organization that performs them. Standards activities must not be constrained by defining the organization or product of the deliberations in such a way that full participation in the intended activities cannot be achieved.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated as significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This interim final rule involves the collection currently approved by OMB under the BIS control number: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications. The information collection under control number 0694–0088, carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 31,835 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements, including prior notice and the opportunity for public comment.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism

15 CFR Part 772

Exports.

Accordingly, parts 744 and 772 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Section 744.11 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through(f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

(1) *Standards Related Activity.* A license is not required for the release of ''technology'' or ''software'' designated EAR99 or controlled on the CCL for anti-terrorism reasons only, when such a release is for a ''standards-related activity.'' In addition, a license is not required for the release of the following ECCN ''items'' level paragraphs of ''technology'' or ''software'' specifically for the ''development,'' ''production,'' or ''use'' of cryptographic functionality

when such a release is for a ''standards-related activity:'' ''software'' that is classified under ECCN 5D002.b or 5D002.c.1 (for equipment specified in ECCN 5A002.a and 5A002.c only); ''technology'' that is classified under ECCN 5E002 (for equipment specified in ECCN 5A002.a, .b and .c); and ''technology'' for software controlled under ECCN 5D002.b or .c.1 (for equipment specified in ECCN 5A002.a and .c only).

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■ 3. Section 744.16 is amended by revising paragraph (a) to read as follows:

§ 744.16 ENTITY LIST

* * * * *

(a) *License requirements.* In addition to the license requirements for items specified on the CCL, you may not, without a license from BIS, export, reexport, or transfer (in-country) any items included in the License Requirement column of an entity's entry on the Entity List (supplement no. 4 to this part) when that entity is a party to a transaction as described in § 748.5(c) through (f) of the EAR. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in supplement no. 4 to this part. A license is not required for the release of certain ''technology'' or ''software'' when such a release is for a ''standards-related activity,'' as described in § 744.11(a)(1) and § 772.1 of the EAR.

■ 4. Supplement No. 4 to part 744 is amended by revising the introductory text and the following entries:

■ a. Under Argentina, ''Huawei Cloud Argentina'' and ''Huawei Tech Investment Co., Ltd. Argentina'';

■ b. Under Australia, ''Huawei Technologies (Australia) Pty Ltd.'';

■ c. Under Bahrain, ''Huawei Technologies Bahrain'';

■ d. Under Belarus, ''Bel Huawei Technologies LLC'';

■ e. Under Belgium, ''Huawei Technologies Research & Development Belgium NV'';

■ f. Under Bolivia, ''Huawei Technologies (Bolivia) S.R.L.'';

■ g. Under Brazil, ''Huawei Cloud Brazil'' and ''Huawei do Brasil Telecomunicacões Ltda'';

■ h. Under Burma, ''Huawei Technologies (Yangon) Co., Ltd.'';

■ i. Under Canada, ''Huawei Technologies Canada Co., Ltd'';

■ j. Under Chile, ''Huawei Chile S.A.'' and ''Huawei Cloud Chile'';

■ k. Under China, ''Beijing Huawei Digital Technologies Co., Ltd.'', ''Chengdu Huawei High-Tech Investment Co., Ltd.'', ''Chengdu Huawei Technologies Co., Ltd.'', ''Dongguan Huawei Service Co., Ltd.'', ''Dongguan Lvyuan Industry Investment Co., Ltd.'', ''Gui'an New District Huawei Investment Co., Ltd.'', ''Hangzhou Huawei Digital Technology Co., Ltd.'', ''HiSilicon Optoelectronics Co., Ltd.'', ''HiSilicon Technologies Co., Ltd (HiSilicon)'', ''HiSilicon Tech (Suzhou) Co., Ltd.'', ''Hua Ying Management Co. Limited'', ''Huawei Cloud Beijing'', ''Huawei Cloud Computing Technology'', ''Huawei Cloud Dalian'', ''Huawei Cloud Guangzhou'', ''Huawei Cloud Guiyang'', ''Huawei Cloud Hong Kong'', ''Huawei Cloud Shanghai'', ''Huawei Cloud Shenzhen'', ''Huawei Device Co., Ltd.'', ''Huawei Device (Dongguan) Co., Ltd.'', ''Huawei Device (Hong Kong) Co., Limited.'', ''Huawei Device (Shenzhen) Co., Ltd.'', ''Huawei International Co., Limited'', ''Huawei Machine Co., Ltd.'', ''Huawei OpenLab Suzhou'', ''Huawei Software Technologies Co., Ltd.'', ''Huawei Tech. Investment Co., Limited'', ''Huawei Technical Service Co., Ltd.'', ''Huawei Technologies Co., Ltd.'',, ''Huawei Technologies Service Co., Ltd.'', ''Huawei Training (Dongguan) Co., Ltd.'', ''Huayi internet Information Service Co., Ltd.'', ''Hui Tong Business Ltd.,'', ''North Huawei Communication Technology Co., Ltd.'', ''Shanghai Haisi Technology Co., Ltd.'', ''Shanghai HiSilicon Technologies Co., Ltd.,'', ''Shanghai Mossel Trade Co., Ltd.'', ''Shenzhen HiSilicon Technologies Co., Electrical Research Center'', ''Shenzhen Huawei Technical Services Co., Ltd.'', ''Shenzhen Huawei Terminal Commercial Co., Ltd.'', ''Shenzhen Huawei Training School Co., Ltd.'', ''Shenzhen Huayi Loan Small Loan Co., Ltd.'', ''Shenzhen Legrit Technology Co., Ltd.'', ''Shenzhen Smartcom Business Co., Ltd.'', ''Smartcom (Hong Kong) Co., Limited'', ''Suzhou Huawei Investment Co., Ltd.'', ''Wuhan Huawei Investment Co., Ltd.'', ''Wulanchabu Huawei Cloud Computing Technology'', ''Xi'an Huawei Technologies Co., Ltd.'', and ''Xi'an Ruixin Investment Co., Ltd.'';

■ l. Under Costa Rica, ''Huawei Technologies Costa Rica SA'';

■ m. Under Cuba, ''Huawei Cuba'';

■ n. Under Denmark, ''Huawei Denmark'';

■ o. Under Egypt, ''Huawei OpenLab Cairo'' and ''Huawei Technology'';

■ p. Under France, ''Huawei Cloud France'', ''Huawei France'' and ''Huawei OpenLab Paris'';

■ q. Under Germany, ''Huawei Cloud Berlin'', ''Huawei OpenLab Munich'', ''Huawei Technologies Deutschland GmbH'' and ''Huawei Technologies Dusseldorf GmbH;

■ r. Under India, ''Huawei OpenLab Delhi'' and ''Huawei Technologies India Private Limited'';

■ s. Under Indonesia, ''Huawei Tech Investment, PT'';

■ t. Under Israel, ''Toga Networks'';

■ u. Under Italy, ''Huawei Italia'', and ''Huawei Milan Research Institute'';

■ v. Under Jamaica, ''Huawei Technologies Jamaica Company Limited'';

■ w. Under Japan, ''Huawei Technologies Japan K.K.'';

■ x. Under Jordan, ''Huawei Technologies Investment Co. Ltd.'';

■ y. Under Kazakhstan, ''Huawei Technologies LLC Kazakhstan'';

■ z. Under Lebanon, ''Huawei Technologies Lebanon'';

■ aa. Under Madagascar, ''Huawei Technologies Madagascar Sarl'';

■ bb. Under Mexico, ''Huawei Cloud Mexico'', ''Huawei OpenLab Mexico City'', and ''Huawei Technologies De Mexico S.A.'';

■ cc. Under Morocco, ''Huawei Technologies Morroco'';

■ dd. Under Netherlands, ''Huawei Cloud Netherlands'' and ''Huawei Technologies Coöperatief U.A.'';

■ ee. Under New Zealand, ''Huawei Technologies (New Zealand) Company Limited'';

■ ff. Under Oman, ''Huawei Tech Investment Oman LLC'';

■ gg. Under Pakistan, ''Huawei Technologies Pakistan (Private) Limited'';

■ hh. Under Panama, ''Huawei Technologies Cr Panama S.A'';

■ ii. Under Paraguay, ''Huawei Technologies Paraguay S.A.'';

■ jj. Under Peru ''Huawei Cloud Peru'';

■ kk. Under Portugal, ''Huawei Technology Portugal'';

■ ll. Under Qatar, ''Huawei Tech Investment Limited'';

■ mm. Under Romania, ''Huawei Technologies Romania Co., Ltd.'';

■ nn. Under Russia, ''Huawei Cloud Russia'', ''Huawei OpenLab Moscow'', and ''Huawei Russia'';

■ oo. Under Singapore, ''Huawei Cloud Singapore'', ''Huawei International Pte. Ltd.'', and ''Huawei OpenLab Singapore'';

■ pp. Under South Africa, ''Huawei Cloud South Africa'', ''Huawei OpenLab Johannesburg'', and ''Huawei Technologies South Africa Pty Ltd.'';

■ qq. Under Sri Lanka, ''Huawei Technologies Lanka Company (Private) Limited'';

■ rr. Under Sweden, ''Huawei Sweden'';

■ ss. Under Switzerland, ''Huawei Cloud Switzerland'' and ''Huawei Technologies Switzerland AG'';

■ tt. Under Taiwan, ''Xunwei Technologies Co., Ltd.'';

■ uu. Under Thailand, ''Huawei Cloud Thailand'', ''Huawei OpenLab Bangkok'', and ''Huawei Technologies (Thailand) Co.'';

■ vv. Under Turkey, ''Huawei OpenLab Istanbul'';

■ ww. Under United Arab Emirates ''Huawei OpenLab Dubai'';

■ xx. Under United Kingdom, ''Centre for Integrated Photonics Ltd.'', ''Huawei Global Finance (UK) Limited'', ''Huawei Technologies R&D UK'', ''Huawei Technologies (UK) Co., Ltd.'', ''Proven Glory'', and ''Proven Honour''; and

uu. Under Vietnam, ''Huawei Technologies (Vietnam) Company Limited'' and ''Huawei Technology Co. Ltd.''.

The revisions read as follows:

Supplement No. 4 to Part 744—Entity List

This Supplement lists certain entities subject to license requirements for specified items under this parts 744 and 746 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR. See § 744.11 for licensing requirements in the context of a ''standards-related activity''. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
ARGENTINA	Huawei Cloud Argentina, Buenos Aires, Argentina.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Tech Investment Co., Ltd., Argentina, Av. Leandro N. Alem 815, C1054 CABA, Argentina.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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AUSTRALIA	Huawei Technologies (Australia) Pty Ltd., L6 799 Pacific Hwy, Chatswood, New South Wales, 2067, Australia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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BAHRAIN	Huawei Technologies Bahrain, Building 647 2811 Road 2811, Block 428, Muharraq, Bahrain.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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BELARUS	Bel Huawei Technologies LLC, a.k.a., the following one alias, —BellHuawei Technologies LLC. 5 Dzerzhinsky Ave., Minsk, 220036, Belarus.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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BELGIUM	Huawei Technologies Research & Development Belgium NV, Technologiepark 19, 9052 Zwijnaarde Belgium.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	**Federal Register** citation
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BOLIVIA	Huawei Technologies (Bolivia) S.R.L., La Paz, Bolivia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
BRAZIL	Huawei Cloud Brazil, Sau Paulo, Brazil.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR 8182, 2/14/22. 87 FR 21012, 4/11/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei do Brasil Telecomunicacões Ltda, Sao Paulo, Brazil; *and* Av. Jerome Case, 2600, Sorocaba—SP, 18087–220, Brazil.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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BURMA	Huawei Technologies (Yangon) Co., Ltd., Yangon, Burma.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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CANADA	* *	*	* *	*
	Huawei Technologies Canada Co., Ltd., Markham, ON, Canada.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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CHILE	Huawei Chile S.A., Santiago, Chile.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Chile, Santiago, Chile.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
CHINA, PEOPLE'S REPUBLIC OF.	* *	*	* *	*
	Beijing Huawei Digital Technologies Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	Federal Register citation
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	Chengdu Huawei High-Tech Investment Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Chengdu Huawei Technologies Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Dongguan Huawei Service Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Dongguan Lvyuan Industry Investment Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Gui'an New District Huawei Investment Co., Ltd., Guiyang, Guizhou, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Hangzhou Huawei Digital Technology Co., Ltd., Hangzhou, Zhejiang, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	HiSilicon Optoelectronics Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	HiSilicon Technologies Co., Ltd (HiSilicon), Bantian Longgang District, Shenzhen, 518129, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	HiSilicon Tech (Suzhou) Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Hua Ying Management Co. Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR 83769, 12/23/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Beijing, Beijing, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Computing Technology, Huawei Cloud Data Center, Xinggong Road, Qianzhong Avenue, Gui'an New District, Guizhou Province, China; *and* Huawei Cloud Data Center, Jiaotianfu Road, Jinma Avenue, Gui'an New District, Guizhou Province, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Dalian, Dalian, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Guangzhou, Guangzhou, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Guiyang, Guiyang, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Hong Kong, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 85 FR 52901, 8/27/20. 86 FR 12531, 3/4/21. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Shanghai, Shanghai, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Cloud Shenzhen, Shenzhen, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Device Co., Ltd., a.k.a., the following two aliases: —Huawei Device; *and* —Songshan Lake Southern Factory. Dongguan, Guangdong, China *and* No. 2 Xincheng Avenue, Songshan Lake Road, Dongguan City, Guangdong, China; *and* Songshan Lake Base, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Device (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Device (Hong Kong) Co., Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR 83769, 12/23/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Device (Shenzhen) Co., Ltd., Shenzhen, Guangdong, China *and* Building 2, Zone B, Huawei Base, Bantian, Longgang District, Shenzhen, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei International Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR 83769, 12/23/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Machine Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Suzhou, a.k.a., the following one alias: —Huawei Suzhou OpenLab, Suzhou, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Software Technologies Co., Ltd., Nanjing, Jiangsu, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Tech. Investment Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR 83769, 12/23/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technical Service Co., Ltd., China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies Co., Ltd., a.k.a., the following two aliases: —Shenzhen Huawei Technologies; *and* —Huawei Technology, and to include the following addresses and the following 22 affiliated entities: Addresses for Huawei Technologies Co., Ltd.: Bantian Huawei Base, Longgang District, Shenzhen, 518129, China; *and* No. 1899 Xi Yuan Road, High-Tech West District, Chengdu, 611731; *and* C1, Wuhan Future City, No. 999 Gaoxin Ave., Wuhan, Hebei Province; *and* Banxuegang Industrial Park, Buji Longgang, Shenzhen, Guangdong, 518129, China; *and* R&D Center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, China; *and* Zone G, Huawei Base, Bantian, Longgang District, Shenzhen, China; *and* Tsim Sha Tsui, Kowloon, Hong Kong. Affiliated entities:	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 86 FR 71559, 12/17/21. 87 FR 6026, 2/3/22. 87 FR 8182, 2/14/22. 87 FR 21012, 4/11/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Beijing Huawei Longshine Information Technology Co., Ltd., a.k.a., the following one alias: —Beijing Huawei Longshine, to include the following subordinate. Q80–3–25R, 3rd Floor, No. 3, Shangdi Information Road, Haidian District, Beijing, China. *Hangzhou New Longshine Information Technology Co., Ltd.,* Room 605, No. 21, Xinba, Xiachang District, Hangzhou, China. *Hangzhou Huawei Communication Technology Co., Ltd.,* Building 1, No. 410, Jianghong Road, Changhe Street, Binjiang District, Hangzhou, Zhejiang, China. *Hangzhou Huawei Enterprises,* No. 410 Jianghong Road, Building 1, Hangzhou, China. *Huawei Digital Technologies (Suzhou) Co., Ltd.,* No. 328 XINHU STREET, Building A3, Suzhou (Huawei R&D Center, Building A3, Creative Industrial Park, No. 328, Xinghu Street, Suzhou), Suzhou, Jiangsu, China. *Huawei Marine Networks Co., Ltd.,* a.k.a., the following one alias: —Huawei Marine; HMN Technologies; Huahai Zhihui Technology Co., Ltd.; *and* —HMN Tech. Building R4, No. 2 City Avenue, Songshan Lake Science & Tech Industry Park, Dongguan, 523808, *and* No. 62, Second Ave., 5/F–6/F, TEDA, MSD–B2 Area, Tianjin Economic and Technological Development Zone, Tianjin, 300457, China. *Huawei Mobile Technology Ltd.,* Huawei Base, Building 2, District B, Shenzhen, China. *Huawei Tech. Investment Co.,* U1 Building, No. 1899 Xiyuan Avenue, West Gaoxin District, Chengdu City, 611731, China. *Huawei Technology Co., Ltd. Chengdu Research Institute,* No. 1899, Xiyuan Ave., Hi-Tech Western District, Chengdu, Sichuan Province, 610041, China. *Huawei Technology Co., Ltd. Hangzhou Research Institute,* No. 410, Jianghong Rd., Building 4, Changhe St., Binjiang District, Hangzhou, Zhejiang Province, 310007, China. *Huawei Technologies Co., Ltd. Beijing Research Institute,* No. 3, Xinxi Rd., Huawei Building, ShangDi Information Industrial Base, Haidian District, Beijing, 100095, China; *and* No. 18, Muhe Rd., Building 1–4, Haidian District, Beijing, China. *Huawei Technologies Co., Ltd. Material Characterization Lab,* Huawei Base, Bantian, Shenzhen 518129, China. *Huawei Technologies Co., Ltd. Xi'an Research Institute,* National Development Bank Building (Zhicheng Building), No. 2, Gaoxin 1st Road, Xi'an High-tech Zone, Xi'an, China.			

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Terminal (Shenzhen) Co., Ltd., Huawei Base, B1, Shenzhen, China. *Nanchang Huawei Communication Technology,* No. 188 Huoju Street, F10–11, Nanchang, China. *Ningbo Huawei Computer & Net Co., Ltd.,* No. 48 Daliang Street, Ningbo, China. *Shanghai Huawei Technologies Co., Ltd.,* R&D center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, 286305 Shanghai, China, China. *Shenzhen Huawei Anjiexin Electricity Co., Ltd.,* a.k.a., the following one alias: —Shenzhen Huawei Agisson Electric Co., Ltd. Building 2, Area B, Putian Huawei Base, Longgang District, Shenzhen, China; *and* Huawei Base, Building 2, District B, Shenzhen, China. *Shenzhen Huawei New Technology Co., Ltd.,* Huawei Production Center, Gangtou Village, Buji Town, Longgang District, Shenzhen, China. *Shenzhen Huawei Technology Service,* Huawei Base, Building 2, District B, Shenzhen, China. *Shenzhen Huawei Technologies Software,* Huawei Base, Building 2, District B, Shenzhen, China. *Zhejiang Huawei Communications Technology Co., Ltd.,* No. 360 Jiangshu Road, Building 5, Hangzhou, Zhejiang, China.			
	Huawei Technologies Service Co., Ltd., Langfang, Hebei, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Training (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huayi Internet Information Service Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Hui Tong Business Ltd., Huawei Base, Electrical Research Center, Shenzhen, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	North Huawei Communication Technology Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Shanghai Haisi Technology Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shanghai HiSilicon Technologies Co., Ltd., Room 101, No. 318, Shuixiu Road, Jinze Town (Xiqi), Qingpu District, Shanghai, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shanghai Mossel Trade Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Shenzhen HiSilicon Technologies Co., Electrical Research Center, Huawei Base, Shenzhen, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shenzhen Huawei Technical Services Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shenzhen Huawei Terminal Commercial Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shenzhen Huawei Training School Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Shenzhen Huayi Loan Small Loan Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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Country	Entity	License requirement	License review policy	Federal Register citation
	Shenzhen Legrit Technology Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Shenzhen Smartcom Business Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Smartcom (Hong Kong) Co., Limited, Sheung Wan, Hong Kong.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR 83769, 12/23/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Suzhou Huawei Investment Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Wuhan Huawei Investment Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Wulanchabu Huawei Cloud Computing Technology, a.k.a., the following one alias: —Ulan Qab Huawei Cloud Computing Technology. Huawei Cloud Data Center at the Intersection of Manda Road and Jingqi Road, Jining District, Wulanchabu City, Inner Mongolia Autonomous Region, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Xi'an Huawei Technologies Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Xi'an Ruixin Investment Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
COSTA RICA ...	Huawei Technologies Costa Rica SA, a.k.a., the following one alias: —Huawei Technologies Costa Rica Sociedad Anonima. S.J, Sabana Norte, Detras De Burger King, Edif Gru, Po Nueva, San Jose, Costa Rica.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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CUBA	Huawei Cuba, Cuba.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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DENMARK	Huawei Denmark, Vestre Teglgade 9, Kobenhavn Sv, Hovedstaden, 2450, Denmark.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
EGYPT	* *	*	* *	*
	Huawei OpenLab Cairo, a.k.a., the following one alias: —Huawei Cairo OpenLab. Cairo-Alex Desert Rd, Al Giza Desert, Giza Governorate, Egypt.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technology, Cairo, Egypt.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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FRANCE	* *	*	* *	*
	Huawei Cloud France, Paris, France.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei France, a.k.a., the following one alias: —Huawei Technologies France SASU. 36–38, quai du Point du Jour, 92659 Boulogne-Billancourt cedex, France.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Paris, a.k.a., the following one alias: —Huawei Paris OpenLab. 101 Boulevard Murat, 75016 Paris, France.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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GERMANY	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Cloud Berlin, Berlin Germany.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Munich, a.k.a., the following one alias: —Huawei Munich OpenLab. Huawei Germany Region R&D Centre Riesstr. 22 80992 Munich, Germany; *and* Huawei Germany Region R&D Centre Riesstr. 12 80992 Munich, Germany.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 85 FR 52901, 8/27/20. 86 FR 12531, 3/4/2021. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies Deutschland GmbH, Germany.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies Dusseldorf GmbH, Huawei Germany Region R&D Centre Riesstr. 25, 80992 Munich, Germany, *and* Am Seestern 24 Duesseldorf, D–40547 Germany.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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INDIA	* *	*	* *	*
	Huawei OpenLab Delhi, a.k.a., the following one alias: —Huawei Delhi OpenLab. Delhi, India.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies India Private Limited, a.k.a., the following one alias: —Huawei Technologies India Pvt., Ltd. Level-3/4, Leela Galleria, The Leela Palace, No. 23, Airport Road, Bengaluru, 560008, India; *and* SYNO 37, 46,45/3,45/4 ETC KNO 1540, Kundalahalli Village Bengaluru Bangalore KA 560037 India.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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INDONESIA	Huawei Tech Investment, PT, Bri Ii Building 20Th Floor, Suite 2005, Jl. Jend., Sudirman Kav. 44–46, Jakarta, 10210, Indonesia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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ISRAEL	* *	*	* *	*
	Toga Networks, 4 Haharash St., Hod Hasharon, Israel.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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ITALY	Huawei Italia, Via Lorenteggio, 240, Tower A, 20147 Milan, Italy.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Milan Research Institute, Milan, Italy.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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JAMAICA	Huawei Technologies Jamaica Company Limited, Kingston, Jamaica.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
JAPAN	Huawei Technologies Japan K.K., Japan.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
JORDAN	Huawei Technologies Investment Co. Ltd., Amman, Jordan.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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KAZAKHSTAN	* *	*	* *	*
	Huawei Technologies LLC Kazakhstan, 191 Zheltoksan St., 5th floor, 050013, Bostandyk, District of Almaty, Republic of Kazakhstan.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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LEBANON	* *	*	* *	*
	Huawei Technologies Lebanon, Beirut, Lebanon.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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MADAGASCAR	Huawei Technologies Madagascar Sarl, Antananarivo, Madagascar.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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MEXICO	Huawei Cloud Mexico, Mexico City, Mexico.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Mexico City, a.k.a., the following one alias: —Huawei Mexico City OpenLab. Mexico City, Mexico.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Technologies De Mexico S.A., Avenida Santa Fé No. 440, Torre Century Plaza Piso 15, Colonia Santa Fe, Delegación Cuajimalpa de Morelos, C.P. 05348, Distrito Federal, CDMX, Mexico; *and* Laza Carso, Torre Falcón, Lago Zurich No. 245, Piso 18, Colonia Ampliacion Granda, Delegación Miguel Hidalgo, CDMX, Mexico.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
MOROCCO	Huawei Technologies Morocco, Immeuble High Tech, 4eme Etage, Plateaux N 11, 12 Et 13, Hay Riad —Rabat, Morocco.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
NETHERLANDS	* *	*	* *	*
	Huawei Cloud Netherlands, Amsterdam, Netherlands.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies Coöperatief U.A., Netherlands.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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NEW ZEALAND	Huawei Technologies (New Zealand) Company Limited, 80 Queen Street, Auckland Central, Auckland, 1010, New Zealand.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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OMAN	* *	*	* *	*
	Huawei Tech Investment Oman LLC, Muscat, Oman.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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PAKISTAN	* *	*	* *	*
	Huawei Technologies Pakistan (Private) Limited, Islamabad, Pakistan.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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PANAMA	Huawei Technologies Cr Panama S.A, Ave. Paseo del Mar, Costa del Este Torre MMG, Piso 17 Ciudad de Panamá, Panama.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
PARAGUAY	Huawei Technologies Paraguay S.A., Asuncion, Paraguay.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
PERU	Huawei Cloud Peru, Lima, Peru.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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PORTUGAL	Huawei Technology Portugal, Avenida Dom João II, 51B–11°.A 1990–085 Lisboa, Portugal.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
QATAR	Huawei Tech Investment Limited, Doha, Qatar.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
ROMANIA	Huawei Technologies Romania Co., Ltd., Ion Mihalache Blvd, No. 15–17, 1st District, 9th Floor of Bucharest Tower center, Bucharest, Romania.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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RUSSIA	*	*	*	*	*	*
	Huawei Cloud Russia, Moscow, Russia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Moscow, a.k.a., the following one alias: —Huawei Moscow OpenLab, Moscow, Russia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Russia, Business-Park "Krylatsky Hills", 17 bldg. 2, Krylatskaya Str., Moscow 121614, Russia.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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SINGAPORE	*	*	*	*	*	*
	Huawei Cloud Singapore, Singapore, Singapore.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei International Pte. Ltd., Singapore.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei OpenLab, Singapore, a.k.a., the following one alias: —Huawei Singapore OpenLab, Singapore, Singapore.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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SOUTH AFRICA	* *	*	* *	*
	Huawei Cloud South Africa, Johannesburg, South Africa.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab, Johannesburg, a.k.a., the following one alias: —Huawei Johannesburg OpenLab, Johannesburg, South Africa.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies South Africa Pty Ltd., 128 Peter St Block 7 Grayston Office Park, Sandton, Gauteng, 1682, South Africa.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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SRI LANKA	Huawei Technologies Lanka Company (Private) Limited, Colombo, Sri Lanka.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
SWEDEN	* *	*	* *	*
	Huawei Sweden, Skalholtsgatan 9–11 Kista, 164 40 Stockholm, Sweden.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
SWITZERLAND	* *	*	* *	*
	Huawei Cloud Switzerland, Bern, Switzerland.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies Switzerland AG, Liebefeld, Bern, Switzerland.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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TAIWAN	* *	*	* *	*
	Xunwei Technologies Co., Ltd., Taipei, Taiwan.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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THAILAND	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Cloud Thailand, Bangkok, Thailand.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei OpenLab Bangkok, a.k.a., the following one alias: —Huawei Bangkok OpenLab. Bangkok, Thailand.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies (Thailand) Co., 87/1 Wireless Road, 19th Floor, Capital Tower, All Seasons Place, Pathumwan, Bangkok, 10330, Thailand.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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TURKEY	* *	*	* *	*
	Huawei OpenLab Istanbul, a.k.a., the following one alias: —Huawei Istanbul OpenLab. Istanbul, Turkey.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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UNITED ARAB EMIRATES.	* *	*	* *	*
	Huawei OpenLab Dubai, a.k.a., the following one alias: —Huawei Dubai OpenLab. Dubai, United Arab Emirates.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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UNITED KINGDOM.	* *	*	* *	*
	Centre for Integrated Photonics Ltd., B55 Adastral Park, Pheonix House, Martlesham Heath, Ipswich, IP5 3RE United Kingdom.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Huawei Global Finance (UK) Limited, Great Britain.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technologies R&D UK, a.k.a., the following two aliases: —Huawei Research & Development (UK) Ltd; *and* —Huawei Technologies Research & Development (UK)). Former Spicers Site Sawston Bypass Sawston Cambridge Cambridgeshire CB22 3JG, England; *and* 302 Cambridge Science Park, Milton Road, Cambridge, CB4 0WG, England; *and* Phoenix House (B55) Adastral Park, Martlesham Heath, Ipswich, Suffolk. IP5 3RE.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Technologies (UK) Co., Ltd., a.k.a., the following one alias: —Huawei Software Technologies Co. Ltd. 300 South Oak Way, Green Park, Reading, RG2 6UF; *and* 6 Mitre Passage, SE 10 0ER, United Kingdom.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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	Proven Glory, British Virgin Islands	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Proven Honour, British Virgin Islands.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
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VIETNAM	Huawei Technologies (Vietnam) Company Limited, Hanoi, Vietnam.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].
	Huawei Technology Co. Ltd., Hanoi, Vietnam.	For all items subject to the EAR, see §§ 734.9(e) [1] and 744.11 of the EAR [2]	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 87 FR 6026, 2/3/22. 87 FR [INSERT FR PAGE NUMBER AND 9/9/22].

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PART 772—[AMENDED]

■ 4. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 5. Section 772.1 is amended by
■ a. Removing the definitions of ''Standard'' and ''Standards organization''; and
■ b. Adding the definition of ''Standards-related activity'' in alphabetical order.

The addition reads as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Standards-related activity. ''Standards-related activity'' includes the development, adoption, or application of a standard (*i.e.,* any document or other writing that provides, for common and repeated use, rules, guidelines, technical or other characteristics for products or related processes and production methods, with which compliance is not mandatory), including but not limited to conformity assessment procedures, with the intent that the resulting standard will be ''published.'' A ''standards-related activity'' includes an action taken for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, implementing or otherwise maintaining or applying such a standard.

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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–19415 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 9, 9A, 9B, 9C, 10, 10A, 10B, 10C, 11, and 12

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing ten general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions program: GLs 9, 9A, 9B, 9C, 10, 10A, 10B, 10C, 11, and 12, each of which was previously made available on OFAC's website.

DATES: GL 9 was issued on February 24, 2022 with an expiration date of May 25, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On February 24, 2022, OFAC issued GL 9, with an expiration date of May 25, 2022, to authorize certain activities prohibited by Executive Order (E.O.) 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation'' (86 FR 20249, April 19, 2021). On March 1, 2022, OFAC incorporated E.O. 14024 into the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (87 FR 11297, March 1, 2022), so subsequent iterations of GL 9 were issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations. On March 2, 2022, OFAC issued GL 9A, which superseded GL 9 and had an expiration date of May 25, 2022. On April 6, 2022, OFAC issued GL 9B, which superseded GL 9A. GL 9B had different expiration dates for different provisions: paragraphs (a)(1), (b)(1)(i), and (c) of GL 9B had an expiration date of May 25, 2022; and paragraphs (a)(2) and (b)(1)(ii) had an expiration date of June 30, 2022. On April 7, 2022, OFAC issued GL 9C, which superseded GL 9B. GL 9C also had different expiration dates for different provisions: paragraphs (a)(1), (b)(1)(i), and (c) of GL 9B had an expiration date of May 25, 2022; paragraphs (a)(2) and (b)(1)(ii) had an expiration date of June 30, 2022; and paragraphs (a)(3) and (b)(1)(iii) had an expiration date of July 1, 2022.

Similar to GL 9, OFAC issued GL 10 to authorize certain activities prohibited by E.O. 14024, then issued subsequent iterations pursuant to the Russian Harmful Foreign Activities Sanctions Regulations. On February 24, 2022, OFAC issued GL 10, with an expiration date of May 25, 2022. On March 2, 2022, OFAC issued GL 10A, which superseded GL 10 and had an expiration date of May 25, 2022. On April 6, 2022, OFAC issued GL 10B, which superseded GL 10A. GL 10B had different expiration dates for different provisions: paragraphs (a)(1) and (b) had an expiration date of May 25, 2022; and paragraph (a)(2) had an expiration date of June 30, 2022. On April 7, 2022, OFAC issued GL 10C, which superseded GL 10B. Like GL 10B, GL 10C had different expiration dates for different provisions: paragraph (a)(1) and paragraph (b) had an expiration date of May 25, 2022; paragraph (a)(2) had an expiration date of June 30, 2022; and paragraph (a)(3) had an expiration date of July 1, 2022.

On February 24, 2022, OFAC issued GL 11, with an expiration date of March 26, 2022, and GL 12, also with an expiration date of March 26, 2022, to authorize certain activities prohibited by E.O. 14024.

At the time of issuance, OFAC made GLs 9, 9A, 9B, 9C, 10, 10A, 10B, 10C, 11, and 12 available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 9

Authorizing Transactions Related to Dealings in Certain Debt or Equity

(a) Except as provided in paragraphs (c) and (d) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to dealings in debt or equity of one or more of the following entities issued prior to February 24, 2022 (''covered debt or equity'') are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, covered debt or equity must be to a non-U.S. person:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company; or

(6) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

Note to paragraph (a). The transactions authorized in paragraph (a) of this general license include facilitating, clearing, and settling transactions to divest covered debt or equity to a non-U.S. person, including on behalf of U.S. persons.

(b)(1) Except as provided in paragraph (d) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided such trades were placed prior to 4:00 p.m. eastern standard time, February 24, 2022.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (b)(1) of this general license.

(c) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment by U.S. persons in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(d) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;* or

(2) Any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 9A

Authorizing Transactions Related to Dealings in Certain Debt or Equity

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to dealings in debt or equity of one or more of the following entities issued prior to February 24, 2022 (''covered debt or equity'') are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, covered debt or equity must be to a non-U.S. person:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company; or

(6) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

Note to paragraph (a). The transactions authorized in paragraph (a) of this general license include facilitating, clearing, and settling transactions to divest covered debt or equity to a non-U.S. person, including on behalf of U.S. persons.

(b)(1) Except as provided in paragraph (e) of this general license, all transactions

prohibited by the RuHSR that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided such trades were placed prior to 4:00 p.m. eastern standard time, February 24, 2022.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (b)(1) of this general license.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* that are ordinarily incident and necessary to the receipt of interest, dividend, or maturity payments in connection with debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation issued before March 1, 2022, are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment by U.S. persons in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(f) Effective March 2, 2022, General License No. 9, dated February 24, 2022, is replaced and superseded in its entirety by this General License No. 9A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 9B

Authorizing Transactions Related to Dealings in Certain Debt or Equity

(a)(1) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to dealings in debt or equity of one or more of the following entities issued prior to February 24, 2022 (''Tranche 1 debt or equity'') are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, Tranche 1 debt or equity must be to a non-U.S. person:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to dealings in debt or equity of Joint Stock Company Alfa-Bank (''Alfa-Bank'') or any entity in which Alfa-Bank owns, directly or indirectly, a 50 percent or greater interest, issued prior to April 6, 2022 (''Alfa-Bank debt or equity'') are authorized through 12:01 a.m. eastern daylight time, June 30, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, Alfa-Bank debt or equity must be to a non-U.S. person.

Note to paragraph (a). The transactions authorized in paragraph (a) of this general license include facilitating, clearing, and settling transactions to divest covered debt or equity to a non-U.S. person, including on behalf of U.S. persons.

(b)(1) Except as provided in paragraph (e) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and

necessary to facilitating, clearing, and settling trades are authorized:

(i) for Tranche 1 debt or equity, through 12:01 a.m. eastern daylight time, May 25, 2022, provided such trades were placed prior to 4:00 p.m. eastern standard time, February 24, 2022; and

(ii) for Alfa-Bank debt or equity, through 12:01 a.m. eastern daylight time, June 30, 2022, provided such trades were placed prior to 4:00 p.m. eastern daylight time, April 6, 2022.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (b) of this general license.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation, that are ordinarily incident and necessary to the receipt of interest, dividend, or maturity payments in connection with debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation issued before March 1, 2022, are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment by U.S. persons in, directly or indirectly, covered debt or equity, other than purchases of or investments in Tranche 1 debt or equity or Alfa-Bank debt or equity (''covered debt or equity'') that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(f) Effective April 6, 2022, General License No. 9A, dated March 2, 2022, is replaced and superseded in its entirety by this General License No. 9B.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 9C

Authorizing Transactions Related to Dealings in Certain Debt or Equity

(a)(1) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to dealings in debt or equity of one or more of the following entities issued prior to February 24, 2022 (''Russian financial institution debt or equity'') are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, Russian financial institution debt or equity must be to a non-U.S. person:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to dealings in debt or equity of Joint Stock Company Alfa-Bank (''Alfa-Bank'') or any entity in which Alfa-Bank owns, directly or indirectly, a 50 percent or greater interest, issued prior to April 6, 2022 (''Alfa-Bank debt or equity'') are authorized through 12:01 a.m. eastern daylight time, June 30, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, Alfa-Bank debt or equity must be to a non-U.S. person.

(3) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to dealings in debt or equity of Public Joint Stock Company Alrosa (''Alrosa''), or any entity in which Alrosa owns, directly or indirectly, a 50 percent or greater interest, issued prior to April 7, 2022 (''Alrosa debt or equity'') are authorized through 12:01 a.m. eastern daylight time, July 1, 2022, provided that any divestment or transfer of, or facilitation of divestment or transfer of, Alrosa debt or equity must be to a non-U.S. person.

Note to paragraph (a). The transactions authorized in paragraph (a) of this general license include facilitating, clearing, and settling transactions to divest debt or equity of the persons described in paragraph (a) of this general license (''covered debt or equity'') to a non-U.S. person, including on behalf of U.S. persons.

(b)(1) Except as provided in paragraph (e) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to facilitating, clearing, and settling trades are authorized:

(i) for Russian financial institution debt or equity, through 12:01 a.m. eastern daylight time, May 25, 2022, provided such trades were placed prior to 4:00 p.m. eastern standard time, February 24, 2022;

(ii) for Alfa-Bank debt or equity, through 12:01 a.m. eastern daylight time, June 30, 2022, provided such trades were placed prior to 4:00 p.m. eastern daylight time, April 6, 2022; and

(iii) for Alrosa debt or equity, through 12:01 a.m. eastern daylight time, July 1, 2022, provided such trades were placed prior to 4:00 p.m. eastern daylight time, April 7, 2022.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked persons described in paragraph (a) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (b) of this general license.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* that are ordinarily incident and necessary to the receipt of interest, dividend, or maturity payments in connection with debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation issued before March 1, 2022, are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment by U.S. persons in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(f) Effective April 7, 2022, General License No. 9B, dated April 6, 2022, is replaced and superseded in its entirety by this General License No. 9C.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: April 7, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 10

Authorizing Certain Transactions Related to Derivative Contracts

(a)(1) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, February 24, 2022, that (i) include one of the following entities (together, the ''Covered Entities'') as a counterparty or (ii) are linked to debt or equity of a Covered Entity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any payments to a blocked person are made into a blocked account:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a)(1) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (a)(1) of this general license.

(b) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;* or

(3) Any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 10A

Authorizing Certain Transactions Related to Derivative Contracts

(a)(1) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, February 24, 2022, that (i) include one of the following entities (together, the ''Covered Entities'') as a counterparty or (ii) are linked to debt or equity of a Covered Entity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any payments to a blocked person are made into a blocked account:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a)(1) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (a)(1) of this general license.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O). 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the*

Russian Federation, that are ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to 12:01 a.m. eastern standard time, March 1, 2022, that include the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (collectively, ''Directive 4 entities'') as a counterparty are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Directive 4 entities; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective March 2, 2022, General License No. 10, dated February 24, 2022, is replaced and superseded in its entirety by this General License No. 10A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 10B

Authorizing Certain Transactions Related to Derivative Contracts

(a)(1) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, February 24, 2022, that (i) include one of the following entities (together, the ''Tranche 1 entities'') as a counterparty or (ii) are linked to debt or equity of a Tranche 1 entity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any payments to a blocked person are made into a blocked account:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraph (c) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern daylight time, April 6, 2022, that (i) include Joint Stock Company Alfa-Bank (''Alfa-Bank'') or any entity in which Alfa-Bank owns, directly or indirectly, a 50 percent or greater interest (collectively, ''Alfa-Bank entities'') as a counterparty or (ii) are linked to debt or equity of an Alfa-Bank entity are authorized through 12:01 a.m. eastern daylight time, June 30, 2022, provided that any payments to a blocked person are made into a blocked account.

(3) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraphs (a)(1) and (2) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraphs (a)(1) and (2) of this general license.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* that are ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to 12:01 a.m. eastern standard time, March 1, 2022, that include the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (collectively, ''Directive 4 entities'') as a counterparty are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Directive 4 entities; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective April 6, 2022, General License No. 10A, dated March 2, 2022, is replaced and superseded in its entirety by this General License No. 10B.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 10C

Authorizing Certain Transactions Related to Derivative Contracts

(a)(1) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, February 24, 2022, that (i) include one of the following entities (collectively, the ''Russian financial institution entities'') as a counterparty or (ii) are linked to debt or equity of a Russian financial institution entity are authorized through 12:01 a.m. eastern daylight time, May 25, 2022, provided that any payments to a blocked person are made into a blocked account:

(i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(ii) Public Joint Stock Company Bank Financial Corporation Otkritie;

(iii) Sovcombank Open Joint Stock Company;

(iv) Public Joint Stock Company Sberbank of Russia;

(v) VTB Bank Public Joint Stock Company; or

(vi) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraph (c) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern daylight time, April 6, 2022, that (i) include Joint Stock Company Alfa-Bank (''Alfa-Bank'') or any entity in which Alfa-Bank owns, directly or indirectly, a 50 percent or greater interest (collectively, ''Alfa-Bank entities'') as a counterparty or (ii) are linked to debt or equity of an Alfa-Bank entity are authorized through 12:01 a.m. eastern daylight time, June 30, 2022, provided that any payments to a blocked person are made into a blocked account.

(3) Except as provided in paragraph (c) of this general license, all transactions prohibited by the RuHSR that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern daylight time, April 7, 2022, that (i) include Public Joint Stock Company Alrosa (''Alrosa''), or any entity in which Alrosa owns, directly or indirectly, a 50 percent or greater interest (collectively, ''Alrosa entities'') as a counterparty or (ii) are linked to debt or equity of an Alrosa entity are authorized through 12:01 a.m. eastern daylight time, July 1, 2022, provided that any payments to a blocked person are made into a blocked account.

(4) Debits to accounts on the books of a U.S. financial institution of the blocked entities described in paragraph (a) of this general license are authorized to the extent ordinarily incident and necessary to effect the transactions authorized in paragraph (a) of this general license.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* that are ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to 12:01 a.m. eastern standard time, March 1, 2022, that include the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (collectively, ''Directive 4 entities'') as a counterparty are authorized through 12:01 a.m. eastern daylight time, May 25, 2022.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Directive 4 entities; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective April 7, 2022, General License No. 10B, dated April 6, 2022, is replaced and superseded in its entirety by this General License No. 10C.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: April 7, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 11

Authorizing the Wind Down of Transactions Involving Certain Blocked Persons

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of transactions involving one or more of the following blocked persons are authorized through 12:01 a.m. eastern daylight time, March 26, 2022:

(1) Public Joint Stock Company Bank Financial Corporation Otkritie;

(2) Sovcombank Open Joint Stock Company;

(3) VTB Bank Public Joint Stock Company; or

(4) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 12

Authorizing U.S. Persons To Reject Certain Transactions

(a) Except as provided in paragraph (b) of this general license, U.S. persons are authorized to reject all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following blocked persons that are not authorized, through 12:01 a.m. eastern daylight time, March 26, 2022:

(1) Public Joint Stock Company Bank Financial Corporation Otkritie;

(2) Sovcombank Open Joint Stock Company;

(3) VTB Bank Public Joint Stock Company; or

(4) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize a U.S. person to reject any transaction involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless those transactions are separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19512 Filed 9–8–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 1, 1A, 2, 3, 4, 5, and 7

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing seven general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions program: GLs 1, 1A, 2, 3, 4, 5, and 7, each of which was previously made available on OFAC's website.

DATES: GL1, issued on May 21, 2021, was superseded by GL 1A, issued on August 20, 2021. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On May 21, 2021, OFAC issued GL 1 to authorize certain activities prohibited by the Protecting Europe's Energy Security Act of 2019, 22 U.S.C. 9526 note, as amended. On August 20, 2021, OFAC issued GL 1A, which superseded GL 1.

On February 22, 2022, OFAC issued GL 2 and GL 3 to authorize certain activities prohibited by Executive Order (E.O.) 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation'' (86 FR 20249, April 19, 2022). GL 3 expired on March 24, 2022. On February 23, 2022, OFAC issued GL 4 to authorize certain activities prohibited by E.O. 14039 of August 20, 2021, ''Blocking Property with Respect to Certain Russian Energy Export Pipelines'' (86 FR 47205, August 24, 2021). GL 4 expired on March 2, 2022.

On February 24, 2022, OFAC issued GLs 5 and 7, among others, to authorize certain activities prohibited by E.O. 14024.

At the time of issuance, OFAC made GLs 1, 1A, 2, 3, 4, 5, and 7 available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Protecting Europe's Energy Security Act of 2019 22 U.S.C. 9526 Note, as Amended

GENERAL LICENSE NO. 1

Authorizing Certain Activities Involving Federal State Budgetary Institution Marine Rescue Service

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by the Protecting Europe's Energy Security Act of 2019, 22 U.S.C. 9526 note, as amended (PEESA), involving Federal State Budgetary Institution Marine Rescue Service (MRS), or any entity in which MRS owns, directly or indirectly, a 50 percent or greater interest, that are not related to the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project, are authorized.

(b) This general license does not authorize:

(1) Any transactions or activities involving any vessels identified on the Office of Foreign Assets Control's Non-SDN Menu-Based Sanctions List (NS–MBS List) as blocked property of MRS or of any entity in which MRS owns, directly or indirectly, a 50 percent or greater interest; or

(2) Any transactions or activities otherwise prohibited by PEESA, or prohibited by any part of 31 CFR chapter V, other statute, or Executive order, or involving any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 21, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 20, 2021

Blocking Property With Respect to Certain Russian Energy Export Pipelines

Protecting Europe's Energy Security Act of 2019 22 U.S.C. 9526 Note, as Amended

GENERAL LICENSE NO. 1A

Authorizing Certain Activities Involving Federal State Budgetary Institution Marine Rescue Service

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) of August 20, 2021 or the Protecting Europe's Energy Security Act of 2019, 22 U.S.C. 9526 note, as amended (PEESA), involving Federal State Budgetary Institution Marine Rescue Service (MRS), or any entity in which MRS owns, directly or indirectly, a 50 percent or greater interest, that are not related to the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project, are authorized.

(b) This general license does not authorize:

(1) Any transactions or activities involving any vessels identified on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (SDN List) as blocked property of MRS, including vessels identified as blocked property of any entity in which MRS owns, directly or indirectly, a 50 percent or greater interest; or

(2) Any transactions or activities otherwise prohibited by E.O. of August 20, 2021 or PEESA, or prohibited by any part of 31 CFR chapter V, other statute, or other Executive order, or involving any blocked person other than the blocked persons identified in paragraph (a) of this general license.

(c) Effective August 20, 2021, General License No. 1, dated May 21, 2021, is replaced and superseded in its entirety by this General License No. 1A.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: August 20, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 2

Authorizing Certain Servicing Transactions Involving State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB), or any entity in which VEB owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the servicing of bonds issued before March 1, 2022 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation are authorized.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, Prohibitions Related to Certain Sovereign Debt of the Russian Federation; or

(2) Any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 22, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 3

Authorizing the Wind Down of Transactions Involving State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of transactions involving State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB), or any entity in which VEB owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, March 24, 2022.

(b) This general license does not authorize any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 22, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14039 of August 20, 2021

Blocking Property With Respect to Certain Russian Energy Export Pipelines

GENERAL LICENSE NO. 4

Authorizing the Wind Down of Transactions Involving Nord Stream 2 AG

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14039 that are ordinarily incident and necessary to the wind down of transactions involving Nord Stream 2 AG, or any entity in which Nord Stream 2 AG owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, March 2, 2022.

(b) This general license does not authorize any transactions involving any person blocked pursuant to E.O. 14039 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 23, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 5

Official Business of Certain International Organizations and Entities

All transactions prohibited by Executive Order (E.O.) 14024 that are for the conduct of the official business of the following entities by employees, grantees, or contractors thereof are authorized:

(a) The International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);

(b) The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing; and

(c) The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies.

Note to General License No. 5. *See also* section 9 of E.O. 14024, which exempts transactions that are for the conduct of the official business of the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 7

Authorizing Overflight Payments, Emergency Landings, and Air Ambulance Services

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the receipt of, and payment of charges for, services rendered in connection with overflights of the Russian Federation or emergency

landings in the Russian Federation by aircraft registered in the United States or owned or controlled by, or chartered to, U.S. persons are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to provide air ambulance and related medical services, including medical evacuation, to individuals in the Russian Federation are authorized.

(c) This general license does not authorize the opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19509 Filed 9–8–22; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 21, 21A, 22, 23, 24, 25, 26, 27, 28, 29, and 30

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing eleven general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions program: GLs 21, 21A, 22, 23, 24, 25, 26, 27, 28, 29, and 30, each of which was previously made available on OFAC's website.

DATES: GL 21 was issued on April 6, 2022 and expired on June 7, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

OFAC issued each of these eleven GLs to authorize certain activities prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. On April 6, 2022, OFAC issued GL 21, with an expiration date of June 7, 2022. On April 7, 2022, OFAC issued GL 21A, with an expiration date of June 7, 2022, which superseded GL 21. On April 6, 2022, OFAC issued GL 22 with an expiration date of April 13, 2022, and GL 23 with an expiration date of May 6, 2022. On April 7, 2022, OFAC issued GL 24, with an expiration date of May 7, 2022, and GL 25. On April 12, 2022, OFAC issued GL 26 with an expiration date of July 12, 2022. On April 19, 2022, OFAC issued GL 27. On April 20, 2022, OFAC issued GL 28, with an expiration date of October 20, 2022, and GL 29, with an expiration date of May 20, 2022. On May 2, 2022, OFAC issued GL 30, with an expiration date of September 30, 2022.

At the time of issuance, OFAC made GLs, 21, 21A, 22, 23, 24, 25, 26, 27, 28, 29, and 30 available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 21

Authorizing the Wind Down of Sberbank CIB USA, Inc.

(a) Except as provided in paragraph (b) of this general license, U.S. persons are authorized to engage in all transactions ordinarily incident and necessary to the wind down of Sberbank CIB USA, Inc., or any entity in which Sberbank CIB USA, Inc. owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including the processing and payment of salaries, severance, and expenses; payments to vendors and landlords; and closing of accounts, through 12:01 a.m. eastern daylight time, June 7, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 21A

Authorizing the Wind Down of Sberbank CIB USA, Inc. and Alrosa USA, Inc.

(a) Except as provided in paragraph (b) of this general license, U.S. persons are authorized to engage in all transactions ordinarily incident and necessary to the wind down of Sberbank CIB USA, Inc. or Alrosa USA, Inc. (collectively, the ''blocked entities''), or any entity in which the blocked entities own, directly or indirectly, a 50 percent or greater interest, that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including the processing and payment of salaries, severance, and expenses; payments to vendors and landlords; and closing of accounts, through 12:01 a.m. eastern daylight time, June 7, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(c) Effective April 7, 2022, General License 21, dated April 6, 2022, is replaced and superseded in its entirety by this General License No. 21A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: April 7, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 22

Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Sberbank of Russia

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Public Joint Stock Company Sberbank of Russia (''Sberbank'') or any entity in which Sberbank owns, directly or indirectly, a

50 percent or greater interest that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, April 13, 2022.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;* or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 23

Authorizing the Wind Down of Transactions Involving Joint Stock Company Alfa-Bank

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Joint Stock Company Alfa-Bank (''Alfa-Bank'') or any entity in which Alfa-Bank owns, directly or indirectly, a 50 percent or greater interest that are prohibited by Executive Order 14024 are authorized through 12:01 a.m. eastern daylight time, May 6, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 24

Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Alrosa

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Public Joint Stock Company Alrosa (''Alrosa'') or any entity in which Alrosa owns, directly or indirectly, a 50 percent or greater interest that are prohibited by Executive Order 14024 are authorized through 12:01 a.m. eastern daylight time, May 7, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: April 7, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 25

Authorizing Transactions Related to Telecommunications and Certain Internet-Based Communications

(a) Except as provided in paragraph (c) of this general license, all transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized.

(b) Except as provided in paragraph (c) of this general license, the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Russian Federation of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, videoconferencing, chat and email, social networking, sharing of photos, movies, and documents, web browsing, blogging, web hosting, and domain name registration services, that is prohibited by the RuHSR, is authorized.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transaction prohibited by Executive Order (E.O.) 14066 or E.O. 14068.

Note to General License No. 25. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: April 7, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 26

Authorizing the Wind Down of Transactions Involving Joint Stock Company SB Sberbank Kazakhstan or Sberbank Europe AG

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Joint Stock Company SB Sberbank Kazakhstan or Sberbank Europe AG (collectively, ''the blocked Sberbank subsidiaries''), or any entity in which the blocked Sberbank subsidiaries own, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, July 12, 2022.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent*

or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 12, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 27

Certain Transactions in Support of Nongovernmental Organizations' Activities

(a) Except as provided in paragraph (c) of this general license, all transactions ordinarily incident and necessary to the activities described in paragraph (b) by nongovernmental organizations that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized, provided that the only involvement of blocked persons is the processing of funds by financial institutions blocked pursuant to Executive Order (E.O.) 14024.

(b) The activities referenced in paragraph (a) of this general license are as follows:

(1) Activities to support humanitarian projects to meet basic human needs in Ukraine or the Russian Federation, including drought and flood relief; food, nutrition, and medicine distribution; the provision of health services; assistance for vulnerable or displaced populations, including individuals with disabilities and the elderly; and environmental programs;

(2) Activities to support democracy building in Ukraine or the Russian Federation, including activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support education in Ukraine or the Russian Federation, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting the people of Ukraine or the Russian Federation, including those related to health, food security, and water and sanitation; and

(5) Activities to support environmental and natural resource protection in Ukraine or the Russian Federation, including the preservation and protection of threatened or endangered species, responsible and transparent management of natural resources, and the remediation of pollution or other environmental damage.

(c) This general license does not authorize:

(1) Any transaction prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transaction prohibited by E.O. 14066 or E.O. 14068.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 19, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 28

Authorizing Certain Transactions Involving Public Joint Stock Company Transkapitalbank and Afghanistan

(a) Except as provided in paragraph (c) of this general license, all transactions involving Public Joint Stock Company Transkapitalbank (TKB), or any entity in which TKB owns, directly or indirectly, a 50 percent or greater interest, that are ultimately destined for or originating from Afghanistan and prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, October 20, 2022.

(b) Except as provided in paragraph (c) of this general license, U.S. financial institutions are authorized to operate correspondent accounts on behalf of TKB, or any entity in which TKB owns, directly or indirectly, a 50 percent or greater interest, provided such accounts are used solely to effect transactions authorized in paragraph (a) of this general license.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 20, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 29

Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Transkapitalbank

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Public Joint Stock Company Transkapitalbank (TKB), or any entity in which TKB owns, directly, or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024, are authorized through 12:01 a.m. eastern daylight time, May 20, 2022.

(b) This general license does not authorize:

(1) Any transaction prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024,

Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation; or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 20, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 30

Authorizing Transactions Involving Gazprom Germania GmbH Prohibited by Directive 3 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, all transactions involving Gazprom Germania GmbH, or any entity in which Gazprom Germania GmbH owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by Directive 3 under Executive Order 14024, *Prohibitions Related to New Debt and Equity of Certain Russia-related Entities,* are authorized through 12:01 a.m. eastern daylight time, September 30, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 2, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19511 Filed 9–8–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 14, 15, 16, 17, 17A, 18, 19, and 20

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing eight general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions program: GLs 14, 15, 16, 17, 17A, 18, 19, and 20, each of which was previously made available on OFAC's website.

DATES: GL 14 was issued on March 2, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

OFAC issued each of these eight GLs to authorize certain activities prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. On March 2, 2022, OFAC issued GL 14; on March 3, 2022, OFAC issued GL 15; on March 8, 2022, OFAC issued GL 16, with an expiration date of April 22, 2022; on March 11, 2022, OFAC issued GL 17, with an expiration date of March 25, 2022. On March 24, 2022, OFAC issued GL 17A, which superseded GL 17. GL 17A had different expiration dates for different provisions: paragraph (a) of GL 17A had an expiration date of March 25, 2022, and paragraph (b) had an expiration date of June 23, 2022. On March 11, 2022, OFAC issued GLs 18 and 19; and on March 24, 2022, OFAC issued GL 20.

At the time of issuance, OFAC made GLs 14, 15, 16, 17, 17A, 18, 19, and 20 available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 14

Authorizing Certain Clearing and Settlement Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (collectively, ''Directive 4 entities''), where the Directive 4 entity's sole function in the transaction is to act as an operator of a clearing and settlement system, are authorized, provided that: (i) there is no transfer of assets to or from any Directive 4 entity, unless separately authorized; and (ii) no Directive 4 entity is either a counterparty or a beneficiary to the transaction, unless separately authorized.

(b) This general license does not authorize any debit to an account on the books of a U.S. financial institution of any Directive 4 entity.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 15

Authorizing Transactions Involving Certain Blocked Entities Owned by Alisher Burhanovich Usmanov

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), involving any entity owned 50 percent or more, directly or indirectly, by Alisher Burhanovich Usmanov that is not listed on OFAC's Specially Designated Nationals and Blocked Persons List (''blocked Usmanov entity'') are authorized.

(b) Except as provided in paragraph (c) of this general license, all property and interests in property of the blocked Usmanov entities are unblocked, and debits to accounts on the books of a U.S. financial institution of the blocked Usmanov entities are authorized.

(c) This general license does not authorize any transactions otherwise prohibited by the RuHSR or involving any person blocked or otherwise sanctioned pursuant to the RuHSR, including Alisher Burhanovich Usmanov, or his property or interests in property, other than the blocked Usmanov entities, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 3, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 16

Authorizing Transactions Related to Certain Imports Prohibited by Executive Order of March 8, 2022

Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) of March 8, 2022, Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, that are ordinarily incident and necessary to the importation into the United States of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products of Russian Federation origin pursuant to written contracts or written agreements entered prior to March 8, 2022 are authorized through 12:01 a.m. eastern daylight time, April 22, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 8, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 17

Authorizing Transactions Related to Certain Imports Prohibited by Executive Order of March 11, 2022

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by section 1(a)(i) of Executive Order of March 11, 2022, Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression, that are ordinarily incident and necessary to the importation into the United States of fish, seafood, and preparations thereof; alcoholic beverages; or non-industrial diamonds of Russian Federation origin pursuant to written contracts or written agreements entered into prior to March 11, 2022 are authorized through 12:01 a.m. eastern daylight time, March 25, 2022.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 11, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 17A

Authorizing Transactions Related to Certain Imports Prohibited by Executive Order 14068

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by section 1(a)(i) of Executive Order (E.O.) 14068 that are ordinarily incident and necessary to the importation into the United States of alcoholic beverages or non-industrial diamonds of Russian Federation origin pursuant to written contracts or written agreements entered into prior to March 11, 2022 are authorized through 12:01 a.m. eastern daylight time, March 25, 2022.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by section 1(a)(i) of E.O. 14068 that are ordinarily incident and necessary to the importation into the United States of fish, seafood, and preparations thereof of Russian Federation origin pursuant to written contracts or written agreements entered into prior to March 11, 2022 are authorized through 12:01 a.m. eastern daylight time, June 23, 2022.

(c) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR, unless separately authorized.

(d) Effective March 24, 2022, General License No. 17, dated March 11, 2022, is replaced and superseded in its entirety by this General License No. 17A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 18

Authorizing U.S. Dollar-Denominated Banknote Noncommercial, Personal Remittances Prohibited by Executive Order of March 11, 2022

(a)(1) Except as provided in paragraph (b) of this general license, all transactions prohibited by section (1)(a)(iv) of Executive Order of March 11, 2022, Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression, that are ordinarily incident and necessary to the transfer of U.S. dollar-denominated banknote noncommercial, personal remittances from: (i) the United States or a U.S. person, wherever located, to an individual located in the Russian Federation; or (ii) a U.S. person who is an individual located in the Russian Federation, are authorized.

Note to paragraph (a)(1). Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business.

(2) Transferring institutions may rely on the originator of a funds transfer with regard to compliance with paragraph (a)(1) of this general license, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a)(1).

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), or involving any person blocked pursuant to RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 11, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 19

Authorizing Transactions Related to Personal Maintenance of U.S. Individuals Located in the Russian Federation Prohibited by Executive Order of March 11, 2022

(a) Except as provided in paragraph (b) of this general license, individuals who are U.S. persons located in the Russian Federation are authorized to engage in all transactions prohibited by section 1(a)(iv) of Executive Order of March 11, 2022, Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression, that are ordinarily incident and necessary to their personal maintenance within the Russian Federation, including payment of housing expenses, acquisition of goods or services for personal use, payment of taxes or fees, and purchase or receipt of permits, licenses, or public utility services.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 11, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 20

Authorizing Third-Country Diplomatic and Consular Funds Transfers

(a) Except as provided in paragraph (b) of this general license, U.S. persons are authorized to engage in all transactions ordinarily incident and necessary to the official business of third-country diplomatic or consular missions located in the Russian Federation that are prohibited by Executive Order (E.O.) 14024 or section 1(a)(iv) of E.O. 14068.

(b) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation;

(3) The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of U.S. dollar-denominated banknotes to the Government of the Russian Federation, other than the payment of taxes or fees, and purchase or receipt of permits, licenses, or public utility services; or

(4) Any transactions otherwise involving any person blocked pursuant to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 24, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19510 Filed 9–8–22; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159

[Docket ID: DoD–2020–OS–0016]

RIN 0790–AK87

Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD is finalizing updates to this rule resulting from changes from the National Defense Authorization Act (NDAA) for Fiscal Years (FY) 2017 and 2020 as well as DoD policy updates. These changes include administrative updates and clarifications to private security contractors (PSCs) performing duties while under contract to DoD in support of a contingency operations, humanitarian or peace operations, or other military operations or exercises.

DATES: This rule is effective on October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Livingston, 703–692–3032, *donna.m.livingston.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Legal Authority

This section of the CFR was last updated in a final rule published in the **Federal Register** (76 FR 49650) on August 11, 2011. DoD is finalizing this rule to meet the mandates of NDAA for FY 2017 and 2020 and updates to DoD policy that require the Department to propose additional guidance on inherently governmental functions, PSC compliance with national and international recognized quality assurance management standards, and to add new definitions for total force and arming authorities. DoD also added language requiring PSCs to cooperate with DoD on all U.S. Government investigations. Additional language is also provided to state DoD is responsible for providing the appropriate contract administration oversight of PSCs.

The corresponding internal DoD policy is established in DoD Instruction 3020.50, ''Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises,'' published on July 22, 2009, and last updated on August 31, 2018. This Instruction will be updated based on publication of this final rule. For additional information, DoD Instruction 3020.50 can be accessed at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302050p.pdf.*

Discussion of Comments

A proposed rule titled ''Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises'' was published in the **Federal Register** (86 FR 28042) on May 25, 2021.

Two commenters provided comments and the Department's responses are as follows.

Comment: One comment discussed operational energy-related issues including registering activities involved with maintenance and security of the electrical grid, coordinating the activities of other U.S. Government entities operating in the area of operation, and coordinating with the host government on matters related to infrastructure in the area of operation.

Response: While the Department appreciates the comment, it does not specifically address private security contractors and does not require a change to the rule.

Comment: The second comment was supportive of the rule and suggested the new guidance be made readily available to all contractors. The commenter also opined that these policies should be strictly enforced with increased penalties for those that do not follow the requirements of the rule.

Response: The Department appreciates the comment. The new guidance will be made available to the contractors through publication on public websites and will be shared with the contracting community and industry groups to support wider dissemination. Enforcement and penalties are not decided at the Department level. They must be considered and assessed on an individual contract basis.

As no public comment required changes to the rule, the Department is finalizing the rule with minor administrative edits to provide additional clarity.

Expected Impact of the Final Rule

As no public comment was received on the economic analysis of the proposed rule, the Department is finalizing this section with no changes. Separate from this amendment rule, contractors are required to report certain types of incidents to the combatant commander (CCDR) with the geographic area of responsibility (AOR) in which they are assigned and in accordance with orders and instructions established by those commanders.

Total Costs for Non-Government and Government

The Office of the Secretary of Defense (OSD) subject matter experts on contractors performing private security functions have estimated an average of 4 incidents per month or 48 incidents (responses) per year from 12 respondents. Based on the nature of the task, the subject matter experts determined that it takes approximately 30 minutes for each contractor to retrieve, prepare, and submit the information for each incident report. Based on our assessment, the complexity of the reporting requirement is equivalent to that of a GS–11, step 5. See the rate calculation below. The estimated annual cost to contractors for receiving, preparing, and submitting the information for incidents is as follows:

ESTIMATION OF RESPONDENT BURDEN HOURS: OFFICE OF MANAGEMENT AND BUDGET (OMB) CONTROL NUMBER 0704–0549

Number of respondents	12
Responses per respondent	4
Number of responses (a)	48
Hours per response (b)	.5
Estimated hours (number of responses multiplied hours per response)	24
Cost per hour (c)	$45
Total cost to respondents	$1,080

We estimate that the U.S. Government receives approximately 48 contractor incident reports each year. According to OSD subject matter experts on contractors performing private security functions, it takes approximately 30 minutes for the U.S. Government to receive, review, and analyze the information for each incident reported by a contractor.

Based on our assessment, the complexity of the work is equivalent to that of a GS–11, step 5. See the rate calculation below. The estimated annual cost to the U.S. Government for receiving, reviewing, analyzing, and forwarding the information submitted by the contractor is as follows:

ESTIMATION OF FEDERAL GOVERNMENT BURDEN HOURS: OMB CONTROL NUMBER 0704–0549

Number of responses (a)	48
Hours per response (b)	.5
Estimated hours (number of responses multiplied hours per response)	24
Cost per hour (c)	$45
Annual Federal Government burden (estimated hours multiplied by cost per hour)	$1,080

The hourly rate was calculated by adding an overhead factor of 36.25 percent (taken from OMB Memo M–08–13, which provides standard cost factors for agency use) to the calendar year 2019 Office of Personnel Management rate for the Rest of the United States for a GS–11, step 5; $33.24.

Labor rate calculation:

Cost per hour	
GS–11, step 5 as follows	$33.24
OMB burden @36.25%	12.05
Total	45.29
Total Rounded to nearest whole dollar	45.00

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

These Executive orders direct agencies to assess all costs, benefits, and available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). These Executive orders emphasize the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866.

B. Congressional Review Act (5 U.S.C. 801 et seq.)

Pursuant to the Congressional Review Act, this rule has not been designated a major rule, as defined by 5 U.S.C. 804(2).

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

The Under Secretary of Defense for Acquisition and Sustainment certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

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

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

It has been determined that this amendment rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. There is an

existing information collection for 32 CFR part 159 that has been reviewed and approved by the OMB under OMB Control Number 0704–0549, ''Defense Federal Acquisition Regulation Supplement, part 225, Foreign Acquisition, and Defense Contractors Performing Private Security Functions Outside the United States.'' The amendments to this rule neither increase nor decrease the public burden nor cost to the Federal Government associated with this collection.

F. Executive Order 13132, ''Federalism''

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

G. Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 159

Government contracts, Reporting and recordkeeping requirements, Security measures.

Accordingly, 32 CFR part 159 is amended as follows:

PART 159—PRIVATE SECURITY CONTRACTORS (PSCs) OPERATING IN CONTINGENCY OPERATIONS, HUMANITARIAN OR PEACE OPERATIONS, OR OTHER MILITARY OPERATIONS OR EXERCISES

■ 1. The authority citation for part 159 is revised to read as follows:

Authority: Sec. 862, Pub. L. 110–181, 122 Stat. 253; Sec. 832, Sec 853, Pub. L. 110–417, 122 Stat. 4535; Sec. 831–833, Pub L. 111–383, 124 Stat. 4276.

■ 2. Revise the heading for part 159 to read as set forth above.

■ 3. Amend § 159.2 by:

■ a. In paragraph (a)(1):

■ i. Adding ''(CJCS)'' after ''Office of the Chairman of the Joint Chiefs of Staff''.

■ ii. Adding ''(DoD)'' after ''the Office of the Inspector General of the Department of Defense''.

■ iii. Removing ''organizational entities in the Department of Defense'' and adding in its place ''organizational entities in the DoD''.

■ b. Revising paragraph (a)(2).

■ c. Adding paragraph (a)(3).

■ d. Revising paragraph (b)(1).

■ e. In paragraph (b)(2), removing ''USG-funded'' and adding in its place ''U.S.G.-funded''.

The revisions and addition read as follows:

§ 159.2 Applicability and scope.

* * * * *

(a) * * *

(2) The Department of State and other U.S. Federal agencies insofar as it implements the requirements of section 862 of Public Law 110–181, as amended. Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for U.S. Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations or other significant military operations for the limited purposes of this part. In such an instance, the standards established in accordance with this part would, in coordination with the Secretary of State, expand from covering only DoD PSCs and PSC personnel to cover all U.S.G.-funded PSCs and PSC personnel operating in the designated area.

(3) The requirements of this part shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretary of Defense and the Secretary of State under this paragraph (a)(3) on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

(b) * * *

(1) DoD PSCs and PSC personnel on contract and subcontract, at any tier, performing private security functions in support of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States.

* * * * *

■ 4. Amend § 159.3 by:

■ a. Adding the definition of ''Arming authority'' in alphabetical order.

■ b. Revising the definition of ''Contingency operation,'' ''Covered contract,'' ''Other significant military operations,'' and ''Private security functions''.

■ c. Removing the definition of ''PSC''.

■ d. Adding the definitions of ''Private Security Contractor (PSC)'' and ''Total Force'' in alphabetical order.

The revisions and additions read as follows:

§ 159.3 Definitions.

* * * * *

Arming authority. A Combatant Commander (CCDR) with responsibility for the applicable geographic area concerned, or a person or persons designated by that Commander who can authorize the arming of civilians under their authority or supervision for security functions or to permit the carrying of firearms for personal protection in support of operations outside the United States.

Contingency operation. Per 10 U.S.C. 101(a)(13)(a), a military operation that is designated by the Secretary of Defense as a contingency operation, or that becomes a contingency operation as a matter of law in accordance with 10 U.S.C. 101(a)(13)(b).

* * * * *

Covered contract. (1) A DoD contract for performance of services and/or delivery of supplies in an area of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States or non-DoD Federal agency contract for performance of services and/or delivery of supplies in an area of combat operations or other significant military operations, as designated by the Secretary of Defense; a subcontract at any tier under such contracts; or a task order or delivery order issued under such contracts or subcontracts.

(2) Excludes temporary arrangements entered into by non-DoD contractors for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company.

Other significant military operations. (1) Activities, other than combat operations, as part of an overseas contingency operation that are carried out by U.S. Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

(2) With respect to an area of other significant military operations, the requirements of this part shall apply only upon agreement of the Secretary of Defense and the Secretary of State. Such an agreement of the Secretary of Defense and the Secretary of State may be made

only on an area-by-area basis. With respect to an area of combat operations, the requirements of this part shall always apply.

Private security functions. Activities engaged in by a contractor under a covered contract as follows:

(1) Guarding personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of their contract. For the DoD, DoD Instruction 3020.41, ''Operational Contract Support (OCS)'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302041p.pdf*) prescribes policies related to personnel allowed to carry weapons for self-defense.

(3) Contractors, including those performing private security functions, are not authorized to perform inherently governmental functions. In this regard, armed contractors are limited in the use of force to a defensive response to hostile acts or demonstrated hostile intent.

Private Security Contractor (PSC). A company contracted by the U.S.G. to perform private security functions under a covered contract.

* * * * *

Total Force. The organizations, units, and individuals that comprise DoD's resources for implementing the National Security Strategy. It includes the DoD Active and Reserve Component military personnel, DoD civilian personnel (including foreign national direct-hires as well as non-appropriated fund employees), contracted support, and host nation support personnel.

§ 159.4 [Amended]

■ 5. Amend § 159.4 by:
■ a. In paragraph (a):
■ i. Adding ''as amended,'' after ''Public Law 110–181,''.
■ ii. Removing ''section 159.5 of this part'' and adding in its place ''§ 159.5''.
■ b. In paragraph (b):
■ i. Removing ''Geographic Combatant Commanders'' and adding in its place ''Combatant Commanders (CCDRs) with geographic Areas of Responsibility (AORs)''.
■ ii. Redesignating footnotes 4 and 5 as footnotes 1 and 2.
■ c. In paragraph (c):
■ i. Removing ''geographic Combatant Commander'' and adding in its place ''CCDR for the applicable geographic AOR'' wherever it appears.
■ ii. Adding ''(COM)'' after ''the relevant Chief of Mission'' in the first sentence.
■ iii. Removing ''Chief of Mission'' and adding in its place ''COM'' in the second sentence.
■ 6. Revise § 159.5 to read as follows:

§ 159.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will provide Department-wide policies on the total force manpower mix and labor sourcing, consistent with U.S. law, the FAR, the DFARS, and other applicable Federal policy documents, especially with respect to contracted services and restrictions on functions that contractors may and may not perform. The USD(P&R) will ensure that policies specifically address circumstances where use of PSCs would be inherently governmental or where CCDRs with geographic AORs would need to assess where performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(b) The Deputy Assistant Secretary of Defense for Logistics (DASD(Logistics)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) and through the Assistant Secretary of Defense for Sustainment, monitors the registering, processing, and accounting of PSC personnel in areas of contingency operations, humanitarian or peace operations, or other military operations or exercises.

(c) The Principal Director, Defense Pricing and Contracting (DPC), under the authority, direction, and control of the USD(A&S) and through the Assistant Secretary of Defense for Acquisition, ensures that the DFARS and (when appropriate, in consultation with the other members of the FAR Council) the FAR, provides appropriate guidance and publishes contracting requirements pursuant to this part and section 862 of Public Law 110–181.

(d) The CJCS shall ensure that joint doctrine is consistent with the principles established by DoD Directive 3020.49, ''Program Management for the Planning and Execution of Operational Contract Support'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/302049d.pdf?ver=fgxC1kzBqeIV4KpOv9pDTw%3d%3d*); DoD Instruction 3020.41, DoD Directive 5210.56, ''Arming and the Use of Force'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/521056p.PDF?ver=PIvIb3eht0obgolnD0UCEw%3d%3d*); and this part.

(e) CCDRs with responsibility for the AOR in which contingency operations, humanitarian or peace operations, or other military operations or exercises are occurring, and within which PSCs and PSC personnel perform under covered contracts, shall:

(1) Provide guidance and procedures, as necessary and consistent with the principles established by DoD Directive 3020.49, DoD Instruction 3020.41, DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf*); DFARS, 48 CFR 225.302, and this part, for the selection, training, accountability, and equipping of such PSC personnel and the conduct of PSCs and PSC personnel within their AOR. Individual training and qualification standards shall meet, at a minimum, one of the Military Departments' established standards. Within a Combatant Command (CCMD) with a designated geographic AOR, a sub unified commander or JFC shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant COM in designated areas of combat operations or other significant military operations.

(2) Through the Contracting Officer, the PSC should acknowledge that its personnel understand their obligation to comply with the terms and conditions of applicable covered contracts.

(3) Issue written authorization to the PSC identifying individual PSC personnel who are authorized to be armed. Rules for the Use of Force shall be included with the written authorization, if not previously provided. Rules for the Use of Force shall conform to the guidance in DoD Directive 5210.56 and the CJCS Instruction 3121.01B, ''Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces.'' Offerors' and contractors' access to the Rules for the Use of Force may be controlled in accordance with the terms of FAR, 48 CFR 52.204–2, ''Security Requirements''; DFARS, 48 CFR 252.204–7000, ''Disclosure of Information''; or both.[1]

(4) Ensure that the procedures, orders, directives, and instructions prescribed in § 159.6 are available through a single location (including an internet website,

[1] CJCS Instruction 3121.01B provides guidance on the standing rules of engagement (SROE) and establishes standing rules for the use of force for DoD operations worldwide. This document is classified secret. CJCS Instruction 3121.01B is available via Secure internet Protocol Router Network at *https://jsportal.osd.smil.mil.*

consistent with security considerations and requirements).

(f) The Heads of the DoD Components shall:

(1) Ensure that all private security-related requirement documents are in compliance with the procedures listed in § 159.6 and the guidance and procedures issued by the CCMD of the applicable geographic AOR.

(2) Ensure private security-related solicitations and contracts contain the appropriate clauses in accordance with the applicable FAR and DFARS clauses and include additional mission-specific requirements as appropriate.

(3) In coordination with the appropriate requiring activity (or activities), ensure the head of the contracting activity responsible for each covered contract takes appropriate steps to assign sufficient oversight personnel to the contract to verify that the contractor responsible for performing private security functions complies with the requirements of this part. This includes ensuring that the contracting officer coordinates with the requiring activity to nominate and appoint a qualified contracting officer's representative (COR) or other multiple or alternate CORs, in accordance with DoD Instruction 5000.72, ''DoD Standard for Contracting Officer's Representative (COR) Certification'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf*).

■ 7. Amend § 159.6 by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(1)(i), removing '', ''Contractor Personnel Authorized to Accompany the U.S. Armed Forces.'' '' and adding a period in its place.

■ c. In paragraph (a)(1)(iii) introductory text:

■ i. Removing ''geographic Combatant Commander'' and adding in its place ''CCDR of the geographic AOR'' wherever it appears.

■ ii. Removing ''of this part''.

■ d. In paragraph (a)(1)(iii)(C):

■ i. Removing '' ''Guidance for Determining Workforce Mix,'' '' and adding in its place '' ''Policy and Procedures for Determining Workforce Mix,'' ''.

■ ii. Redesignating footnote 12 as footnote 1.

■ e. In paragraph (a)(1)(iii)(F)(*1*), redesignating footnote 13 as footnote 2.

■ f. In paragraph (a)(1)(iv), adding ''PSC personnel, weapons,'' before ''armored vehicles''.

■ g. In paragraph (a)(1)(v)(F), removing ''TASER guns'' and adding in its place ''disruption devices''.

■ h. In paragraph (a)(1)(viii), removing ''commander of a combatant command may request'' and adding in its place ''CCDR may, through the contracting officer, request''.

■ i. In paragraph (a)(1)(x), removing ''paragraph (a)(2)(ii)'' and adding in its place ''paragraph (a)(2)(iii)''.

■ j. In paragraph (a)(2)(i), removing '', ''Contractor Personnel Authorized to Accompany the U.S. Armed Forces.'' '' and adding a period in its place.

■ k. Redesignating paragraphs (a)(2)(ii) through (iv) as paragraphs (a)(2)(iii) through (v) and adding new paragraph (a)(2)(ii).

■ l. Further redesignating newly redesignated paragraph (a)(2)(v) as paragraph (a)(2)(vi) and adding new paragraph (a)(2)(v).

■ m. In newly redesignated paragraph (a)(2)(vi), removing ''Chief of Mission'' and adding in its place ''COM''.

■ n. Removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

■ o. In newly redesignated paragraph (b):

■ i. Revising the paragraph heading.

■ ii. Removing ''Chief of Mission'' and ''combatant command'' and adding in their places ''COM'' and ''CCDR'', respectively.

■ p. In newly redesignated paragraph (c):

■ i. Revising the paragraph heading.

■ ii. Removing ''Chief of Mission'' and ''geographic Combatant Commander/sub unified commander'' and adding in their places ''COM'' and ''CCDR with geographic AOR/sub unified commander'', respectively.

The revisions and additions read as follows:

§ 159.6 Procedures.

(a) *Standing Combatant Command (CCMD) guidance and procedures.* Each CCDR with a geographic AOR shall develop and publish guidance and procedures for PSCs and PSC personnel operating during contingency operations, humanitarian or peace operations, or other military operations or exercises within their AOR, consistent with applicable law; this part; applicable Military Department publications; and other applicable DoD issuances including DoD Directive 3020.49, DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix,'' FAR, DFARS, DoD Instruction 3020.41, DoD Directive 2311.01E, ''DoD Law of War Program'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101p.pdf?ver=2020-07-02-143157-007*); DoD 5200.08–R, ''Physical Security Program'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520008rm.pdf*); CJCS Instruction 3121.01B,, and DoD Directive 5210.56. The guidance and procedures shall:

* * * * *

(2) * * *

(ii) Assessing compliance with DoD approved business and operational standards for private security functions.

* * * * *

(v) Requirements for the PSC to cooperate with any investigation conducted by the DoD, including by providing access to its employees and relevant information in its possession regarding the matter(s) under investigation.

* * * * *

(b) *Subordinate guidance and procedures.* * * *

(c) *Consultation and coordination.* * * *

Dated: August 29, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–18992 Filed 9–8–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0671]

RIN 1625–AA00

Safety Zone; Steve Hemberger Wedding Fireworks, Bay Harbor, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-foot radius of a fireworks display in Bay Harbor, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by repair work on the bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie.

DATES: This rule is effective from 11 p.m. on October 1, 2022 through 12 a.m. on October 2, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0671 in the search box and click ''Search.'' Next, in the Document Type

column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT. Deaven Palenzuela, U.S. Coast Guard Sector Sault Sainte Marie Waterways Management, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive sufficient notice of this event to undergo notice and comment and this safety zone must be established by October 1, 2022 in order to protect the public from the dangers associated with a fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to ensure that the potential safety hazards associated with the fireworks display are effectively mitigated.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with a fireworks display on October 1, 2022 will be a safety concern for anyone within a 500-foot radius of the navigable waters surrounding the fireworks launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 11 p.m. on October 1, 2022 until 12 a.m. on October 2, 2022. The safety zone will cover all navigable waters within 500-feet of a fireworks display center in position 45°21′58.80″ N 85°01′54.38″ W in Bay Harbor, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Bay Harbor. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 1 hour that will prohibit entry within a 500-foot radius of a fireworks display center in position 45°21′58.80″ N 85°01′54.38″ W in Bay Harbor, MI. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0671 to read as follows:

§ 165.T09–0671 Safety Zone; Steve Hemberger Wedding Fireworks, Bay Harbor, MI.

(a) *Location.* The following area is a safety zone: All navigable water within 500-feet of the fireworks launching location in position 45°21′58.80″ N 85°01′54.38″ W (NAD 83).

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative.

(2) Before a vessel operator may enter or operate within the safety zone, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from 11 p.m. on October 1, 2022 until 12 a.m. on October 2, 2022.

Dated: September 1, 2022.

A.R. Jones,

Captain of the Port Sault Sainte Marie.

[FR Doc. 2022–19387 Filed 9–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AR57

Reproductive Health Services

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) amends its medical regulations to remove the exclusion on abortion counseling and establish exceptions to the exclusion on abortions in the medical benefits package for veterans who receive care set forth in that package, and to remove the exclusion on abortion counseling and expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries.

DATES:

Effective date: This interim final rule is September 9, 2022.

Comment date: Comments must be received on or before October 11, 2022.

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

FOR FURTHER INFORMATION CONTACT: Dr. Shereef Elnahal, Under Secretary for Health, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7671.

SUPPLEMENTARY INFORMATION:

I. Background

A. Brief Summary of this Interim Final Rule

On June 24, 2022, the Supreme Court in *Dobbs* v. *Jackson Women's Health*

Organization, 142 S. Ct. 2228 (2022), overruled *Roe* v. *Wade,* 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania* v. *Casey,* 505 U.S. 833 (1992). *Dobbs,* 142 S. Ct. at 2279. After *Dobbs,* certain States have begun to enforce existing abortion bans and restrictions on care, and are proposing and enacting new ones, creating urgent risks to the lives and health of pregnant veterans and CHAMPVA beneficiaries in these States. In response, VA is acting to help to ensure that, irrespective of what laws or policies States may impose, veterans who receive the care set forth in the medical benefits package will be able to obtain abortions, if determined needed by a health care professional, when the life or the health of the pregnant veteran would be endangered if the pregnancy were carried to term or the pregnancy is the result of an act of rape or incest. Similarly, VA is acting to ensure CHAMPVA beneficiaries will be able to obtain abortions, if determined medically necessary and appropriate, when the health of the pregnant CHAMPVA beneficiary would be endangered if the pregnancy were carried to term or the pregnancy is the result of an act of rape or incest.

VA is taking this action because it has determined that providing access to abortion-related medical services is needed to protect the lives and health of veterans. *See* section 1710 of title 38, United States Code (U.S.C.); § 17.38(b) of title 38, Code of Federal Regulations (CFR). As abortion bans come into force across the country, veterans in many States are no longer assured access to abortion services in their communities, even when those services are needed. VA has determined that an abortion is ''needed'' pursuant to 38 U.S.C. 1710, when sought by a veteran, if determined needed by a health care professional, when the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest. Unless VA removes its existing prohibitions on abortion-related care and makes clear that needed abortion-related care is authorized, these veterans will face serious threats to their life and health.

Similarly, VA has determined that providing access to abortion-related medical services is medically necessary and appropriate to protect the health of CHAMPVA beneficiaries. *See* 38 U.S.C. 1781; 38 CFR 17.270(b) (defining ''CHAMPVA-covered services and supplies'' as ''those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under [38 CFR 17.272(a)(1)] through (84)''). CHAMPVA beneficiaries in many States are also no longer assured access to abortion services in their communities. Unless VA removes existing prohibitions on abortion-related care and makes clear that medically necessary and appropriate abortion-related care is authorized, these CHAMPVA beneficiaries will face serious threats to their health.

VA is therefore taking this action to avert imminent and future harm to the veterans and CHAMPVA beneficiaries whose interests Congress entrusted VA to serve.

B. VA Authority To Provide Abortions and Abortion Counseling Under 38 U.S.C. 1710 (Medical Benefits Package)

Pursuant to VA's general treatment authority for veterans, VA ''shall furnish'' specified veterans with ''hospital care and medical services which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(1)–(2). For veterans not described in paragraphs (1) and (2), the Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(3). As relevant here, such ''medical services'' include ''medical examination, treatment,'' ''[s]urgical services,'' and ''[p]reventive health services.'' 38 U.S.C. 1701(6).

VA implements its general treatment authority, and the Secretary determines what care is ''needed,'' 38 U.S.C. 1710(a)(1)–(3), by regulation through VA's medical benefits package. 38 CFR 17.38. The medical benefits package consists of a wide range of basic and preventive care, including inpatient and outpatient medical and surgical care, prescription drugs, emergency care (as authorized by statute and regulation), pregnancy and delivery services (to the extent authorized by law),[1] and periodic medical exams. 38 CFR 17.38(a). Care included in the medical benefits package is ''provided to individuals only if it is determined by appropriate health care professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' 38 CFR 17.38(b).

Some care is specifically excluded from the medical benefits package because the Secretary has determined it is not ''needed'' within the meaning of 38 U.S.C. 1710(a)(1)–(3). 38 CFR 17.38(c); 64 FR 54207, 54210 (Oct. 6, 1999). Among other services, ''[a]bortions and abortion counseling'' are currently excluded from the medical benefits package, with no exceptions. 38 CFR 17.38(c)(1).

VA first established the medical benefits package in 1999. 64 FR 54217. The Veterans' Health Care Eligibility Reform Act of 1996, Public Law 104–262, 10 Stat. 3177, mandated that VA implement a national enrollment system to manage the delivery of health care services to eligible veterans. When VA developed regulations to implement this national enrollment system, VA recognized the need to also regulate the health care services it provided. 64 FR 54210. VA did not explain the rationale behind the exclusion of abortions and abortion counseling from the medical benefits package when it was established in 1999. At the time, *Roe* had been reaffirmed in relevant part by *Casey,* and VA was aware that veterans of reproductive age enrolled in its health care system could access abortion services in their communities.

After the *Dobbs* decision, however, veterans living in States that ban or restrict abortion services may no longer be able to receive such medical services in their communities, including in States that now restrict access to abortion even in cases of rape or incest or where the health of the pregnant individual is in danger. It is thus essential for the lives and health of our veterans that abortions be made available if determined needed by a health care professional when: (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. VA has also determined that abortion counseling is needed so that veterans can make informed decisions about their health care.

VA has determined that such medical care is ''needed'' within the meaning of VA's general treatment authority, 38 U.S.C. 1710(a). This means that such care may be provided if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b)(1)–(3). VA can therefore provide abortion counseling and covered abortions pursuant to 38 U.S.C. 1710 and 38 CFR 17.38.

The Veterans Health Care Act of 1992, Public Law 102–585, 106 Stat. 4943 (VHCA), does not prohibit VA's amendment of its medical benefits package in this manner. When that law

[1] The language ''to the extent authorized by law'' in 38 CFR 17.38 means to the extent VA has legal authority to provide such services under 38 U.S.C.1710. 64 FR 54210 (Nov. 10, 1999).

was enacted in 1992, prior to the 1996 enactment of the Veterans' Health Care Eligibility Reform Act, VA health care was subject to a patchwork of eligibility criteria, and care was largely linked only to service-connected conditions. *See* 38 U.S.C. 1710 (Supp. I 1994) (authority under which hospital and nursing home care were provided prior to 1996); 38 U.S.C. 1712 (Supp. I 1994) (authority under which medical services were provided prior to 1996). The VHCA, in relevant part, was designed to improve the health care services available to women veterans.[2] Section 106(a) of the VHCA stated that VA could provide ''women'' with ''[p]apanicolaou tests (pap smears),'' ''[b]reast examinations and mammography,'' and ''[g]eneral reproductive health care . . . , but not including under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.'' Public Law 102–585, sec. 106(a).[3]

Section 106 did not limit VA's authority to provide care under any other provision of law. The ''but not including'' language in section 106 of the VHCA limited only the services provided ''under this section,'' meaning that while section 106 barred the provision of any abortion or infertility service under section 106 of the VHCA, it did not limit VA's authority to provide such services under any other statutory provision such as 38 U.S.C. 1710 or 38 U.S.C. 1712. Public Law 102–585, sec. 106(a). Consequently, a veteran might have been eligible for infertility services for a service-connected disability under 38 U.S.C. 1712,[4] even though that veteran would have been ineligible for infertility services under section 106 because of that section's exclusions. VA has consistently interpreted section 106 in this fashion.[5]

In 1996, the Veterans' Health Care Eligibility Reform Act made major changes to eligibility for VA health care and, as noted above, directed VA to establish a system of patient enrollment to manage the provision of care. The purpose behind eligibility reform was to replace the old system with a system where an enrolled veteran could receive whatever medical care and services are deemed needed. *See* House of Representatives Report No. 104–690, at 4 (1996) (''[The Act] would substitute a single uniform eligibility standard for the complex array of standards governing access to VA hospital and outpatient care. While the new standard is a simple one, more importantly, it employed a clinically appropriate 'need for care' test, thereby ensuring that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished.''); *id.* at 13 (''[The Act] would substitute a single, streamlined eligibility provision—based on clinical need for care—for the complex array of disparate rules currently governing veterans' eligibility for hospital and outpatient care.''). The Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA.[6] For example, a veteran in 1992 was only eligible for pregnancy and delivery care under section 106 if the pregnancy was complicated or the risks of complication were increased by a service-connected condition. Public Law 102–585, sec. 106(a). In contrast, general pregnancy and delivery services were included in the medical benefits package when it was established in 1999 pursuant to VA's authority in 38 U.S.C. 1710. 64 FR 54210; 38 CFR 17.38(a)(1)(xiii). Moreover, while section 106 of the VHCA provided that infertility services could not be provided under that section, infertility services (with the exception of in vitro fertilization) were also included in the medical benefits package pursuant to VA's authority under 38 U.S.C. 1710. *Id.* Consequently, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. 1710. *Id.* VA no longer relies on section 106 of the VHCA to provide such services or any other services.

Congress has ratified VA's interpretation that section 106 of the VHCA does not limit the medical care that the VA may provide pursuant to its authority under 38 U.S.C. 1710. Most recently, when Congress enacted the Deborah Sampson Act of 2020, Public Law 116–315, tit. V (2021), it created a central office to, inter alia, ''monitor[ ] and encourag[e] the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of health care services provided to women veterans by the Department.'' 38 U.S.C. 7310(b)(1). Congress defined ''health care'' for these purposes as ''the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act [Jan. 5, 2021].'' 38 U.S.C. 7310 note.[7] Given that VA's medical benefits package as of that date included services that were excluded from the coverage of Section 106 of the VHCA, Congress ratified VA's interpretation that it may provide for these services pursuant to its authority under 38 U.S.C. 1710, notwithstanding section 106. Indeed, the fact that the Deborah Sampson Act of 2020 did not reference section 106 of the VHCA and only referenced VA's medical benefits package shows that Congress did not interpret section 106 of the VHCA as a limitation on VA's authority to provide care to ''women veterans.'' [8]

Furthermore, the fact that VA does not rely on section 106 of the VHCA and instead relies on 38 U.S.C. 1710(a)(1)–(3) to provide pap smears, breast exams and mammography, or general reproductive health services, pregnancy or infertility services confirms that

[2] 102 Cong. Rec. 32,367 (1992).

[3] Prior to the enactment of section 106(a), VA provided gynecology services, including mammograms and screening for cervical cancer, under the Department's authority to provide preventative health services pursuant to 38 U.S.C. 1762. General Accounting Office (GAO)/Human Resources Division (HRD)–92–23 *VA Health Care for Women: Despite Progress, Improvements needed* (January 1992) p. 3 (*https://www.gao.gov/assets/hrd-92-23.pdf*). However, the legislative history of the VHCA generally, and section 106 specifically, indicates that Congress sought to provide statutory support for the services VA already provided pursuant to its existing authority. Senate Report No. 102–409, p. 40 (1992) (discussing the intent behind S. 2973, section 201, *Well-women care services,* ''The Committee expects that providing explicit authority to furnish cancer-screening procedures will lead VA to redouble its efforts in this critical area. The Committee believes that these services are not only vital to women veterans, but they are also in line with VA's goal to emphasize preventative health-care services within the system.''); *see also* 102 Congressional Record 34,299 (1992) (''The measure also incorporates the exception to the bar on furnishing pregnancy care reflected in VA regulations (at 39 CFR 17.48(h) [sic]) associated with care relating to a complicated pregnancy, as well as the instance in which the risks of complication are increased by a service-connected condition.'').

[4] 102 Congressional Record 34,299 (1992).

[5] Veterans Health Administration (VHA) Directive 10–93–151, December 6, 1993; Letter from Secretary Denis McDonough to Senator Jerry Moran, July 7, 2021.

[6] As detailed above, section 106 of the VHCA was intended to reinforce VA's existing authority to provide preventative health care services to women veterans. *See* 38 U.S.C. 1762; 38 CFR 17.30(m)(1); Public Law 102–585, sec. 513. The subsequent 1996 amendments to 38 U.S.C. 1710 and the 1999 rulemaking establishing the medical benefits package overtook VA's need to rely on section 106 to provide certain women's health care to women veterans.

[7] 38 U.S.C. 7310(b)(6) authorizes the Office of Women's Health to ''promote the expansion and inclusion of clinical . . . activities of [VHA].'' Additionally, subsection (b)(9) authorizes the Office to ''carry out such other duties as the Under Secretary for Health may require.'' Thus, the Office of Women's Health can address health care and services that were not included in the medical benefits package on the day before the date of enactment of the Deborah Sampson Act of 2020.

[8] Letter to Denis McDonough from 24 U.S. Senators, July 28, 2022.

section 106's prohibition on providing certain services ''under this section'' simply is no longer operative.

VA's authority under 38 U.S.C. 1710 is different from authorities governing the provision of health care by other Federal agencies. Pursuant to the 1996 amendment, by statute, VA ''shall'' (and, for some categories of veterans, ''may'') furnish care that ''the Secretary determines to be needed'' to veterans, with no exclusion for abortion. 38 U.S.C. 1710(a)(1)–(3). Other Federal agencies, by contrast, are subject to underlying statutory restrictions or restrictions in their appropriations acts concerning certain abortions. For instance, Federal funds available to the Departments of Labor, Health and Human Services, and Education are subject to an appropriations restriction known as the ''Hyde Amendment.'' Congress has included the Hyde Amendment in those agencies' annual appropriations legislation for more than forty years. In its current form, the Hyde Amendment provides that no covered funds ''shall be expended for any abortion'' or ''for health benefits coverage that includes coverage of abortion,'' except ''if the pregnancy is the result of an act of rape or incest; or . . . in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.'' Consolidated Appropriations Act, 2022, Public Law 117–103, Div. H, secs. 506–07, 136 Stat. 49. The breadth of the Hyde Amendment's exception has varied over the years, but since fiscal year 1994, the Hyde Amendment has included an exception for the life of the woman and for pregnancies resulting from acts of rape or incest. *See, e.g.,* Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994, Public Law 103–112, Sec. 509, 107 Stat. 1082, 1113 (1993). No similar statutory restriction applies to VA.

C. VA Authority To Provide Abortions and Abortion Counseling for CHAMPVA Beneficiaries

By statute, VA's ''Secretary is authorized to provide'' specified ''medical care'' to certain spouses, children, survivors, and caregivers of veterans who meet specific eligibility criteria. 38 U.S.C. 1781(a). This health benefits program is known as CHAMPVA. VA must provide ''for medical care'' under CHAMPVA ''in the same or similar manner and subject to the same or similar limitations as medical care is'' provided by the Department of Defense to active-duty family members, retired service members and their families, and others under the TRICARE (Select) program. 38 U.S.C. 1781(b); *see* 32 CFR 199.1(r), 199.17(a)(6)(ii)(D). VA has regulated services covered by CHAMPVA to mean those medical services that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded. 38 CFR 17.270(b).

The current CHAMPVA regulations exclude coverage for abortions, except when a physician certifies that the abortion was performed because the life of the woman would be endangered if the fetus were carried to term, 38 CFR 17.272(a)(64), and also exclude coverage for abortion counseling, 38 CFR 17.272(a)(65). The current CHAMPVA regulations do not include coverage for abortions when the pregnancy is the result of an act of rape or incest.

In contrast, TRICARE (Select) provides coverage for abortions when the pregnancy is the result of an act of rape or incest, or when a physician certifies that the life of the woman would be endangered if the fetus were carried to term, and it provides coverage for counseling for covered abortions.[9]

In this rule, VA amends its CHAMPVA regulations by removing the exclusion for abortion counseling and permitting abortions when the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of an act of rape or incest. This amendment will better align coverage under CHAMPVA with coverage under TRICARE (Select).

Coverage under CHAMPVA will deviate from coverage under TRICARE (Select) because CHAMPVA will cover abortions when the health of the CHAMPVA beneficiary is at risk and will cover abortion counseling for non-covered abortions. VA, however, has determined that, overall, the relevant care provided under CHAMPVA will still be sufficiently ''similar'' to that provided under TRICARE (Select). 38 U.S.C. 1781(b). Section 1781(b) does not require CHAMPVA and TRICARE (Select) to be administered identically. Rather, by referring to care that is ''similar,'' the statute permits VA flexibility to administer the program for CHAMPVA beneficiaries. For this reason, not every aspect of CHAMPVA will find a corollary in TRICARE (Select).

VA has previously deviated from TRICARE (Select) in amending its CHAMPVA regulations to provide care that goes beyond the benefits offered by TRICARE (Select). Generally, VA determined that these deviations were necessary to best provide services to the CHAMPVA population while remaining ''similar'' to TRICARE (Select). For example, TRICARE (Select) does not include an annual physical exam benefit for all TRICARE (Select) beneficiaries; instead, that benefit is limited to certain circumstances.[10] VA has exercised its discretion to deviate from TRICARE (Select) and provide annual physical exams to all CHAMPVA beneficiaries. 38 CFR 17.272(30)(xiii). VA did not believe that limiting the provision of annual exams was appropriate from a clinical perspective. 83 FR 2396, 2401 (Jan. 17, 2018). Annual physical exams are beneficial for both CHAMPVA beneficiaries and VA because they may identify serious medical issues before they progress. *Id.* Additionally, TRICARE (Select) does not waive beneficiary costs associated with preventive services for TRICARE (Select) beneficiaries who are Medicare-eligible in cases in which those services are not covered by Medicare. VA's CHAMPVA regulations, however, do waive cost-sharing requirements for preventive services for Medicare-eligible beneficiaries. VA determined that enforcing cost-sharing requirements for Medicare-eligible beneficiaries for preventive services would unfairly disadvantage them as compared to CHAMPVA beneficiaries with other health insurance. 83 FR 2404.

Thus, VA has previously regulated to provide CHAMPVA benefits beyond those benefits offered by TRICARE (Select) if providing such health care would better promote the long-term health of CHAMPVA beneficiaries. In so doing, VA is still providing for health care in a manner similar to TRICARE (Select), but the care is being provided in a manner that best serves the CHAMPVA population. Similarly, here, VA is aligning CHAMPVA benefits with TRICARE (Select) benefits in certain ways, VA is also providing benefits beyond those offered by TRICARE (Select) in order to better promote the long-term health of CHAMPVA beneficiaries. For the reasons discussed further below, VA finds that allowing abortions for CHAMPVA beneficiaries when there is a risk to the CHAMPVA

[9] *Covered Services, Abortions,* TRICARE, *http://tricare.mil/CoveredServices/IsItCovered/Abortions* (last visited Aug. 22, 2022).

[10] *Covered Services, Physicals,* TRICARE, *http://tricare.mil/CoveredServices/IsItCovered/Physicals* (last visited Aug. 22, 2022).

beneficiary's health and providing abortion counseling for both covered and noncovered abortions is both medically necessary and appropriate to promote the long-term health of CHAMPVA beneficiaries.

II. Abortions in Limited Circumstances Under 38 U.S.C. 1710 and 1781

A. Abortions When the Life or Health of the Pregnant Veteran Would Be Endangered if the Pregnancy Is Carried to Term Are Needed

VA has determined that access to abortions is ''needed,'' 38 U.S.C. 1710(a)(1)–(3), and such care may be provided to veterans when an appropriate health care professional determines that such care ''is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice,'' 38 CFR 17.38(b), when the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term. Abundant evidence supports VA's determination.

Research has shown that while most pregnancies progress without incident, pregnancy and childbirth in the United States can result in physical harm and even death for certain pregnant individuals. From 1998 to 2005, the U.S. mortality rate associated with live births was 8.8 deaths per 100,000 live births, and maternal mortality rates have increased staggeringly since then.[11] A 2019 study reviewed mortality data from 2007 to 2015 from the National Association for Public Health Statistics and Information Systems, which includes information on all deaths in the 50 States and the District of Columbia (DC). The data showed that, during this time, within 38 States and DC, the maternal mortality rate rose to 17.9 deaths of individuals per 100,000 live births. This study identified the factors that likely contributed to this rising maternal mortality rate, including reduced access to family planning and reproductive health services through abortion clinic closures and legislation restricting abortions based on gestational age.[12]

Individuals at risk of pregnancy complications who do not have access to contraception or abortion may experience conditions resulting from pregnancies that can leave them at risk for loss of future fertility, significant morbidity, or death. According to the American College of Obstetricians and Gynecologists (ACOG) and Physicians for Reproductive Health, there are situations when pregnancy termination, in the form of treatment that may be considered to be an abortion, is the only medical intervention that can preserve a patient's health or save their life.[13] Pregnancy poses significant physiological changes on an individual's body, which can exacerbate underlying or preexisting conditions, like renal or cardiac disease, and can severely compromise health or even cause death.[14] During pregnancies, individuals may suffer from life-threatening conditions such as severe preeclampsia, newly diagnosed cancer requiring prompt treatment, and intrauterine infections.[15] Preeclampsia is a disorder associated with new-onset hypertension that can result in blood pressure swings, liver issues, and seizures, among other conditions.[16]

Some pregnant veterans may be at heightened risk for other pregnancy complications including hemorrhage, placenta accreta spectrum, and peripartum hysterectomy, among others.[17] Notably, the need for peripartum hysterectomy in such instances would cause not only morbidity, but loss of future fertility. Pregnancy-related complications may endanger the pregnant veteran's life or health. Abortion may be needed to protect the life or health of the pregnant veteran in these and other circumstances.

Veterans of reproductive age, in particular, have high rates of chronic medical and mental health conditions that may increase the risks associated with pregnancy.[18] Such conditions include chronic post-traumatic stress disorder, severe hypertension, and chronic renal disease.[19] When a health care professional determines that these conditions (potentially in combination with other factors) render an abortion needed to preserve the health of a veteran, access to an abortion is essential health care.

For all of the reasons discussed above, research supports the conclusion that an abortion may be needed to save the life or preserve the health of a veteran. 38 CFR 17.38(b). Therefore, VA is revising the medical benefits package to allow the provision of abortions in such circumstances.

B. Abortions When the Health of the Pregnant CHAMPVA Beneficiary Would Be Endangered if the Pregnancy Is Carried to Term Are Medically Necessary and Appropriate

Currently, abortions for CHAMPVA beneficiaries are excluded ''except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.'' 38 CFR 17.272(a)(64). VA has determined that when the health of the pregnant CHAMPVA beneficiary would be endangered if the pregnancy were carried to term, access to abortions is also medically necessary and appropriate and such abortions should be covered CHAMPVA services. As explained above, VA is required to provide medically necessary and appropriate care under CHAMPVA to certain spouses, children, survivors, and caregivers of veterans who meet specific eligibility criteria. 38 U.S.C. 1781(a); 38 CFR 17.270 *et seq.* While this care must be ''in the same or similar manner and subject to the same or similar limitations as medical care is'' provided by the Department of Defense under TRICARE (Select), 38 U.S.C. 1781(b), VA has consistently maintained that ''similar'' does not mean ''identical.'' VA requires that such care be medically

[11] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,* 119 Obstetrics & Gynecology 215, 216 (2012); see also Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues,* 128 Obstetrics & Gynecology 447 (2016) (finding a 26.6 percent increase in maternal mortality rates between 2000 and 2014).

[12] Summer Shelburne Hawkins et al., *Impact of State-Level Changes on Maternal Mortality: A Population-Based, Quasi-Experimental Study,* Am. Journal of Preventive Medicine. 85(2): 165–74 (2019).

[13] *Abortion Can Be Medically Necessary,* Am. College of Obstetricians and Gynecologists, Sep. 25, 2019. *http://www.acog.org/news/news-releases/2019/09/abortion-can-be-medically-necessary* (last visited Aug. 22, 2022).

[14] Victoria L. Meah, et al., *Cardiac output and related haemodynamics during pregnancy: a series of meta-analyses,* Heart J., 102:518–526 (2016).

[15] *Abortions later in Pregnancy,* Kaiser Family Foundation, Dec. 5, 2019. *http://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/* (last visited Aug. 22, 2022).

[16] ACOG Practice Bulletin No. 222, *Gestational Hypertension and Preeclampsia,* Am. College of Obstetricians and Gynecologists (Dec. 2018).

[17] ACOG Practice Bulletin No. 183, *Postpartum Hemorrhage,* Am. College of Obstetricians and Gynecologists (Oct. 2017); ACOG Obstetric Care Consensus, Placenta Accreta Spectrum (July 2012, reaff'd 2021); ACOG Practice Bulletin No. 198, *Prevention and Management of Obstetric Lacerations at Vaginal Delivery,* Am. College of Obstetricians and Gynecologists (Sept. 2018); ACOG Clinical Consensus No. 1, *Pharmacologic Stepwise Multimodal Approach for Postpartum Pain Management,* Am. College of Obstetricians and Gynecologists (Sept. 2021).

[18] Joan L. Combellick, et al., *Severe Maternal Morbidity Among a Cohort of Post-9/11 Women Veterans,* J Women's Health, 29(4):577–84 (Apr. 2020).

[19] Jonathan Shaw, et al., *Post-traumatic Stress Disorder and Antepartum Complications: a Novel Risk Factor for Gestational Diabetes and Preeclampsia,* Paediatr Perinat Epidemiol. 31(3):185–194 (May 2017); David Jones & John P. Hayslett, *Outcome of pregnancy in women with moderate or severe renal insufficiency,* N Engl J Med. 25;335(4):226–32 (Jul. 1996).

necessary and appropriate for the treatment of a condition and not be specifically excluded under the CHAMPVA regulations. *See* 38 CFR 17.270(b) (defining CHAMPVA-covered services and supplies).

As discussed in the prior section, an abortion may be medically necessary and appropriate to protect a pregnant individual's health. Pregnancy can exacerbate underlying or preexisting conditions, like renal or cardiac disease, in such a way as to severely compromise the health of an individual.[20] Additionally, pregnant individuals may have their health endangered due to severe preeclampsia, newly diagnosed cancer requiring prompt treatment, and intrauterine infections.[21] In those circumstances, an abortion may be the only treatment available to protect the health of the pregnant CHAMPVA beneficiary. Thus, there may be instances when an abortion may be medically necessary and appropriate to prevent a pregnant CHAMPVA beneficiary's health from being endangered if the pregnancy was carried to term, and VA finds it necessary to deviate from TRICARE (Select) to provide abortions in these circumstances.

Accordingly, consistent with VA's regulatory requirements in 38 CFR 17.270(b), VA is revising the CHAMPVA regulations to allow the provision of abortions in such circumstances.

C. Abortions for Veterans When the Pregnancy Is the Result of an Act of Rape or Incest Are Needed

VA has also determined that access to abortions is ''needed,'' 38 U.S.C. 1710(a)(1)–(3), and such care may be provided in accordance with 38 CFR 17.38(b), when the pregnancy is the result of an act of rape or incest.

There are severe health consequences associated with being forced to carry a pregnancy that is the result of rape or incest to term, including constant exposure to the violation committed against the individual which can cause serious traumatic stress and a risk of long-lasting psychological conditions such as anxiety and depression.[22] Those mental health consequences have a unique impact on veterans, who report higher rates of sexual trauma compared to their civilian peers.[23] Moreover, veterans are also more likely to have preexisting mental health conditions that would be compounded by the mental health consequences of being forced to carry a pregnancy to term if that pregnancy is the result of rape or incest. Thus, abortion access is critical to protect the lives and health of pregnant veterans whose pregnancy is the result of an act of rape or incest.

As discussed above, even where Congress has restricted the circumstances in which other Federal agencies may provide abortions, Congress has allowed funding when the pregnancy is the result of an act of rape or incest. VA agrees that abortions for pregnancies resulting from rape or incest are, where sought by the pregnant veteran, needed to protect the life and the health of the veteran consistent with the terms of 38 U.S.C. 1710. VA further expects that, in all but the most unusual circumstances, an individual's access to abortion in cases of pregnancy resulting from rape or incest would be ''needed to promote, preserve, or restore the health of the individual'' and would be ''in accord with generally accepted standards of medical practice.'' 38 CFR 17.38(b).

D. Abortions for CHAMPVA Beneficiaries When Pregnancy Is the Result of an Act of Rape or Incest Are Medically Necessary and Appropriate

For similar reasons as discussed above, VA has determined that access to abortion when the pregnancy is the result of an act of rape or incest is medically necessary and appropriate and must be available to CHAMPVA beneficiaries. Allowing abortions in these circumstances better aligns with TRICARE (Select), which also allows abortions when the pregnancy is the result of an act of rape or incest.[24]

VA has determined that this change will provide CHAMPVA beneficiaries with care that is medically necessary and appropriate.

III. Abortion Counseling Under 38 U.S.C. 1710 and 1781

A. Abortion Counseling Is Needed Care for Veterans

Through this rulemaking, VA will remove the exclusion on abortion counseling in the medical benefits package from 38 CFR 17.38(c)(1). Abortion counseling is a part of pregnancy options counseling and is a component of comprehensive, patient-centered, high quality reproductive health care both as a responsibility of the provider and a right of the pregnant veteran. Abortion counseling has three purposes: (1) to aid a pregnant individual in making a decision about an unwanted pregnancy, (2) to help the pregnant individual implement the decision, and (3) to assist the pregnant individual in controlling their future fertility.[25]

Removing the exclusion on abortion counseling from 38 CFR 17.38(c)(1) will allow VA to provide abortion counseling services to veterans who receive the care set forth in the medical benefits package. Such counseling is essential to ensure that veterans may make informed decisions about their care. Studies have shown that individuals have limited knowledge about the safety and risks of abortion.[26] Providing veterans with accurate information about abortions is needed to ensure that they can make informed decisions about their health care. *See also* 38 U.S.C. 7331; 38 CFR 17.32.

Abortion counseling should no longer be excluded from the medical benefits package. The provision of abortion counseling will enable a pregnant veteran to make a fully informed health care decision, just as counseling is offered or covered by VA regarding any other health care decision. As such, abortion counseling will be provided as part of conversations a veteran has with their provider related to pregnancy options care, when appropriate.

B. Abortion Counseling Is Medically Necessary and Appropriate for CHAMPVA Beneficiaries

Through this rulemaking, VA will remove the exclusion of abortion counseling from 38 CFR 17.272(a)(65). This will authorize the provision of abortion counseling for both covered

[20] Victoria L. Meah, et al., *Cardiac output and related haemodynamics during pregnancy: a series of meta-analyses,* HEART J., 102:518–526 (2016).

[21] *Abortions later in Pregnancy,* Kaiser Family Foundation, Dec. 5, 2019. *http://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/* (last visited Aug. 22, 2022).

[22] *Concluding observations of the Committee against Torture,* United Nations Committee Against Torture, 47th Sess., Oct. 31, 2011–Nov. 25, 2011 CAT/C/PRY/CO/4–6; Paraguay, p. 9, paragraph 22. *https://www2.ohchr.org/english/bodies/cat/docs/CAT.C.PRY.CO.4-6_en.pdf.*

[23] Carey Pulverman & Suzannah Creech, *The Impact of Sexual Trauma on the Sexual Health of Women Veterans: A Comprehensive Review,* Trauma Violence Abuse. 22(4): 656–671 (Oct. 2021). doi: 10.1177/1524838019870912.

[24] *See Covered Services, Abortions,* TRICARE, *https://tricare.mil/CoveredServices/IsItCovered/Abortions* (last visited Aug. 22, 2022).; 38 U.S.C. 1781(b); and 32 CFR 199.1(r), 199.17(a)(6)(ii)(D).

[25] Asher, J.D., *Abortion counseling.* American Journal of Public Health,63(5):686–8 (May 1972). *https://pubmed.ncbi.nlm.nih.gov/5024296/.*

[26] Ellen Weibe., et al., *Knowledge and Attitudes about Contraception and Abortion in Canada, US, UK, France and Australia,* Gynecology & Obstetrics, 5(9) (2015), *http://www.longdom.org/open-access/knowledge-and-attitudes-about-contraception-and-abortion-in-canada-us-uk-france-and-australia-40135.html.*

and noncovered abortions to CHAMPVA beneficiaries. We acknowledge that this is broader than the abortion counseling provided under TRICARE (Select). However, the relevant care provided under CHAMPVA will still be sufficiently ''similar'' to that provided under TRICARE (Select). 38 U.S.C. 1781(b). As explained previously, 38 U.S.C. 1781(b) does not require CHAMPVA and TRICARE (Select) to be administered identically. Rather, by referring to care that is ''similar,'' the statute permits VA flexibility to administer the program for CHAMPVA beneficiaries. For this reason, not every aspect of CHAMPVA will find a corollary in TRICARE (Select).

Indeed, as addressed throughout this rule, VA has previously provided CHAMPVA beneficiaries with health care services that exceed those services offered by TRICARE (Select). As discussed in the section above, abortion counseling will enable a pregnant CHAMPVA beneficiary to make a fully informed health care decision, just as counseling is offered or covered by VA when medically necessary and appropriate to make any other health care decision. Because providing CHAMPVA beneficiaries with accurate information about abortions is medically necessary to ensure that they can make informed decisions about their health and the care will be similar to that provided under TRICARE (Select), we believe it is appropriate to revise the CHAMPVA regulations to authorize the provision of abortion counseling for both covered and noncovered abortions to CHAMPVA beneficiaries.

Thus, VA finds that abortion counseling is beneficial for all CHAMPVA beneficiaries to receive accurate information about abortions. Therefore, we are including abortion counseling as a covered medical service under CHAMPVA.

IV. These Changes Will Promote Clarity and Parity Across Federal Agencies

VA believes it is important to provide at least the same reproductive health care services that other Federal agencies provide their beneficiaries. Many veterans and VA beneficiaries previously received health care from other Federal agencies, such as the Department of Defense, and those beneficiaries should have the same or greater access to services that they had previously and came to expect under other agency policies. This is particularly true for our veteran patients who earned their VA health care benefits through their military service and sacrifice to this country. It is unconscionable that they would not have access to at least these same critical services following their transition to civilian life.

As a result of this rulemaking, VA will also provide abortions when the health of the pregnant veteran or CHAMPVA beneficiary is endangered in addition to when the pregnancy threatens their life. This difference is due to VA's particular statutory authority in 38 U.S.C. 1710 to provide needed health care for veterans and VA's flexibility in administering the CHAMPVA program under 38 U.S.C. 1781, as discussed throughout. In contrast, other Federal agencies have different statutory authorities and additional limitations concerning the services they provide, such as the Hyde Amendment discussed above.

In addition, some post-*Dobbs* State and local laws purport to impose criminal liability or threaten suspension of the medical licenses of providers who perform abortions without authorization.[27] In the absence of clarity as to exactly what care is covered, this may result in a chilling effect on the provision of care, including abortions, to veterans and CHAMPVA beneficiaries. Denial of care because of uncertainty about the scope of changing State laws has already been evidenced outside of the Federal health system in certain States.[28] ACOG warns that the full scope of abortion restrictions' effects includes how physicians' ethical obligations to their patients and to the practice of medicine may be reshaped, redirected, or even contradicted by the threat posed by laws not founded in science or based on evidence.[29]

Consequently, VA is revising its medical benefits package and CHAMPVA regulations to promote clarity.

V. Preemption and Related Principles

As previously described, as a result of *Dobbs,* States and localities have begun to enforce existing abortion bans and restrictions on care, and are proposing and enacting new bans or restrictions, creating urgent risks to the lives and health of pregnant veterans and the health of pregnant CHAMPVA beneficiaries in those States. Such State and local bans and restrictions on care chill the provision of needed care for veterans and medically necessary and appropriate care for CHAMPVA beneficiaries. For instance, the Texas Medical Association sent a letter to the Texas Medical Board, seeking clarity on the Texas abortion restrictions as it received complaints that in some health care settings, physicians have been prohibited from providing medically appropriate care to women with ectopic pregnancies and other complications.[30] As reported even before the *Dobbs* decision, there is a climate of fear created by these abortion restrictions that has resulted not only in patients not having access to needed care but also in patients receiving medically inappropriate care.[31]

Accordingly, VA clarifies that State and local laws and regulations that would prevent VA health care professionals from providing needed abortion-related care, as permitted by this rule, are preempted. VA previously issued a regulation, 38 CFR 17.419, in which VA confirmed the ability of VA health care professionals to practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification, or other requirements that unduly interfere with their practice. The regulation provides that, in order to ''provide the same complete health care and hospital services to beneficiaries in all States . . . conflicting State laws, rules, regulations, or requirements pursuant to such laws are without any force or effect, and State governments have no legal authority to enforce them in relation to actions by health care professionals within the scope of their VA employment.'' 38 CFR 17.419(c). Consistent with § 17.419, VA has

[27] *See e.g.,* Ark. Code Ann. sec. 5–61–404 (making abortion an unclassified felony); Idaho Code Ann. sec. 18–622 (making abortion a felony and requiring suspension of medical license); La. Rev. Stat. Ann. sec. 40:1061 (making abortion a criminal act and basis for professional disciplinary action); Tenn. Code Ann. sec. 39–15–216 (2019) (making abortion a felony); Tex. Health & Safety Code Ann. sec. 170A.004–05 (making abortion a felony and subject to a civil penalty).

[28] See, *e.g.,* Pam Belluck, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment,* N.Y. Times, July 21, 2022, *https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html* (last visited Aug. 23, 2022).

[29] *Breaking the Law or Breaking the Oath? How Abortion Bans Betray America's Patients and Physicians,* Am. College of Obstetricians and Gynecologists, *http://www.acog.org/education-and-events/webinars/acog-nyu-how-abortion-bans-betray-americas-patients-physicians* (last visited Aug. 22, 2022).

[30] Allie Morris, *Texas Hospitals Fearing Abortion Law Delay Pregnant Women's Care, Medical Association Says,* Dallas News, July 14, 2022, *http://www.dallasnews.com/news/politics/2022/07/14/texas-hospitals-fearing-abortion-law-delay-pregnant-womens-care-medical-association-says* (last visited Aug. 22, 2022).

[31] Whitney Arey, et al., *A Preview of the Dangerous Future of Abortion Bans—Texas Senate Bill 8,* N Engl J Med; 387:388–390 (2022), *http://www.nejm.org/doi/full/10.1056/NEJMp2207423* (last visited Aug 22, 2022).

determined that State and local laws, rules, regulations, or requirements that restrict, limit, otherwise impede access to, or regulate the provision of health care provided by VA pursuant to Federal law, would ''unduly interfere[] with VA health care professionals' practice within the scope of VA employment.'' 38 CFR 17.419(b)(1). Accordingly, consistent with § 17.419, this rulemaking confirms that a State or local civil or criminal law that restricts, limits, or otherwise impedes a VA professional's provision of care permitted by this regulation would be preempted.

In addition, ''[t]he Constitution's Supremacy Clause generally immunizes the Federal Government from State laws that directly regulate or discriminate against it,'' unless federal law authorizes such State regulation. *United States* v. *Washington,* 142 S. Ct. 1976, 1982 (2022). Therefore, States generally may not impose criminal or civil liability on VA employees who perform their duties in a manner authorized by federal law. *See, e.g., In re Neagle,* 135 U.S. 1, 62 (1890). This rulemaking serves as notice that all VA employees, including health care professionals who provide care and VA employees who facilitate that health care, such as VA employees in administrative positions that schedule abortion procedures and VA employees who provide transportation to the veteran or CHAMPVA beneficiary to the VA facility for reproductive health care, may not be held liable under State or local law or regulation for reasonably performing their Federal duties.

VI. Changes to 38 CFR 17.38(c)(1)

Based on the rationale described above, we remove the exclusion on abortion counseling from § 17.38(c)(1). We revise § 17.38(c)(1) by adding paragraphs (c)(1)(i) and (ii) to state that the medical benefits package includes abortions in certain circumstances.

Section 17.38(c)(1)(i) permits abortions when the life or health of the pregnant veteran would be endangered if the pregnancy is carried to term. Assessment of the conditions, injuries, illness, or diseases that will qualify for this care will be made by appropriate health care professionals on a case-by-case basis. As appropriate, VA may issue supplemental guidance to inform these decisions.

Section 17.38(c)(1)(ii) permits abortions when the pregnancy is the result of an act of rape or incest. We are not requiring a veteran to present particular evidence such as a police report to qualify for this care. This is consistent with longstanding VA policy to treat eligible individuals who experienced military sexual trauma without evidence of the trauma. This approach, similar to in the context of military sexual trauma, removes barriers to providing care. Therefore, the regulation will provide that self-reporting from the pregnant veteran constitutes sufficient evidence.

VII. Changes to 38 CFR 17.272

Based on the rationale described above, we amend the CHAMPVA regulations at 38 CFR 17.272. We remove § 17.272(a)(65) that excludes abortion counseling from the CHAMPVA program. We revise current § 17.272(a)(64), which excludes abortions except when a physician certifies that the life of the pregnant beneficiary would be endangered if the fetus were carried to term, and we add § 17.272(a)(64)(i) and (ii).

Section 17.272(a)(64)(i) permits abortions when the life or health of the CHAMPVA beneficiary would be endangered if the pregnancy is carried to term. Assessment of the conditions, injuries, illnesses, or diseases that will qualify for this care will be made by appropriate health care professionals on a case-by-case basis. As appropriate, VA may issue supplemental guidance to inform these decisions.

Section 17.272(a)(64)(ii) permits abortions when the pregnancy is the result of an act of rape or incest. We are not requiring the CHAMPVA beneficiary to present particular evidence such as a police report to qualify for this care. This approach, as discussed above, removes barriers to providing care. Therefore, the regulation will provide that self-reporting from the pregnant CHAMPVA beneficiary constitutes sufficient evidence.

VIII. Regulatory Requirements

A. Executive Order 13132, Federalism

Executive Order 13132 establishes principles for preemption of State laws when those laws are implicated in rulemaking or proposed legislation. The order provides that, where a Federal statute does not expressly preempt State law, agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

As discussed above, consistent with 38 CFR 17.419, State and local laws, rules, regulations, or requirements are preempted to the extent those laws unduly interfere with Federal operations and the performance of Federal duties. That includes laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA health care professionals acting in the scope of their VA authority and employment and that would prevent those individuals from providing care authorized by 38 U.S.C. 1701, 1710, 1781, 1784A, 7301, and 7310, and VA's implementing regulations. State and local laws, rules, regulations, or requirements are therefore without any force or effect to the extent of the conflict with Federal law, and State and local governments have no legal authority to enforce them in relation to actions by VA employees acting within the scope of their VA authority and employment.

Because all State and local laws, rules, regulations, or requirements that unduly interfere with VA's provision of reproductive health care have no force or effect, there are no actual or possible violations of such laws related to VA programs, operations, facilities, contracts, or information technology systems that would necessitate mandatory reporting by VA employees. 38 CFR 1.201–1.205. This rulemaking confirms VA's authority and discretion to manage its employees concerning the services that will be provided pursuant to this rulemaking.

Next, Executive Order 13132 requires that any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations that are promulgated. Under VA's regulations, State and local laws, rules, regulations, or other requirements are preempted only to the extent they unduly interfere with the ability of VA employees to furnish reproductive health care while acting within the scope of their VA authority and employment. Therefore, VA believes that the rulemaking is restricted to the minimum level necessary to achieve the objectives of the Federal statutes.

B. Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment and provide a 30-day delay before the rules becomes effective. An agency may forgo notice if the agency for good cause finds that compliance would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). An agency may also bypass the APA's 30-day delay requirement if good cause exists, 5

U.S.C. 553(d)(3), or if the rule ''recognizes an exemption or relieves a restriction,'' 5 U.S.C. 553(d)(1). The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment because it would be impracticable and contrary to the public interest and finds that there is good cause under 5 U.S.C. 553(d)(3) to bypass the 30-day delay requirement. The Secretary also finds that the 30-day delay is inapplicable as this rule is removing restrictions on abortion, in certain, limited circumstances, and on abortion counseling. 5 U.S.C. 553(d)(1).

As discussed at length above, leaving veterans and CHAMPVA beneficiaries without access to abortions and abortion counseling puts their health and lives at risk. Pregnancy and childbirth in the United States can result in physical harm or death to certain pregnant individuals,[32] as pregnant individuals may suffer from life-threatening conditions such as severe preeclampsia, newly diagnosed cancer requiring prompt treatment, and intrauterine infections,[33] and may have pre-existing conditions exacerbated by continuing the pregnancy.[34] In such cases, an abortion may be the only treatment available to save the health or life of the pregnant individual.[35] This is especially relevant because VA serves a population that is particularly vulnerable to adverse pregnancy outcomes. Pregnant veterans and CHAMPVA beneficiaries may be at heightened risk for pregnancy complications including hemorrhage, placenta accreta spectrum, and peripartum hysterectomy, among others.[36] Veterans of reproductive age, in particular, have high rates of chronic medical and mental health conditions that may increase the risks associated with pregnancy.[37] As lack of access to abortions can result in loss of future fertility, significant morbidity, or death, it is critical that veterans and CHAMPVA beneficiaries have access to abortions that are needed to save their lives and preserve their health. It is, without exception, an urgent and tragic event when pregnant veterans and VA beneficiaries face pregnancy-related complications that put their health or lives at risk. In such cases, the veterans, VA beneficiaries, and their families must be confident that their health care providers can and will take swift and decisive action to provide needed health care.

The ability of veterans and CHAMPVA beneficiaries to receive abortions through VA is especially critical following State attempts to further ban abortion, which put the health and lives of veterans and CHAMPVA beneficiaries at risk.

When VA implemented the exclusion on abortions in the medical benefits package in 1999, veterans and other CHAMPVA beneficiaries had access to abortions in their communities. However, in *Dobbs,* the Supreme Court overruled the constitutional protections recognized in *Roe* and *Casey. Dobbs* has had an immediate or near-immediate effect because several States had laws banning abortion that were triggered upon the overruling of *Roe. Dobbs* has also led States and localities to consider new restrictions on abortion. As of August 2022, many States appear to be enforcing bans on abortion that do not include, or have limited, exceptions for when the pregnancy is due to rape or incest. Other States have bans on abortions with limited exceptions that are poised to take effect imminently. Additional State legislatures are introducing bans on abortion with limited exceptions. While some State courts have temporarily blocked the implementation of abortion bans, litigation in those States remains ongoing and other State courts have declined to enjoin their State's abortion ban.[38] These developments have made it, and will likely continue to make it, very difficult for many veterans and CHAMPVA beneficiaries to receive needed abortions in their communities. Additionally, ongoing litigation challenging individual State abortion bans causes confusion about where abortion remains legally accessible.[39]

Thousands of veterans and CHAMPVA beneficiaries are or may be impacted by abortion bans and the state of confusion related to where abortion remains legal. According to the National Partnership for Women & Families, it is estimated that up to 53 percent of veterans of reproductive age may be living in States that have already banned or are likely to soon ban abortion following the *Dobbs* decision.[40] VA estimates that over 155,000 veterans ages 18 through 49 are potentially capable of pregnancy, enrolled in VA health care, and live in States that have enacted abortion bans or restrictions. Additionally, VA estimates there are more veterans who may be capable of pregnancy who are eligible for, but are not currently enrolled in or using, VA health care who could also be impacted by current and future abortion bans and restrictions imposed by the State in which they live. Additionally, based on VA data, almost 50,000 CHAMPVA beneficiaries may similarly be impacted.

Thus, State bans and restrictions on abortion present a serious threat to the health and lives of over one hundred thousand veterans and CHAMPVA beneficiaries who currently rely, or may rely in the future, on VA health care. These State laws will have an immediate detrimental impact on the lives and health of veterans and CHAMPVA beneficiaries who are unable to receive the care that was available before State restrictions following the *Dobbs* decision. This detrimental impact is underscored by the potential harmful effects associated with being denied an abortion, when an abortion is needed to protect the life or

[32] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,* 119 Obstetrics & Gynecology 215, 216 (2012); see also Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues* 128 Obstetrics & Gynecology 447 (2016) (finding a 26.6 percent increase in maternal mortality rates between 2000 and 2014). Victoria L. Meah, et al., *Cardiac output and related haemodynamics during pregnancy: a series of meta-analyses,* Heart J., 102:518–526 (2016).

[33] *Abortions later in Pregnancy,* Kaiser Family Foundation, Dec. 5, 2019. *http://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/* (last visited Aug. 22, 2022).

[34] Victoria L. Meah, et al., *Cardiac output and related haemodynamics during pregnancy: a series of meta-analyses,* Heart J., 102:518–526 (2016).

[35] *Abortion Can Be Medically Necessary,* Am. College of Obstetricians and Gynecologists, Sep. 25, 2019. *http://www.acog.org/news/news-releases/2019/09/abortion-can-be-medically-necessary* (last visited Aug. 22, 2022).

[36] ACOG Practice Bulletin No. 183, *Postpartum Hemorrhage,* Am. College of Obstetricians and Gynecologists (Oct. 2017); ACOG Obstetric Care Consensus, Placenta Accreta Spectrum (July 2012, reaff'd 2021); ACOG Practice Bulletin No. 198, *Prevention and Management of Obstetric Lacerations at Vaginal Delivery, Am. College of Obstetricians and Gynecologists* (Sept. 2018); ACOG Clinical Consensus No. 1, *Pharmacologic Stepwise Multimodal Approach for Postpartum Pain Management,* Am. College of Obstetricians and Gynecologists (Sept. 2021).

[37] Joan L. Combellick, et al., *Severe Maternal Morbidity Among a Cohort of Post-9/11 Women Veterans,* J Women's Health, 29(4):577–84 (Apr. 2020).

[38] *See, e.g.,* Katie Shepherd, Rachel Roubein, and Caroline Kitchener, *1 in 3 American women have already lost abortion access. More restrictive laws are coming.,* Wash. Post (Aug. 22, 2022, 3:36 p.m.), *http://www.washingtonpost.com/nation/2022/08/22/more-trigger-bans-loom-1-3-women-lose-most-abortion-access-post-roe/; see also, e.g.,* Idaho Code Ann. sec. 18–622, 18–622(3)(a)(ii) (prohibiting abortion in all instances, only providing affirmative defenses in case of life or health of pregnant individual); La. Rev. Stat. Ann. sec. 40:1061 (providing limited exception for life or health to abortion prohibition).

[39] *See, e.g.,* Ava Sasani and Emily Cochrane, *'I'm Carrying This Baby Just to Bury It': The Struggle to Decode Abortion Laws,* N.Y. Times (Aug. 19, 2022), *http://www.nytimes.com/2022/08/19/us/politics/louisiana-abortion-law.html.*

[40] *Issue Brief: State Abortion Bans Could Harm Nearly 15 Million Women of Color* Nat'l Partnership for Women & Families (Jul. 2022), *http://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html.*

health of the pregnant individual, or in cases of rape or incest—as described in prior portions of this preamble.

It is critical that this rule be published and be made effective immediately to ensure pregnant veterans and CHAMPVA beneficiaries have access to this important care. Indeed, delaying the issuance of this rule would increase the risk to their health and lives and put care out of reach for some pregnant veterans and CHAMPVA beneficiaries entirely. Time is also of the essence because, after the *Dobbs* decision, many State laws have prompted providers to cease offering abortion services altogether; thus, many veterans and CHAMPVA beneficiaries would face delays (including travel and wait times) if they were required to obtain, outside the VA, the treatment permitted under this rule. Each day, pregnant patients in the United States, some of whom are veterans or CHAMPVA beneficiaries, find themselves in need of abortion services in accord with generally accepted standards of medical practice. Delaying that care for the time required for notice and comment rulemaking would result in substantial health deterioration and risk the lives of some pregnant veterans and CHAMPVA beneficiaries. Allowing even one preventable death of a veteran or CHAMPVA beneficiary by limiting access to abortions is unacceptable.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest and there is good cause to issue this interim final rule with an immediate effective date. Accordingly, VA is issuing this rule as an interim final rule with an immediate effective date. As noted above, this interim final rule will have a 30-day comment period, after which the Secretary will consider and address the comments received in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

C. Executive Orders 12866 and 13563

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

D. Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–12. This is because the rule does not directly regulate or impose costs on small entities and because any effects on small entities will be indirect. On this basis, the Secretary certifies that the adoption of this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply to this rule.

E. Unfunded Mandates

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

F. Paperwork Reduction Act

This rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–21.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 29, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

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

■ 2. Amend § 17.38 by revising paragraph (c)(1) to read as follows:

§ 17.38 Medical benefits package.

* * * * *

(c) * * *

(1) Abortions, except when:

(i) The life or the health of the pregnant veteran would be endangered if the pregnancy were carried to term; or

(ii) The pregnancy is the result of an act of rape or incest. Self-reporting from the pregnant veteran constitutes sufficient evidence that an act of rape or incest occurred.

* * * * *

■ 3. Amend § 17.272 by:

■ a. Revising paragraph (a)(64).

■ b. Removing paragraph (a)(65).

■ c. Redesignating current paragraphs (a)(66) through (84) as paragraphs (a)(65) through (83).

The revision reads as follows:

§ 17.272 Benefits limitations/exclusions.

(a) * * *

(64) Abortions, except when:

(i) The life or the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term; or

(ii) The pregnancy is the result of an act of rape or incest. Self-reporting from the pregnant beneficiary constitutes sufficient evidence that an act of rape or incest occurred.

* * * * *

[FR Doc. 2022–19239 Filed 9–8–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2022–0483; FRL–9913–02–R7]

Air Plan Approval; Iowa; State Implementation Plan and State Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) and Operating Permit Program for the State of Iowa. This final action will amend the SIP to update incorporations by reference to EPA methods for measuring air pollutant emissions, performance testing (stack testing) and continuous monitoring. These revisions do not impact the stringency of the SIP or have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 8, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0483. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Bethany Olson, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7905; email address: *olson.bethany@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The EPA is approving revisions to the Iowa SIP and the Operating Permits Program received on October 20, 2021. The revisions update incorporations by reference to EPA methods for measuring air pollutant emissions, performance testing (stack testing) and continuous monitoring. The revisions update the definitions of ''EPA Reference Method'' in Iowa Administrative Code Chapter 20, Subrule 20.2, ''Scope of Title—Definitions;'' Chapter 22, Subrule 22.100(455B), ''Controlling Pollution;'' and Chapter 25, Subrule 25.1(9), ''Measurement of Emissions.'' As explained in detail in the EPA's proposed rule, EPA finds these revisions meet the requirements of the Clean Air Act, do not impact the stringency of the SIP, and do not adversely impact air quality (87 FR 36346, June 17, 2022). The full text of these changes can be found in the State's submission, which is included in the docket for this action.

Sections 111 and 112 of the Clean Air Act (CAA) allow EPA to delegate authority to states for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). EPA has delegated authority to Iowa for approved portions of these sections of the CAA. Changes made to Iowa's Chapter 23 pertaining to new and revised NSPS and NESHAPs are not directly approved into the SIP, but rather, are adopted by reference. Thus, EPA is not approving the changes to Chapter 23 of the Iowa Administrative Code into the state's SIP.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 16, 2021, to July 19, 2021, and held a public hearing on July 19, 2021. No public comments were received. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the revisions are also consistent with applicable EPA requirements of Title V of the CAA and 40 CFR part 70.

III. What action is the EPA taking?

The EPA accepted public comment on the proposed rule from June 17, 2022, to July 18, 2022, and received no comments. Therefore, the EPA is finalizing its proposal to approve revisions to the Iowa SIP and the Operating Permits Program at IAC 567–20.2, 567–22.100 and 567–25.1.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Iowa rules 567–20.2, 567–22.100 and 567–25.1 discussed in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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

[1] 62 FR 27968, May 22, 1997.

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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

• Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 1, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entries ''567–20.2'' and ''567–25.1'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title—Definitions				
*	*	*	*	*
567–20.2	Definitions	10/13/2021	9/9/2022, [insert **Federal Register** citation].	The definitions for ''anaerobic lagoon,'' ''odor,'' ''odorous substance,'' ''odorous substance source'' are not SIP approved.
*	*	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment	10/13/2021	9/9/2022, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (x) under ''Iowa'' to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(x) The Iowa Department of Natural Resources submitted for program approval revisions to rules 567–22.100. The state effective date for 567–22.100 is October 13, 2021. This revision is effective November 8, 2022.

* * * * *

[FR Doc. 2022–19327 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2021–0455 and 0463, OLEM–2022–0190, 0192, and 0193; FRL–10159–01–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund section of the NPL.

DATES: This rule is effective on October 11, 2022.

ADDRESSES: Contact information for the EPA Headquarters:

• Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (202) 566–1048, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail code 5204T), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW, Washington, DC 20460.

The contact information for the regional dockets is as follows:

• Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; (617) 918–1413.

• James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4342.

• Lorie Baker, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, 4 Penn Center, 1600 John F. Kennedy Boulevard, Mailcode 3SD12, Philadelphia, PA 19103 (215) 814–3355.

• Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; (404) 562–8926.

• Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 886–4465.

• Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; (214) 665–3154.

• Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; (913) 551–7956.

• David Fronczak, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8SEM–EM–P, Denver, CO 80202–1129; (303) 312–6096.

• Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; (415) 972–3160.

• Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 288 Martin Street, Suite 309, Blaine, WA 98230; (360) 366–8868.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section'') and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions'' (40 CFR 300.5).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site,

as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments, and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that: (1) Explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *https://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Georgetown North Groundwater	Georgetown, DE	EPA–HQ–OLEM–2022–0190.
Highway 3 PCE	Le Mars, IA	EPA–HQ–OLEM–2021–0455.
Lower Hackensack River	Bergen and Hudson Counties, NJ	EPA–HQ–OLEM–2022–0192.
Brillo Landfill	Victory, NY	EPA–HQ–OLEM–2022–0193.
Ochoa Fertilizer Co	Guánica, PR	EPA–HQ–OLEM–2021–0463.

B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site. These documents are also available online at *https://www.regulations.gov.*

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents that support this rule online at *https://www.regulations.gov* or by contacting the EPA HQ docket or appropriate regional docket. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the individual regional dockets for hours. For addresses for the headquarters and regional dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name.*

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following five sites to the NPL, all to the General Superfund section. All of these sites are being added to the NPL based on an HRS score of 28.50 or above.

GENERAL SUPERFUND SECTION

State	Site name	City/county
DE	Georgetown North Groundwater	Georgetown.
IA	Highway 3 PCE	Le Mars.
NJ	Lower Hackensack River	Bergen and Hudson Counties.
NY	Brillo Landfill	Victory.
PR	Ochoa Fertilizer Co	Guánica.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding five sites to the NPL in this final rule. The Ochoa Fertilizer Co site in Guánica, PR was proposed for addition to the NPL on September 9, 2021 (86 FR 50515). The remaining four sites were proposed for addition to the NPL on March 18, 2022 (87 FR 15349).

Comments on the Ochoa Fertilizer Co site are being addressed in a response to comment support document available in the public docket concurrently with this rule. To view public comments on this site, as well as EPA's response, please refer to the support document available at *https://www.regulations.gov.* Below is a summary of significant comments received on the remaining sites.

The EPA received no comments on the Highway 3 PCE site.

Georgetown North Groundwater

The EPA received one comment supporting the listing of the Georgetown North Groundwater site, one comment requesting additional information, and one additional comment that is not site-specific to the Georgetown North Groundwater site. In support of listing, a private citizen expressed approval of the potential for help from the EPA to address groundwater contamination and to keep residential water as clean as possible. This commenter also requested that the EPA investigate possible contamination from a previous dry cleaner in the area and ensure that structures near the facility are included in the remediation.

One commenter, a private citizen, supported listing all five sites proposed on March 18, 2022 (87 FR 15349) and expressed support for the positive attributes of listing including the economic benefits, the protection of human health and the environment, and the positive impact to the environment. The commenter also submitted comments related to taxation and considerations for funding Superfund cleanups in general.

The third commenter, a private citizen, did not oppose listing but expressed concern regarding the groundwater contamination and requested information about testing. The EPA has reached out to this individual

directly to provide further information regarding the scope of the site.

Regarding possible contamination associated with a former dry cleaner in the area, listing makes a site eligible for remedial action funding under CERCLA, and the EPA will examine the site to determine what response, if any, is appropriate. Placing a site on the NPL is based on an evaluation, in accordance with the HRS, of a release or threatened release of hazardous substances, pollutants, or contaminants. This site was evaluated as a groundwater plume with no identified source due to the inability to identify the origin of the likely commingled groundwater contamination. As explained in the attribution section of the HRS documentation record at proposal, possible sources of the likely commingled contamination include dry-cleaning facilities with noted PCE contamination as well as other facilities. A subsequent stage of the Superfund process, the remedial investigation (RI), characterizes conditions and hazards at the site more comprehensively. However, if another, unrelated area of contamination is discovered during the RI, the EPA may decide to evaluate that release for possible placement on the NPL.

Lower Hackensack River

The EPA received three comments supporting the proposed listing of the Lower Hackensack River site. The EPA received one additional comment that is not site-specific but supported listing all five sites proposed on March 18, 2022 (87 FR 15349) to ensure transparency about the public health of the community.

Two organizations, the Hackensack Riverkeeper and the NY/NJ Baykeeper, supported listing the site on the NPL. New Jersey State Senator Gordon Johnson, New Jersey State Assemblywoman Shama Haider, and New Jersey State Assemblywoman Ellen Park also submitted a joint comment as the legislators representing the 37th district of New Jersey in support of the proposed listing of the site on the NPL. The Hackensack Riverkeeper commented that listing will allow the river to receive attention from the EPA and address contamination resulting from multiple possible sources. The Hackensack Riverkeeper asserted that contaminated sediments in the river will likely remain until the Superfund remediation occurs. In support of placing the site on the NPL, the NY/NJ Baykeeper asserted that listing the site on the NPL allows for a more comprehensive approach to remediation of the site and allows the EPA to complete widespread remediation. The NY/NJ Baykeeper also commented that opportunities should be made available for community involvement and engagement. The legislators representing the 37th district in New Jersey provided support for the proposed listing, and they commented that taxpayers in the 37th district should not be responsible for funding cleanup and parties at fault should be held responsible.

Regarding concern for the impact of site listing on remedial activities and the attendant costs, the inclusion of a site on the NPL does not cause the EPA, or a private party, to undertake remedial action, nor does it assign liability for site response costs (56 FR 21462, May 9, 1991). Any EPA actions that may impose costs are based on discretionary decisions and are made on a case-by-case basis. Responsible parties may bear some or all the costs of the remedial investigation and feasibility study (RI/FS) and subsequent work, or the costs may be shared by the EPA and the States. The EPA has not allocated costs for this site at this time.

Regarding community involvement, the Superfund program offers numerous opportunities for public participation at NPL sites. The EPA Regional Office develops a Community Relations Plan (CRP) before RI/FS field work begins. Typical community relations activities include:

- Public meetings at which the EPA presents a summary of technical information regarding the site and citizens can ask questions or comment.
- Small, informal public sessions at which EPA representatives are available to citizens.
- Development and distribution of fact sheets to keep citizens up-to-date on site activities.

For each site, an ''information repository'' is established, usually in a library or town hall and/or on an EPA website, containing reports, studies, fact sheets, and other documents containing information about the site. After the RI/FS is completed and the EPA has recommended a preferred cleanup alternative, the EPA Regional Office sends to all interested parties a Proposed Plan outlining the cleanup alternatives studied and explaining the process for selection of the preferred alternative. At this time, the EPA also begins a public comment period during which citizens are encouraged to submit comments regarding all alternatives. Once the public comment period ends, the EPA develops a Responsiveness Summary, which contains EPA responses to public comments. In addition to meeting these specific Federal requirements, the EPA makes every attempt to ensure that community relations is a continuing activity designed to meet the specific needs of the community. Anyone wanting information on a specific site should contact the Community Relations staff in the appropriate EPA Regional Office.

Brillo Landfill

The EPA received one comment from a private citizen on the proposed listing of the Brillo Landfill site that is not site-specific but supported the implementation of the NCP. The commenter expressed support for the proposed rule noting that the rule change is in a positive direction for protecting the environment from pollutants.

C. Correction of Site Name Spelling Error in Appendix B

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a final rule or technical amendment without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary for the following reason. EPA is merely correcting the name of the site Douglass Road/Uniroyal, Inc., Landfill to Douglas Road/Uniroyal, Inc., Landfill. This minor technical correction is simply administrative and does not affect any substantive requirements. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.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.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This final rule 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

L. Congressional Review Act

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

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Date: August 29, 2022.

Barry Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757,

3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. In appendix B of part 300 amend Table 1 by:

■ a. Removing the ''IN, Douglass Road/Uniroyal, Inc., Landfill'' entry under the state of Indiana; and

■ b. Adding entries for ''DE, Georgetown North Groundwater'', ''IA, Highway 3 PCE'', ''IN, Douglas Road/Uniroyal, Inc., Landfill'', ''NJ, Lower Hackensack River'', ''NY, Brillo Landfill'', and ''PR, Ochoa Fertilizer Co'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	* * * *	* * *	*
DE	Georgetown North Groundwater	Georgetown.	
*	* * * *	* * *	*
IA	Highway 3 PCE	Le Mars.	
*	* * * *	* * *	*
IN	Douglas Road/Uniroyal, Inc., Landfill	Mishawaka.	
*	* * * *	* * *	*
NJ	Lower Hackensack River	Bergen and Hudson Counties.	
*	* * * *	* * *	*
NY	Brillo Landfill	Victory.	
*	* * * *	* * *	*
PR	Ochoa Fertilizer Co	Guánica.	
*	* * * *	* * *	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2022–19148 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2507

RIN 3045–AA59

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is finalizing updates to its regulations for processing requests for records under the Freedom of Information Act (FOIA) to reflect changes made in the FOIA Improvement Act of 2016 and to make the regulations more user friendly through plain language.

DATES: This rule takes effect on October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Stephanie Soper, AmeriCorps FOIA Officer, at 202–606–6747 or *ssoper@cns.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 (Pub. L. 114–185). The Act addresses a range of procedural issues that affect agency FOIA regulations, including requirements that agencies proactively make certain records available on their websites, establish a minimum of 90 days for requesters to file an administrative appeal, and provide dispute resolution services at various times throughout the FOIA process. With regard to exemptions from disclosure, the Act provides that the deliberative process protection for a record sunsets after 25 years, codifies the Department of Justice's ''foreseeable harm'' standard, and amends FOIA Exemption 5. The Act also creates a new ''Chief FOIA Officer Council'' and adds two new elements to agency Annual FOIA Reports.

AmeriCorps published a proposed rule to incorporate these changes on May 2, 2022. *See* 87 FR 25598. AmeriCorps received one public comment submission on the proposed rule, which AmeriCorps addresses in section III of **SUPPLEMENTARY INFORMATION**.

II. Overview of Final Rule

This final rule will incorporate the FOIA Improvement Act of 2016 changes into AmeriCorps' FOIA regulations by, among other things:

- Providing that the deliberative process protection for a record exempt from disclosure sunsets after 25 years;
- Incorporating the ''foreseeable harm'' standard by providing that when a FOIA exemption gives AmeriCorps the discretion to either withhold or release records, AmeriCorps will release the records or information whenever it determines that disclosure would not foreseeably harm an interest that the exemption protects; and
- Providing that the deliberative process privilege of Exemption 5 of the FOIA will not apply to records created 25 years or more before the date when the records were requested.

This rule will update AmeriCorps' processing fees to align with current agency salary ranges, establish different tracks for processing simple FOIA requests and complex FOIA requests and establish a track for expedited processing, and make several non-substantive changes to make the regulation more user-friendly, including breaking the regulation into different subparts and shortening section headings.

The following table provides a comparison of the current AmeriCorps FOIA regulations and the final rule.

Current 45 CFR section	New 45 CFR section	Description of changes
	Subpart A—General Provisions	New subpart designation.
2507.1 Definitions	2507.3 Definitions	Replaces definition of ''Act'' with ''Freedom of Information Act (FOIA)'' for clarity. Replaces definition of ''Corporation'' with definition of ''AmeriCorps.'' Moves definition of ''Freedom of Information Act Officer (FOIA Officer)'' to a new section § 2507.4 describing AmeriCorps' FOIA officials and their responsibilities. Deletes definition for ''electronic data'' because these terms are not used. Deletes definition for ''public interest'' because the meaning of the term is explained in the one section where it appears at final § 2507.24. Adds definitions for ''complex request,'' ''consultation,'' ''exemptions,'' ''expedited processing,'' ''frequently requested records,'' ''multitrack processing,'' ''Office of Government Information Services (OGIS),'' ''proactive disclosures,'' and ''referral.'' Moves and revises definitions for ''commercial use request,'' ''educational institution,'' ''non-commercial scientific institution,'' ''representative of the news media,'' ''review'' (changed to ''review fees''), and ''search'' (changed to ''search fees'') to subpart G where they are exclusively used. Revises the definition of ''FOIA request'' to move the sentence about how written requests may be received to § 2507.6 (b). Revises the definition of ''record'' for simplification.
2507.2 What is the purpose of this part?	2507.1 Scope	Deletes sentence about information customarily furnished to the public because such information does not require FOIA requests. Adds that the rules should be read in conjunction with the FOIA statute and OMB guidelines and cross references Privacy Act regulations.
	2507.2 Policy	New section. Addresses how AmeriCorps approaches its duties and responsibilities under FOIA.
	2507.4 Agency FOIA Officials	New section. Lists AmeriCorps' authorized FOIA officials' positions and their roles.
	Subpart B—Proactive Disclosure of Agency Records.	New subpart designation.
2507.3 What types of records are available for disclosure to the public?	2507.5 Records Available on Agency Website.	Replaces section on what records AmeriCorps will provide when asked with a section on what information AmeriCorps proactively makes available to the public by posting on its website. Moves information on duplication to relevant sections and information on creation of new records to § 2507.8.
	Subpart C—Filing a FOIA Request	New subpart designation.
2507.4 How are requests for records made?	2507.6 Requirements for FOIA Requests.	See breakdown by paragraph below.
	(a) General information	New paragraph. Clarifies that AmeriCorps has a centralized system for processing FOIA requests but that State service commissions are not subject to FOIA.
(a) How made and addressed	(b) Directions for making requests	Allows for email submissions and online submissions of FOIA requests, in addition to hard copy requests. (Provision regarding the electronic reading room is at final § 2507.5).
(b) Request must adequately describe the records sought.	(c) Description of records sought ..	Deletes specific required information for FOIA requests, as long as the requester provides enough detail for personnel to find responsive records with a reasonable amount of effort. Incorporates description of what happens if the records are not sufficiently described that is in current § 2507.5(b).
	(d) Third party requests	Specifies what happens if the records pertain to a third party and additional information that may be required.
	(e) Date range for requested records.	Clarifies that the request may seek records in a specific date range.
(c) Agreement to pay fees	.....	Deleted because the final rule would not charge for fees totaling $25.00 or less. *See* final § 2507.19(d).
	2507.7 Requests for Archived Records.	New section to clarify to whom requesters should direct requests for records that have been archived.
	Subpart D—Agency Processing and Response to FOIA Requests.	New subpart designation.
2507.5 How does the Corporation process requests for records?	2507.8 Processing of Requests	(See breakdown by paragraph below.)
(a) Initial processing	(a) Authority to grant or deny requests.	Clarifies that the FOIA Officer grants or denies the initial request.
(b) Insufficiently identified records ..	[See 2507.6(c)]	Moves provision on how FOIA Officer addresses requests for records that are insufficiently described to § 2507.6(c), and time period for response to § 2507.10(f).
(c) Furnishing records. ..... (d) Format of the disclosure of a record.	(b) Providing records	Simplifies current provisions to state that AmeriCorps will ordinarily provide the record in electronic form or in other forms upon request if readily reproducible in that form.

Current 45 CFR section	New 45 CFR section	Description of changes
	(c) Records previously released	New paragraph. Establishes that AmeriCorps will ordinarily release a record if it has released it in the past.
	(d) Consultation, referral, and coordination.	New paragraph. Establishes steps AmeriCorps will take when it determines another Federal agency is better able to determine whether a record is exempt from disclosure.
(e) Release of record	2507.10 Timing of Responses to Requests.	Consolidates all information on timing for responses to FOIA requests and adds a new multi-track processing system based on the complexity of the requests.
(f) Form and content of notice granting request.	2507.11 Responses to Requests ..	Adds that AmeriCorps will first acknowledge the FOIA request and provide the requester with a tracking number.
(g) Form and content of notice denying the request.	(c)(3) Adverse determinations on requests.	Clarifies what qualifies as an adverse determination or denial of a request.
2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?	2507.10 Timing of Responses to Requests.	Consolidates all information on timing for responses to FOIA requests and adds a new multi-track processing system based on the complexity of the requests.
	Subpart F—Appeals and Alternative Dispute Resolution.	New subpart designation.
2507.7 How does one appeal the Corporations denial of access to records?	2507.14 Administrative Appeals	Increases time limit for submitting an appeal to 90 days after the date of the adverse determination. Identifies where to send an appeal. Refers to the FOIA Appeals Officer rather than the Chief Operating Officer as the position designated to act on appeals.
	2507.15 Mediation and Dispute Resolution Services.	New section. Establishes requesters' right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS.
2507.8 How are fees determined?	Subpart G—Fees	New subpart designation. See breakdown by paragraphs and proposed sections below.
(a) Policy	2507.17 Fees Overview	Consolidates provisions regarding how AmeriCorps will charge fees.
(b) Types of request	2507.18 Requester Categories and Fees Charged.	Consolidates information to provide a table for types of categories and fees.
(c) Direct costs	2507.16 Definitions for this Subpart.	New section. Consolidates definitions for requester categories and types of fees into one section. Provisions regarding direct costs are contained within definitions for ''duplication fees,'' ''review fees,'' and ''search fees.''
(d) Charging of fees	2507.18 Requester Categories and fees charged.	Consolidates fees into a table. Increases fees for photocopies from 10¢ to 20¢ per page. Increases search fee to $70 per hour (in place of $12, $28, or $41 per hour depending on who conducts the search).
	2507.19 Circumstances in Which Fees May Not Be Charged.	New section. Establishes when AmeriCorps may not charge fees and incorporates the statutory threshold of 5,000 pages.
(e) Consent to pay fees	2507.20 Notice of Anticipated Fees in Excess of $25.00.	Clarifies steps AmeriCorps will take if it estimates fees to be assessed will exceed $25.00, based on the category of the requester.
(f) Advance payment	2507.23 Collection and Payment of Fees.	Provides additional information on AmeriCorps' ability to require an advance payment.
(g) Interest on non-payment	2507.21 Other Charges	Adds provision for special services, such as certifying records are true copies.
(h) Aggregating requests	2507.22 Aggregating Requests to Ensure Payment of Fees.	Replaces ''solid basis'' with ''reasonable basis.''
(i) Making payment	2507.23 Collection and Payment of Fees.	Adds that AmeriCorps is not required to accept payments in installments.
(j) Fee processing	.....	Deleted. Proposed rule does not provide for charging fees that total $25.00 or less.
(k) Waiver or reduction of fees	2507.24 Fee Waivers or Fee Reductions.	Specifies factors AmeriCorps will consider in determining whether disclosure of the information is in the public interest and whether the disclosure is primarily in the commercial interest of the requester.
2507.9 What records will be denied disclosure under this part?	2507.9 Reasons for Withholding Some Records 2507.11 Responses to Requests.	Adds steps AmeriCorps will take in documenting the reason for withholding. Adds expiration to deliberative process of Exemption 5.
2507.10 What records are specifically exempt from disclosure?	.....	Deleted. Instead refers to exemptions set out in Act. See proposed definition of ''exemptions.''
2507.11 What are the procedures for the release of commercial business information?	Subpart E—Confidential Commercial Information.	Replaces ''business submitter'' with ''submitter'' to include all submitters of confidential commercial information, rather than just business submitters. Adds that the notification to the submitter will include notice of what information AmeriCorps proposes to disclose and withhold. Establishes that AmeriCorps will consider the specific grounds the submitter asserts for non-disclosure rather than the general criteria listed in the current regulation. Changes the advance notice of the time period for disclosure from six working days to five working days.
	2507.12 Definitions for this Subpart.	
	2507.13 Procedures for Release of Commercial Information.	
2507.12 Authority	.....	Deleted because authority is stated after the table of contents.
	Subpart H—Miscellaneous	New subpart designation.
	2507.25 Preservation of Records ..	New section. Clarifies how AmeriCorps preserves records.

Current 45 CFR section	New 45 CFR section	Description of changes
	2507.26 Reporting Requirements	New section. Identifies what reports AmeriCorps will submit to the Attorney General.
	2507.27 Rights and Services Qualified by the FOIA Statute.	New section. States that the CFR part should not be interpreted to entitle persons to rights or services for which they are not entitled under FOIA.
Appendix A—FOIA Request Letter (Sample).	.....	Deleted. To be made available on website instead of CFR to allow for modifications to keep current.
Appendix B—FOIA Appeal for Release of Information.	.....	Deleted. To be made available on website instead of CFR to allow for modifications to keep current.

III. Response to Comments on Proposed Rule and Changes From Proposed to Final

AmeriCorps received one public comment submission containing several suggested edits to the proposed rule, which are summarized and addressed as follows.

• The commenter pointed out that proposed § 2507.2(b)'s statement that the agency's practice of applying the foreseeable harm standard is not enforceable in court is inaccurate because the right to release of records and information under this standard is enforceable. The final rule deletes this sentence. The final rule also revises the preceding sentence regarding AmeriCorps' release of records or information under this standard to better mirror the statute's language.

• In proposed § 2507.3, which contains definitions for the regulation, the commenter questioned whether the definitions were necessary. AmeriCorps has decided to retain the definitions in the final rule for clarity. Additionally, the commenter suggested edits to two definitions. First, the commenter suggested, in the definition of ''Freedom of Information Act (FOIA),'' adding the U.S. Code citation, clarifying that a request must ''reasonably describe'' the records, and clarifying that agencies may rely upon exclusions (in addition to the exemptions) for not releasing records. The final rule adds each of these suggested edits for clarification. Second, the commenter stated that the definition of ''frequently requested records'' does not mirror the statute, which requires the agency to have determined the records have become or are likely to become the subject of subsequent requests for substantially the same records. The proposed rule contained this additional information in proposed § 2507.5(b)(2). In response to this comment, AmeriCorps has moved that information from § 2507.5(b)(2) into the definition.

• Proposed § 2507.11, Responses to Requests, paragraph (b) imposed a requirement upon AmeriCorps to acknowledge a FOIA request and inform the requester of the tracking number. The commenter pointed out that, statutorily, AmeriCorps is not required to provide the requester this information if AmeriCorps issues a final determination in less than 10 days. AmeriCorps is nevertheless retaining this provision in the final rule to ensure consistency in its approach to acknowledging requests. Additionally, in paragraph (c)(3)(iii)(A) of this section, the proposed rule imposes requirements on AmeriCorps to provide a general description of withheld records at the administrative stage, and the commenter noted that the statute does not require AmeriCorps to provide a general description at this stage. AmeriCorps is retaining this regulatory provision to ensure consistency in its approach to withholding records. The commenter also noted that this proposed paragraph would require AmeriCorps to provide an estimate of the volume of the material withheld, but that doing so may harm an interest protected by an applicable exemption. In response, the final rule adds that AmeriCorps will not specify the volume withheld if doing so would harm an interest protected by an exemption. The final rule also specifies that AmeriCorps will provide the estimate of the volume of material withheld ''where not evident'' given that in some cases, the volume will be clear from visible redactions in released materials.

• In proposed § 2507.13, Procedures for Release of Commercial Information, the commenter suggested clarifying in paragraph (a)(3) when the 10 business days in which a requester may inform the agency of any objection begins. The final rule clarifies that the calculation of the 10 business days begins from the date the notice is sent. The commenter also suggested that paragraph (c) should state that a submitter who fails to respond within the requisite time period should be considered to have no objection to disclosure and that the agency will not consider any information received after the date of the disclosure decision. The final rule adds that AmeriCorps will not consider any information that is not timely submitted. The final rule also includes the requested provision that AmeriCorps will consider any submitter who fails to make a timely objection to have no objection but adds ''unless the submitter requests an extension of time to reply and is granted that extension or a lesser one'' to account for situations where AmeriCorps has granted an extension of time.

• Proposed § 2507.14, Administrative Appeals, paragraph (f)(2) addressed decisions on appeals. The commenter noted that the provision addressed reprocessing of withheld records, but that not all appeal determinations will pertain to withheld records. The final rule addresses this comment by specifying that AmeriCorps will reprocess the FOIA request in accordance with the FOIA Appeals Officer's decision ''if applicable'' and promptly send ''releasable'' records to the requester.

• In proposed § 2507.19, Circumstances in Which Fees May Not Be Charged, the commenter pointed out that the statute refers to 5,000 pages of the response, rather than the 1,000 pages cited in the proposed rule. The final rule corrects this error.

In addition, AmeriCorps made the following non-substantive edits to the proposed rule for clarification:

• In § 2507.3, Definitions, the final rule clarifies how proactive disclosures are made publicly available by specifying that they will be posted on AmeriCorps' website.

• In § 2507.5, Records Available on Agency website, the final rule adds that AmeriCorps will post records that AmeriCorps determines are or will be the subject of widespread media, historical, or academic interest and that may properly be posted.

• In § 2507.6, Requirements for FOIA Requests, the final rule moves the provision stating that requesters may adjust their request or ask for drafting advice by emailing the FOIA office from paragraph (c)(1) to paragraph (c). The final rule makes this change because paragraph (c)(1) is specific to requests that do not reasonably describe the records, while requesters have the option of adjusting their request or

asking for advice outside of this context. Likewise, the final rule moves the provision requiring requesters to provide contact information from paragraph (c)(1) to a new paragraph (f), to require contact information whenever a request is submitted.

- In § 2507.8, Processing of Requests, the reference to ''coordination'' is removed from paragraph (d) because the section does not address coordination. The final rule also clarifies that AmeriCorps will determine whether another Federal agency holds an interest in the record (as opposed to the proposed language regarding who is better able to determine whether a record is exempt).
- In § 2507.11, Responses to Requests, the final rule adds that AmeriCorps will provide an estimated date by which it expects to provide a response to the requester and may provide interim responses releasing records on a rolling basis under certain circumstances.
- In § 2507.13, the final rule adds a new provision requiring AmeriCorps to notify the requester whenever: (1) AmeriCorps provides the submitter with notice and the opportunity to object to disclosure, (2) AmeriCorps provides the submitter of its intent to disclose requested information, or (3) the submitter files a lawsuit to prevent disclosure of the information. These provisions incorporate statutory requirements.
- In § 2507.24(b), the final rule reorganizes paragraph (b) for clarification, to distinguish criteria used to determine if a disclosure is in the public interest from the criteria used to determine that the disclosure is not primarily in the commercial interest of the requester.
- In § 2507.26, the final rule removes detail as to the timing and content of reports to account for changes the Attorney General may make to reporting requirements over time.

IV. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a significant regulatory action and therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

B. Congressional Review Act (Small Business Regulatory Enforcement Fairness Act of 1996, Title II, Subtitle E)

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, AmeriCorps will submit for an interim or final rule a report to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, AmeriCorps has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

D. Unfunded Mandates Reform Act of 1995

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

E. Paperwork Reduction Act

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. This proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have any Federalism implications, as described above.

G. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

AmeriCorps recognizes the inherent sovereignty of Indian Tribes and their right to self-governance. We have evaluated this rule under our consultation policy and the criteria in E.O. 13175 and determined that this rule does not impose substantial direct effects on federally recognized Tribes.

List of Subjects in 45 CFR Part 2507

Freedom of information.

■ For the reasons stated in the preamble, AmeriCorps revises 45 CFR Part 2507 to read as follows:

PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—General Provisions

Sec.
2507.1 Scope.
2507.2 Policy.
2507.3 Definitions.
2507.4 Agency FOIA Officials.

Subpart B—Proactive Disclosures of Agency Records

2507.5 Records available on agency website.

Subpart C—Filing a FOIA Request

2507.6 Requirements for FOIA requests.
2507.7 Requests for archived records.

Authority: 5 U.S.C. 552, 42 U.S.C. 12501 *et seq.*

Subpart A—General Provisions

§ 2507.1 Scope.

This part contains the rules that the Corporation for National and Community Service, operating as AmeriCorps (''the Agency'' or ''AmeriCorps''), follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with AmeriCorps' Privacy Act regulations, 45 CFR part 2508, as well as under this part.

§ 2507.2 Policy.

(a) AmeriCorps follows a balanced approach in administering the FOIA. The Agency recognizes the right of the public to seek access to information in its possession. It also recognizes the legitimate interests of organizations or persons who have submitted records to AmeriCorps or who would otherwise be affected by release of records. AmeriCorps has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. The Agency provides the fullest responsible disclosure that is consistent with the requirements of the FOIA.

(b) When a FOIA exemption gives Federal agencies the discretion to either withhold or release records, AmeriCorps releases the records or information unless it reasonably foresees that disclosure would harm an interest that the exemption protects.

§ 2507.3 Definitions.

As used in this part:

Agency is any executive agency, military agency, government corporation, government-controlled corporation, or other establishment in the Executive Branch of the Federal Government, or any independent regulatory agency. AmeriCorps is an agency.

AmeriCorps or *the Agency* means the Corporation for National and Community Service, which operates as AmeriCorps.

Complex request is a request that typically seeks a high volume of material or requires additional steps to process, such as the need to search for records in multiple locations.

Consultation is when AmeriCorps locates a record that contains information of interest to another agency, and, before any final determination is made, AmeriCorps asks that other agency for its views on whether or not the records can be released to the requester.

Exemptions are the nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called ''exemptions'' from disclosure.

Expedited processing is the FOIA response track granted in certain limited situations to process FOIA requests ahead of other pending requests.

FOIA request is a written request for Agency records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business—but not including a Federal agency, an agent of a foreign government, an order from a court, or a fugitive from the law—that either explicitly or implicitly involves the FOIA, or this part.

Freedom of Information Act (FOIA) is a United States Federal law at 5 U.S.C. 552 that grants the public access to records possessed by government agencies. Upon written request, U.S. Government agencies are required to release reasonably described records, except to the extent the records fall under an exclusion or one of the nine exemptions listed in the Act.

Frequently requested records are records that have been released either in full or with the same information withheld and either:

(1) Have been requested from AmeriCorps three or more times; or

(2) Because of their subject matter, AmeriCorps determines have become or are likely to become the subject of subsequent requests for the same records.

Multitrack processing is a system that divides incoming FOIA requests into processing tracks according to their complexity.

Office of Government Information Services (OGIS) is an office within the National Archives and Records Administration that offers mediation services to resolve disputes between FOIA requesters and agencies, as a non-exclusive alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement.

Proactive disclosures are records that agencies make publicly available on their website without waiting for a specific FOIA request.

Record means information, regardless of the form in which it is stored or its characteristics, which is created or obtained by an agency and is under the control of the agency at the time of the request. It includes information maintained for the agency by an entity under government contract for records management purposes. It does not include records that do not already exist and that would have to be created specifically to respond to a request.

Referral occurs when an agency locates a record that originated with, or is of otherwise primary interest to, another agency. The receiving agency will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

Search is the process of looking for and retrieving records or information responsive to a request.

Simple request is a FOIA request that an agency anticipates will involve a small volume of material or which the agency will be able to process relatively quickly.

Tolling means temporarily stopping the running of a time limit.

§ 2507.4 Agency FOIA officials.

The following are AmeriCorps' authorized FOIA officials, each of whom will be identified on *americorps.gov*, and their roles.

(a) The *Chief FOIA Officer:*

(1) Has overall responsibility for AmeriCorps' compliance with the FOIA;

(2) Provides high-level oversight and support to AmeriCorps' FOIA program;

(3) Recommends adjustments to AmeriCorps' practices, personnel, and funding, as needed, to improve FOIA administration, including through Chief FOIA Officer Reports submitted to the U.S. Department of Justice;

(4) Tells the Agency's FOIA Officers of all significant developments with respect to the FOIA;

(5) Is responsible for offering training to agency staff regarding their FOIA responsibilities;

(6) Serves as the primary liaison with the Office of Government Information Services and the U.S. Department of Justice's Office of Information Policy; and

(7) Reviews, at least annually, all aspects of AmeriCorps' administration of the FOIA to ensure compliance with the FOIA's requirements.

(b) The *FOIA Officer* receives, tracks, and processes the Agency's FOIA requests, including making final release determinations. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of the Agency's FOIA program.

(c) The *FOIA Appeals Officer* receives and act upon appeals from requesters whose initial requests for the Agency's records have been denied, in whole or in part.

(d) The *FOIA Public Liaison* serves as the official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA Officer. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency, answering requesters' questions about the status of their requests, and resolving disputes.

Subpart B—Proactive Disclosures of Agency Records

§ 2507.5 Records available on agency website.

(a) AmeriCorps regularly updates and posts the following on its public website, *americorps.gov*:

(1) Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) and:

(2) Administrative staff manuals and instructions to staff that affect any member of the public.

(3) Statements of policy and interpretation adopted by AmeriCorps and not published in the **Federal Register**.

(4) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases.

(5) Records that AmeriCorps determines are or will be the subject of widespread media, historical, or academic interest and that may properly be publicly posted.

(b) On the FOIA page of its public website, *americorps.gov*, the Agency posts records that are required by the FOIA to be made available for public inspection and copying under 5 U.S.C 552(a)(2), including, but not limited to, frequently requested records.

(c) For help from the FOIA Officer or the FOIA Public Liaison in finding proactively disclosed records, members of the public may contact AmeriCorps at *foia@cns.gov* or at: AmeriCorps, Office of the General Counsel, 250 E Street SW, Washington, DC 20525.

Subpart C—Filing a FOIA Request

§ 2507.6 Requirements for FOIA requests.

(a) *General information.* AmeriCorps has a centralized system for responding to FOIA requests. AmeriCorps headquarters is the central processing point for all requests for Agency records, regardless of where they are stored. State service commissions are not part of AmeriCorps and are not Federal agencies, and thus are not subject to the FOIA.

(b) *Directions for making requests.* All FOIA requests must be submitted in writing to the FOIA Officer at AmeriCorps headquarters in one of the following ways:

(1) *By email: foia@cns.gov.* Including a phone number with a request will help with processing.

(2) *By online submission:* via the National FOIA Portal at *www.FOIA.gov.*

(3) *By mail:* AmeriCorps, Attn.: FOIA Officer, Office of General Counsel, 250 E Street SW, Washington, DC 20525.

(4) *By fax:* (202) 606–3467.

(c) *Description of records sought.* Requesters must provide enough detail about the Agency's records they seek that AmeriCorps personnel can find responsive records, if they exist, with a reasonable amount of effort. To the extent possible, requesters should include information that helps identify the records, such as dates, titles or names, authors, recipients, subject matter of the records, or assigned reference numbers. Requesters may adjust their request or ask for advice on writing a request by sending a note to *foia@cns.gov.*

(1) If a request does not reasonably describe the records sought, AmeriCorps' response to the request may be delayed or denied.

(2) When AmeriCorps determines that a request does not sufficiently describe the records sought, it will ask the requester for further information. If the requester does not respond to a request for additional information within thirty (30) working days, the request may be administratively closed at AmeriCorps' discretion. A requester may, after administrative closure of a request, submit a new request with additional information for further consideration.

(d) *Third-party requests.* When a request for records pertains to a third party (that is, a person other than the requester), the requester may receive greater access by submitting a notarized authorization signed by the third party or a declaration, made in compliance with the requirements set forth in the FOIA, that the third party authorizes disclosure of the records to the requester, or proof that the third party is deceased (for example, a copy of a death certificate or a published obituary). If necessary, AmeriCorps may require additional information from a requester to verify that the third party consents to disclosure. Alternatively, requesters may demonstrate an overriding public interest in the disclosure of information pertaining to a third party (for example, by producing evidence that alleged Government impropriety occurred, necessitating a disclosure of information related to official misconduct).

(e) *Date range for requested records.* Requesters may ask for a specific date range for a search, but requests may not ask for records that are anticipated for the future, but do not yet exist. As it determines which records are responsive to a request, AmeriCorps ordinarily will include only records in its possession as of the date it begins its search, if a date range is not specified.

(f) *Contact information.* Requesters must provide a telephone number or email address in their request so that AmeriCorps can contact them for clarification, if necessary, or help them narrow down a request that would otherwise be unduly burdensome.

§ 2507.7 Requests for archived records.

In accordance with agency records schedules and General Records Schedules, AmeriCorps transfers permanent records to the National Archives and Records Administration (''National Archives''). Once these records are transferred, they are in the physical and legal custody of the National Archives. Accordingly,

requests for retired AmeriCorps records should be submitted to the National Archives by mail addressed to: Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837–1864; or by email to *specialaccess_foia@nara.gov.*

Subpart D—Agency Processing and Response to FOIA Requests

§ 2507.8 Processing of requests.

(a) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or deny any requests for records maintained by AmeriCorps. If the request is for records under the control and jurisdiction of the Office of the Inspector General, the FOIA Officer will forward the request to that office's FOIA officer for the initial determination and the reply to the requester.

(b) *Providing records.* AmeriCorps will provide copies only of records it has in its possession. AmeriCorps is not compelled to create new records to respond to a FOIA request, answer questions posed as FOIA requests, perform research for a requester, compile lists of selected items from its files, or provide a requester with statistical or other data, unless such data has been compiled previously and is available in the form of a record.

(1) AmeriCorps is required to provide only one copy of a record.

(2) AmeriCorps will ordinarily provide the record in electronic form. Requesters may specify the preferred form or format for the records they seek, and AmeriCorps will provide releasable records in that form or format if they are readily reproducible in that way and the format allows for any necessary redactions.

(3) If AmeriCorps cannot make a legible copy of a record to be released, it is not required to reconstruct the record. Instead, AmeriCorps will furnish the best copy possible and note the record's poor quality in its reply.

(c) *Records previously released.* If AmeriCorps has released a record, or a part of a record, to a requester in the past, it will ordinarily release it to a new requester. However, this principle does not apply if the previous release was unauthorized or if an exemption applies that did not apply earlier. If an exemption is the reason for denial, AmeriCorps will specify the exemption under which information is withheld.

(d) *Consultation and referral.* When AmeriCorps reviews records in response to a request and determines that another agency of the Federal Government holds an interest in the record, AmeriCorps will proceed in one of the following ways:

(1) *Consultation.* When responsive records have originated with AmeriCorps but contain within them information of interest to another agency, or other Federal Government office, AmeriCorps consults with that other agency before making a release determination.

(2) *Referral.* (i) When a responsive record has originated with a different agency or other Federal Government office that is subject to the FOIA, AmeriCorps refers the responsibility for responding to the request regarding that record, on the presumption that the agency that originated a record will be best able to make the disclosure determination. However, if AmeriCorps and the originating agency jointly agree that AmeriCorps is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever AmeriCorps refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, notify the requester of the referral, and tell the requester the name(s) of the agency to which the record was referred and that agency's FOIA contact information.

§ 2507.9 Reasons for withholding some records.

(a) AmeriCorps records will be made available to the public unless it determines that such records should be withheld from disclosure under subsection 552(b) of the Act and/or in accordance with this part. Section 552(b) of the FOIA contains nine exemptions to the mandatory disclosure of records.

(b) AmeriCorps will:

(1) Withhold information under the FOIA only if disclosure is prohibited by law or it reasonably foresees that disclosure would harm an interest protected by an exemption.

(2) Consider whether partial disclosure of information is possible whenever it determines that a full disclosure of a requested record is not possible.

(3) Take reasonable steps necessary to segregate and release nonexempt information.

(4) Note in the record and response letter the basis for a redaction when it withholds information in a record, or an entire record.

(c) To the extent it properly can under an exemption, AmeriCorps will withhold information it obtains from any submitter that gave it to the agency in reliance on a statutory or regulatory provision for confidentiality. This section does not authorize the giving of any pledge of confidentiality by any officer or employee of AmeriCorps.

(d) The deliberative process privilege of Exemption 5 of the FOIA will not apply to records created 25 years or more before the date when the records were requested.

§ 2507.10 Timing of responses to requests.

(a) *In General.* AmeriCorps ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* AmeriCorps processes requests in a multitrack system based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing. This multitrack processing system does not lessen the Agency's responsibility to process requests as quickly as possible.

(1) AmeriCorps uses three tracks:

(i) A track for simple requests that can be processed in 20 working days;

(ii) A track for complex requests that require more than 20 working days; and

(iii) A track for expedited processing.

(2) Within each track, processing will ordinarily proceed on a ''first-in, first-out'' basis, and rank-ordered by the date of receipt of the request, unless there are unusual circumstances as set forth in paragraph (c) of this section, or the requester is entitled to expedited processing as set forth in paragraph (e) of this section.

(3) If a request does not qualify as simple, AmeriCorps may give the requester an opportunity to limit the scope of the request in order to qualify for faster processing.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and AmeriCorps extends the time limit on that basis, AmeriCorps will:

(1) Before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances and when AmeriCorps expects to complete processing the request; and

(2) When the extension exceeds 10 working days, AmeriCorps will:

(i) Notify the requester in writing of the right to seek dispute resolution services from the Office of Government Information Services (OGIS);

(ii) Give the requester an opportunity to modify the request or arrange an alternative time period for processing; and

(iii) Provide contact information for the FOIA Public Liaison.

(d) *Aggregating Requests to Satisfy Unusual Circumstances.* For the purposes of satisfying unusual circumstances under the FOIA, AmeriCorps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. AmeriCorps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of a person;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, that explains in detail the basis for requesting expedited processing.

(i) For example, under paragraphs (e)(1)(ii) and (iv) of this section, a requester who is not a full-time member of the news media must establish that their primary professional activity or occupation is information dissemination, though it need not be their sole occupation. They must also clearly describe why there is a particular urgency to inform the public about the government activity or questions about integrity involved in the request—one that extends beyond the public's right to know about government activity generally.

(ii) As a matter of administrative discretion, AmeriCorps may waive the formal certification requirement.

(3) Within 10 calendar days of receiving a request for expedited processing, AmeriCorps will notify the requester of its decision whether to grant or deny the request. If AmeriCorps grants expedited processing, the request will be placed in the expedited processing track and be processed as soon as practicable. If AmeriCorps denies a request for expedited processing, it will act expeditiously on any appeal of that decision.

(f) *Tolling.* The 20-day period under paragraph (b)(1) of this section commences on the date that the request is first received by the FOIA Officer. The 20-day period will not be tolled by AmeriCorps except under the following circumstances:

(1) The FOIA Officer may make one request to the requester for information and will toll the 20-day period while waiting for the information. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

(2) If the requester has indicated that they are willing to pay fees up to a certain amount, but the estimated fee exceeds that amount, the FOIA Officer will notify them of the higher estimated fees and ask if they wish to revise the amount of fees they are willing to pay or modify the request. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

§ 2507.11 Responses to requests.

(a) *In general.* To the extent practicable, AmeriCorps will communicate with requesters using electronic means, such as email. Upon request, AmeriCorps will provide an estimated date by which it expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing records on a rolling basis.

(b) *Acknowledgment of requests.* AmeriCorps will acknowledge the request and inform the requester of the tracking number assigned to the request.

(c) *Determinations on requests.* In all determinations on requests, AmeriCorps will notify the requester in writing of the right to seek assistance from AmeriCorps' FOIA Public Liaison.

(1) *Grants of requests for records.* When AmeriCorps grants a request in for records in full, it will notify the requester in writing and provide the records. If fees apply, AmeriCorps will inform the requester of those fees and send them the requested records promptly upon their payment of those fees.

(2) *Grants for other matters.* When AmeriCorps grants a request for a fee waiver, modification of a request, or expedited processing, it will notify the requester promptly, in writing.

(3) *Adverse determinations on requests.* If AmeriCorps denies a request in any respect, it will notify the requester in writing of the determination and their right to seek dispute resolution services from AmeriCorps' FOIA Public Liaison or the Office of Government Information Services.

(i) Adverse determinations, or denials of requests for records, include decisions that a record, or portion of it, is exempt; that the request does not reasonably describe the records sought; that the record is not subject to the FOIA, is not an agency record, does not exist, cannot be located, or has been destroyed; or that the record is not readily reproducible in the format sought by the requester.

(ii) Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited proceeding.

(4) *Information provided in the case of a denial.* Response letters that deny all or part of a request will be signed by the person making the decision and will provide:

(i) In the case of records withheld in whole or in part, a general description of what has been withheld and, where not evident, an estimate of the volume of material withheld, unless providing the description or estimate would harm an interest protected by an exemption;

(ii) The reasons for the denial, including, as applicable, a reference to the specific FOIA exemption that authorizes the withholding;

(iii) An explanation of the requester's appeal rights as described in Subpart F and the name and contact information of the Agency's FOIA Appeals Officer.

Subpart E—Confidential Commercial Information

§ 2507.12 Definitions for this subpart.

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

Submitter means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

Confidential commercial information means commercial or financial information obtained by an agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

§ 2507.13 Procedures for release of commercial information.

(a) *Notification to submitters of confidential commercial or financial information.* When AmeriCorps possesses confidential commercial or financial information, and receives a request for the records, the Agency will, before release of any information:

(1) Notify the submitter about the request and provide copies of the requested records;

(2) Tell the submitter what information it proposes to disclose and withhold in accordance with Exemption (b)(4) of the Act; and

(3) Require the submitter to inform the agency in writing, within 10 business days from the date the notice is sent, if they object to any proposed disclosure of commercial or financial information in the records.

(b) *When notice to submitter is not required.* AmeriCorps will not give notice to a submitter of confidential commercial or financial information if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Analysis of objection.* AmeriCorps will consider a submitter's timely objections and specific grounds for nondisclosure in deciding whether to disclose the requested information. AmeriCorps will not consider any information not timely submitted. A submitter who fails to make a timely objection will be considered to have no objection to disclosure, unless the submitter requests an extension of time to reply and is granted that extension or a lesser one.

(d) *Disclosure over the objection of a submitter.* Whenever AmeriCorps determines to disclose information over the objection of a submitter of commercial or financial information, it will send the submitter written notice that includes:

(1) A description of the commercial or financial information to be released to the requester;

(2) The reasons why the submitter's objection to release was not sustained;

(3) The date when the records will be disclosed, which shall be not less than 5 business days after the notice is sent.

(e) *Notice of suit for release.* Whenever a requester brings suit to compel the disclosure of a submitter's commercial or financial information, AmeriCorps will promptly notify the submitter.

(f) *Notification to requestor.* AmeriCorps will notify the requester whenever:

(1) AmeriCorps provides the submitter with notice and the opportunity to object to disclosure;

(2) AmeriCorps notifies the submitter of its intent to disclose requested information; and

(3) The submitter files a lawsuit to prevent disclosure of the information.

Subpart F—Appeals and Alternative Dispute Resolution

§ 2507.14 Administrative appeals.

Whenever AmeriCorps denies a FOIA request, it will inform the requester of the reasons for the denial and of the requester's right to appeal the denial to the FOIA Appeals Officer.

(a) *What a requester may appeal.* A requester may appeal:

(1) The withholding of a document or part of a document;

(2) Denial of a fee waiver request;

(3) The type or amount of fees they were charged;

(4) Any other type of adverse determination under the FOIA; or

(5) A failure by AmeriCorps to conduct an adequate search for the requested records.

(b) *What a requester may not appeal.* A requester may not appeal the lack of a timely response.

(c) *When appeal is required.* A requester must generally submit a timely administrative appeal before they seek court review of the Agency's adverse determination.

(d) *Requirements for making an appeal.* A requester must:

(1) Make the appeal in writing;

(2) Transmit or postmark the appeal within 90 calendar days after the date of adverse determination;

(3) Clearly identify the assigned request number and the Agency determination they are appealing;

(4) Mark the subject line of the appeal email, or letter and envelope, with ''FOIA Appeal.''

(e) *Where to file an appeal.* A requester may file an appeal by sending an email to *foia@cns.gov* to the attention of the FOIA Appeals Officer, or a letter to: FOIA Appeals Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525. There is no charge for filing an administrative appeal.

(f) *Adjudication of appeals.* (1) The FOIA Appeals Officer will conduct *de novo* review and make the final determination on appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(f) *Decisions on appeals.* The FOIA Appeals Officer will provide the decision on any appeal in writing within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the FOIA Appeals Officer received the appeal. The FOIA Appeals Officer's determination of an appeal constitutes the Agency's final action.

(1) If the FOIA Appeals Officer's decision upholds the Agency's determination, the decision will:

(i) State the reasons for the affirmance, including any FOIA exemptions applied;

(ii) Notify the requester of their statutory right to file a lawsuit; and

(iii) Inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

(2) If the FOIA Appeals Officer's decision remands or modifies the Agency determination, either in whole or in part, they will notify the requester of that determination in writing. Thereafter, AmeriCorps will re-process the FOIA request in accordance with that determination and, if applicable, promptly send the releasable records to the requester, unless a reasonable delay is justified.

§ 2507.15 Mediation and dispute resolution services.

If a requester receives an adverse determination on a FOIA request, they have the right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS. Congress has charged OGIS with resolving FOIA disputes between Federal agencies and requesters. OGIS's mediation services are an alternative to litigation, but do not preclude it.

Subpart G—Fees

§ 2507.16 Definitions for this subpart.

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

Commercial use request is a FOIA request for a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis, in consideration of the requester's intended use of the information.

Direct costs are the expenses AmeriCorps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, or of heating or lighting a facility.

Duplication fees are the reasonable direct costs of making copies of records to respond to a FOIA request, including the cost of materials to produce paper copies and materials plus operator time to produce tapes, disks, or other media.

Educational institution is any school that operates a program of scholarly research. To qualify for this fee category, a requester must show that the request is authorized by, and made under the auspices of, an educational institution

and that the records are not sought for a commercial use, but rather are sought to further scholarly research. The request must serve the scholarly research goals of the institution rather than an individual research goal.

Fee waiver is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

Noncommercial scientific institution is an institution that is not operated on a ''commercial'' basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by, and made under the auspices of, a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ''news'' means information that is about current events or that would be of current interest to the public. A freelance journalist will be regarded as a representative of the news media if they demonstrate a solid basis for expecting publication through a news media entity.

Review fees are the direct costs incurred during the initial examination of a document to determine if it must be disclosed under the FOIA. This includes doing all that is necessary to prepare a record for disclosure, such as redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter. It does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review fees are properly charged even if a record ultimately is not disclosed.

Search fees are costs of all time spent looking for responsive material, including, if necessary, page-by-page or line-by-line identification of information within records.

§ 2507.17 Fees overview.

(a) AmeriCorps will charge fees for processing FOIA requests in accordance with the provisions of this subpart and with the OMB Guidelines, unless a waiver or reduction of fees has been granted under § 2507.24.

(b) AmeriCorps will search for, review, and duplicate records in the most efficient and the least expensive manner.

(c) AmeriCorps may properly charge for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(d) When a request is made for commercial purposes, review fees will be assessed for the Agency's time spent on its initial analysis to determine whether an exemption applies to a record or portion of a record.

(e) No charge will be made at the administrative review stage for review of exemptions that were applied at the initial review stage. However, if one or more exemptions are deemed to no longer apply, the costs associated with the Agency's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(f) Requesters may seek a fee waiver. AmeriCorps will consider requests for a fee waiver in accordance with the requirements in § 2507.24.

(g) To resolve any fee issues that arise under this section, AmeriCorps may contact a requester for additional information.

§ 2507.18 Requester categories and fees charged.

(a) The FOIA establishes the following categories of requesters and, depending on the category, these types of fees to be paid:

(1) Commercial use requesters: these pay search, review, and duplication fees.

(2) Non-commercial scientific institutions, educational institutions whose purpose is scholarly or scientific research, or news media requesters: these pay only duplication fees.

(3) All other requesters: these pay search and duplication fees.

(b) The fee schedule for search, review, and duplication is as follows:

TABLE 1 TO PARAGRAPH (b)

Requester	Search fee	Review fee	Duplication fee
Commercial use requester	$70.00 per hour	$70.00 per hour	For photocopies, 20¢ per page.
Educational & Non-Commercial Scientific institutions.	No fee	No fee	For photocopies, the first 100 pages are free; after that, 20¢ per page.
Representatives of the news media.	No fee	No fee	For photocopies, the first 100 pages are free; after that, 20¢ per page.
All others	The first two hours are free; after that, $70.00 per hour.	No fee	For photocopies, the first 100 pages are free; after that, 20¢ per page.

§ 2507.19 Circumstances in which fees may not be charged.

(a) If AmeriCorps fails to comply with the time limits for responding to a request, and if no unusual or exceptional circumstances, as defined by the FOIA, apply to processing the request, it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees).

(b) If AmeriCorps fails to comply with the extended time limit for unusual circumstances under § 2705.10(c), it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees), except as follows:

(1) If unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, AmeriCorps may charge search fees (or, for requesters with preferred fee status, may charge duplication fees), so long as AmeriCorps has given the requester timely written notice and has discussed with the requester via email, telephone, or paper mail (or made at least three good-faith attempts to do so) how the requester could limit the scope of the request.

(2) If a court determines that exceptional circumstances exist,

AmeriCorps' failure to comply with a time limit will be excused for the length of time provided by the court order.

(c) AmeriCorps will charge search or review fees for a quarter-hour period only when more than half of that period is required for search or review.

(d) AmeriCorps will not charge any fee if the total fee calculated according to § 2507.18 is $25.00 or less for any request.

§ 2507.20 Notice of anticipated fees in excess of $25.00.

(a) When AmeriCorps estimates that fees will exceed $25.00 and the requester has not stated in writing their willingness to pay fees as high as anticipated, it will inform the requester of the estimated fees, including a breakdown for search, review, or duplication.

(1) AmeriCorps will inform the requester if only a portion of the fee can be readily estimated.

(2) For non-commercial-use requesters subject to search fees, the notice will tell them that they are entitled to two hours of search time at no charge. For all requesters who ask for non-electronic copies of the records, AmeriCorps will inform them that they are entitled to 100 pages of duplication at no charge. In both cases, AmeriCorps will tell the requester whether those entitlements are included in the estimate.

(b) When AmeriCorps notifies a requester that the actual or estimated total fee exceeds $25.00, it will stop work on the request and the processing time will be tolled until the requester, in writing:

(1) Commits to paying the actual or estimated total fee; or

(2) Designates a specific dollar amount of fees they are willing to pay; or

(3) Tells AmeriCorps that they seek only that which can be provided with two free hours of search time and 100 free pages of duplication, in the case that they are eligible for these entitlements.

(c) If the requester has specified a fee amount they are willing to pay, but AmeriCorps estimates that the total fee will be greater than that:

(1) It will notify the requester of the estimated excess and ask if they wish to either revise the amount of fees they are willing to pay or modify the request, and

(2) The Agency will stop work on the request and toll the processing time according to § 2507.10(f).

(d) The FOIA Officer or FOIA Public Liaison will be available to help any requester reformulate a request to meet the requester's needs at a lower cost.

§ 2507.21 Other charges.

(a) *Charges for other services.* Although it is not required to provide special services, if AmeriCorps chooses as a matter of administrative discretion to do so, it will charge the direct costs of providing those services. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(b) *Charging interest.* AmeriCorps may charge interest on any unpaid bill starting on the 31st day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency. AmeriCorps will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

§ 2507.22 Aggregating requests to ensure payment of fees.

(a) When AmeriCorps reasonably believes that a requester or a group of requesters acting together is attempting to divide a single request into multiple smaller requests so as to avoid fees, AmeriCorps may aggregate those requests and charge accordingly.

(1) AmeriCorps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees.

(2) For requests separated by more than 30 days, AmeriCorps will aggregate them only where there is a reasonable basis for determining that aggregation is justified in view of all the circumstances involved.

(b) Multiple requests involving unrelated matters will not be aggregated.

§ 2507.23 Collection and Payment of Fees.

(a) AmeriCorps must ordinarily receive all applicable fees before it sends copies of records to a requester. This is payment for work already completed, not an advance payment.

(b) AmeriCorps may require an advance payment before work begins or is continued on a request when one of the following two circumstances exists. In these cases, AmeriCorps will not consider the FOIA request to have been received and will not conduct further work on the request until it receives the required payment. If the requester does not pay the advance payment within 30 calendar days after the date of AmeriCorps' fee determination, the request will be closed.

(1) If AmeriCorps determines or estimates that a total fee will be greater than $250.00, it may require that the requester pay in advance, up to the amount of the entire anticipated fee, before starting to process the request. AmeriCorps may choose to process the request before it collects fees if it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the billing date, AmeriCorps may require the requester to pay the full amount past due, plus any applicable interest on that prior request, and may also require the requester to pay in advance the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal. If AmeriCorps has a reasonable basis to believe that a requester has misrepresented their identity in order to avoid paying outstanding fees, it may require the requester to provide proof of identity.

(c) Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) AmeriCorps is not required to accept payments in installments.

§ 2507.24 Fee waivers or fee reductions.

(a) Requests for a waiver or reduction of fees should be made when the FOIA request is first submitted to AmeriCorps and should address in specific detail the factors below. However, a requester may ask for a fee waiver at a later time, if their FOIA request is still pending or is on administrative appeal.

(b) AmeriCorps will grant a waiver of fees, or a one-time reduction of the rate established under § 2507.18, when it determines that the requester has demonstrated that disclosure of the requested information is in the public interest and is not primarily in the commercial interest of the requester.

(1) To determine whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, AmeriCorps will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about Federal Government operations or activities in order to be

''likely to contribute'' to an increased public understanding of those operations or activities. Disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not contribute to such understanding.

(iii) Disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area, as well as their ability and intention to effectively convey information to the public, will be considered. A representative of the news media making the request for professional purposes satisfies this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, AmeriCorps will not make value judgments about whether the information at issue is ''important'' enough to be made public.

(2) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, AmeriCorps will give requesters an opportunity to explain the purpose of the request. The Agency will consider the following factors:

(i) If there is an identified commercial interest, AmeriCorps will determine whether that is the primary interest furthered by the request.

(ii) The identified commercial interest is not the primary interest furthered by the request (such that a waiver or reduction of fees is justified) where the public interest in disclosure is greater than the identified commercial interest in disclosure. AmeriCorps ordinarily will presume that when a news media requester has satisfied the public interest standard, it is a public interest that is primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(c) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records only.

(d) A requester may appeal the denial of a fee waiver.

Subpart H—Miscellaneous

§ 2507.25 Preservation of records.

AmeriCorps will preserve all correspondence relating to FOIA requests it receives, and all records processed for those requests, until the destruction of the correspondence and records is authorized by Title 44 of the United States Code and the records disposition authority granted by NARA. The records will not be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

§ 2507.26 Reporting requirements.

(a) AmeriCorps will submit to the Attorney General a statistical report on FOIA requests, processing, disposition, and appeals.

(b) As required, the Chief FOIA Officer will submit to the Attorney General a Chief FOIA Officer Report containing a narrative description of the steps taken by the agency to support and improve FOIA compliance and transparency.

§ 2507.27 Rights and services qualified by the FOIA statute.

Nothing in this part may be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Fernando Laguarda,

General Counsel.

[FR Doc. 2022–19185 Filed 9–8–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No: 220902–0183]

RTID 0648–XB877

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2022–2023 Annual Specifications and Management Measures for Pacific Sardine; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action contains a correction to the final rule for 2022–2023 harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter Pacific sardine), which published on July 1, 2022. Specifically, NMFS is correcting the tonnage amount that would trigger a trip limit for the live bait fishery: 2,500 metric tons (mt).

DATES: Effective September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619–2052, *Taylor.Debevec@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP and in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*

The final rule to implement the annual catch levels, reference points, and management measures for the July 1, 2022–June 30, 2023, fishing season for Pacific sardine, published July 1, 2022 (87 FR 39384), contained a transcription error. The final rule inadvertently listed the tonnage limit that would trigger a trip limit for the live bait fishery as 1,800 mt, when it should have been 2,500 mt. The proposed specifications (87 FR 27557, May 9, 2022), the recommendation by the Pacific Fishery Management Council, and the analysis by NMFS during the proposed and final specifications process all referenced 2,500 mt. NMFS did not receive any public comments on the proposed specifications that warranted a change, and, as stated in the final rule, NMFS did not intend any changes between the proposed and final rules: ''The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 9, 2022.'' (87 FR at 39385).

As such, NOAA corrects the management measure for commercial sardine harvest during the 2022–2023 fishing year.

Correction

In FR Rule Doc. No. 14122, appearing on page 39384 in the **Federal Register** of Friday, July 1, 2022, the following correction is made:

1. On page 39385, in the first column, the second paragraph under table 1, ''(1) If landings in the live bait fishery reach 1,800 mt of Pacific sardine, then a 1 mt per-trip limit of sardine would apply to the live bait fishery.'' is corrected to read ''(1) If landings in the live bait fishery reach 2,500 mt of Pacific sardine, then a 1 mt per-trip limit of sardine would apply to the live bait fishery.''

There are no other corrections to the final rule published July 1, 2022.

Classifications

Section 553(b)(B) of the Administrative Procedure Act (APA) 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.'' The Assistant Administrator for Fisheries determined there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to public interest because this action is simply to correct an inadvertent error in the July 1, 2022, final rule (87 FR 39384). Immediate correction of the error is necessary to prevent confusion among participants in the fishery and to ensure management of the fishery is consistent with both the Council's intent for regulations and the public's expectations based on representations in the proposed and final specifications. Thus, delaying this correction to engage in notice-and-comment rulemaking would be contrary to the public interest.

Under section 553(d) of the APA, an agency must delay the effective date of regulations for 30 days after the date of publication, unless the agency finds good cause to make the regulations effective sooner. For the same reasons stated above, the Assistant Administrator for Fisheries has determined good cause exists to waive the 30-day delay in the date of effectiveness. This rule makes only a minor correction to the final rule, which was effective July 1, 2022. Delaying effectiveness of this correction would result in conflicts in the regulations and confusion among fishery participants and would therefore be contrary to the public interest.

The Regulatory Flexibility Act, 5 U.S.C. 603 and 604, requires an agency to prepare an initial and a final regulatory flexibility analysis whenever an agency is required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Because NMFS found good cause under section 553(b)(3)(B) of the APA to forgo publication of a notice of proposed rulemaking, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required for this rulemaking.

This final rule is not significant under Executive Order 12866.

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

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

Dated: September 2, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–19481 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 174
Friday, September 9, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

RIN 0581–AE18

[Doc. No. AMS–FTPP–22–0046]

Poultry Growing Tournament Systems: Fairness and Related Concerns

AGENCY: Agricultural Marketing Service, U.S. Department of Agriculture.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) is providing additional time for the public to submit comments and information that will inform policy development and future rulemaking proposals regarding the use of poultry grower ranking systems commonly known as tournaments in contract poultry production. AMS seeks this input in response to numerous complaints from poultry growers about the use of tournament systems. Comments in response to this request would help AMS tailor further rulemaking in addition to that already planned and under way to address specific industry practices in relation to tournament systems.

DATES: The comment period for the notice originally published on June 8, 2022, at 87 FR 34814, is reopened. Comments must be submitted on or before September 26, 2022.

ADDRESSES: Comments can be submitted by either of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Enter AMS–FTPP–22–0046 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. AMS–FTPP–22–0046, S. Brett Offutt, Chief Legal Officer, Packers and Stockyards Division, USDA, AMS, FTPP; Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or Email: *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** on June 8, 2022 (87 FR 34814), requested comments and information from the public to assist AMS in developing policy regarding the use of poultry grower ranking or ''tournament'' pay systems as a means to determine grower compensation by vertically integrated poultry companies, known as ''integrators''. This advance notice of proposed rulemaking (ANPR) established a 90-day comment period, ending September 6, 2022. During the initial comment period, AMS received requests from industry organizations asking for additional time to submit comments, citing the breadth and complexity of the questions and concepts presented for comment.

AMS is now reopening the comment period to encourage additional input on the topics raised by the ANPR. The June 8, 2022, ANPR includes numerous specific questions for commenter consideration. We ask that commenters please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–19533 Filed 9–8–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0989; Project Identifier AD–2022–00468–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–90B, GE90–94B, GE90–110B1, and GE90–115B model turbofan engines. This proposed AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. This proposed AD would require the replacement of the affected HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 service information identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272;

email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0989; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0989; Project Identifier AD–2022–00468–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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 *www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in an HPT stage 2 disk manufactured from the same powder metal material used to manufacture certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools for the GE90–90B, GE90–94B, GE90–110B1, and GE90–115B model turbofan engines. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure. As a result of its investigation, the manufacturer published service information that specifies procedures for the removal and replacement of certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools installed on GE90–90B, GE90–94B, GE90–110B1, and GE90–115B model turbofan engines. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed the following service information issued by GE, which specifies procedures for removing the affected HPT stage 2 disk from service. These documents are distinct since they apply to different engine models.

- GE90–100 Service Bulletin 72–0893 R01, dated November 30, 2021.
- GE90–100 Service Bulletin 72–0899 R00, dated April 29, 2022.

The FAA also reviewed GE90–100 Service Bulletin 72–0897 R00, dated February 23, 2022. This service information specifies procedures for removing the affected stages 7–9 compressor rotor spool from service. The FAA also reviewed GE90 Service Bulletin 72–1214 R00, dated April 29, 2022. This service information specifies procedures for removing the affected HPT stage 1 disk and HPT stage 2 disk from service.

Proposed AD Requirements in This NPRM

This proposed AD would require the replacement of certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools.

Differences Between This Proposed AD and the Service Information

GE GE90–100 Service Bulletin 72–0893 R01, dated November 30, 2021, and GE90–100 Service Bulletin 72–0899 R00, dated April 29, 2022, use the term ''HPT rotor stage 2 disk,'' while this proposed AD uses the term ''HPT stage 2 disk.''

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1 engine installed on airplanes of U.S. registry. The FAA estimates that 0 engines installed on airplanes of U.S. registry would require replacement of the HPT stage 1 disk or stages 7–9 compressor rotor spool.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 2 disk	8 work-hours × $85 per hour = $680.	$459,473 (average pro-rated cost of part).	$460,153	$460,153

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 1 disk	8 work-hours × $85 per hour = $680.	$867,041 (average pro-rated cost of part).	867,721	0
Replace stages 7–9 compressor rotor spool.	8 work-hours × $85 per hour = $680.	$442,204 (average pro-rated cost of part).	442,884	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2022–0989; Project Identifier AD–2022–00468–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company GE90–90B, GE90–94B, GE90–110B1, and GE90–115B model turbofan engines with an installed high-pressure turbine (HPT) stage 1 disk, HPT stage 2 disk, or stages 7–9 compressor rotor spool with a part number (P/N) and serial number (S/N) identified in Table 1 to paragraph (c) of this AD.

Table 1 to Paragraph (c) – Affected HPT Stage 1 Disks, HPT Stage 2 Disks, and Stages 7-9 Compressor Rotor Spools

Part Name	P/N	S/N
HPT stage 1 disk	1847M95G04	GWN0R5K4
HPT stage 2 disk	1711M47G13	TMT5N068
HPT stage 2 disk	1865M14P04	TMT5P744 TMT5P745 TMT5P749 TMT5P755 TMT5P762
Stages 7-9 compressor rotor spool	2032M23G02	GWN0R5M5

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and potential uncontained failure of certain HPT stage 1 disks, HPT stage 2 disks, and stages 7–9 compressor rotor spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before exceeding 400 flight cycles after the effective date of this AD, remove the affected HPT stage 1 disk, HPT stage 2 disk, and stages 7–9 compressor rotor spool from service and replace with a part eligible for installation.

(2) For affected engines not in service, before further flight, remove the affected HPT stage 1 disk, HPT stage 2 disk, and stages 7–9 compressor rotor spool and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is any HPT stage 1 disk, HPT stage 2 disk, or stages 7–9 compressor rotor spool with a P/N and S/N not identified in Table 1 to paragraph (c) of this AD.

(2) For the purpose of this AD, ''affected engines not in service'' are affected engines that are in long-term or short-term storage as of the effective date of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 1 disk, HPT stage 2 disk, or stages 7–9 compressor rotor spool with a P/N and S/N identified in Table 1 to paragraph (c) of this AD onto any engine.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov*.

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

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov*.

Issued on July 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–19400 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1151; Project Identifier MCAI–2020–01603–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by a report that electrical bonding jumpers had been installed on fuel scavenge lines even after the removal was required by previous AD rulemaking and that electrical bonding jumpers may have been installed in production or in service at other locations. This proposed AD would require an inspection for electrical bonding jumpers and brackets on the fuel scavenge and vent lines at specific wing locations, and if installed, removal or modification of those jumpers and brackets. This proposed AD would also require a records check to determine if certain maintenance tasks were performed and removal, modification, or rework if those tasks were performed. This proposed AD would also prohibit the use of earlier versions of certain maintenance tasks. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* internet *dehavilland.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.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1151; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1151; Project Identifier MCAI–2020–01603–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–01, dated January 14, 2020 (TCCA AD CF–2020–01) (also referred to after this as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes. You may examine the MCAI in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1151.

This proposed AD was prompted by a report that electrical bonding jumpers had been installed on fuel scavenge lines even after the removal was required by TCCA AD CF–2010–31, dated September 3, 2010 (which corresponds to FAA AD 2011–13–06, Amendment 39–16729 (76 FR 37258, June 27, 2011) (AD 2011–13–06)). AD 2011–13–06 required modifications to the fuel system to address a potential ignition source within the fuel system. Subsequent investigation showed that electrical bonding jumpers may have been installed in production or in service at other locations on the fuel scavenge and vent lines. If installed, these electrical bonding jumpers could affect the integrity of the fuel scavenge and vent lines' electrical bonding paths. The FAA is proposing this AD to address altered electrical bonding paths, which may lead to lightning strike-induced ignition of the fuel tank. See the MCAI for additional background information.

Since the electrical bonding jumpers may have been installed during the accomplishment of certain maintenance tasks, this proposed AD would prohibit the use of those maintenance tasks. Those prohibited tasks may have been accomplished at any point after the airplane was produced. For airplanes on which any of the prohibited tasks were accomplished, this AD would require re-accomplishing the inspection for electrical bonding jumpers and brackets on the fuel scavenge and vent lines at specific wing locations and removal or modification of those bonding jumpers and brackets; or rework using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO); depending on configuration.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Bombardier Service Bulletins 84–28–29; and 84–28–30; both dated October 17, 2018; which describe procedures for an inspection of certain wing stations in the left and right wings for the presence of brackets and electrical bonding jumpers on the fuel scavenge and vent lines, and if installed, removal or modification of those electrical bonding jumpers and brackets. These documents are distinct because they apply to different airplane configurations.

De Havilland Aircraft of Canada Limited has also issued the following Bombardier service information, which describes fuel system limitations or airworthiness limitations for fuel tank systems. These documents are distinct because they apply to different airplane configurations.

- (Bombardier) Q400 Dash 8 Aircraft Maintenance Manual (AMM) Temporary Revision (TR) 28–170, dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–171, dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–166, dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–167, dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–168, dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–169 dated November 2, 2018.
- (Bombardier) Q400 Dash 8 AMM TR 28–163, dated August 1, 2018
- (Bombardier) Q400 Dash 8 Maintenance Task Card Manual (MTCM) Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), Revision 43, Amendment 0001, dated August 1, 2018.
- (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), Revision 43, Amendment 0001, dated August 1, 2018.

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.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also require a records check to determine if certain maintenance tasks were performed. This proposed AD would also prohibit the use of earlier versions of certain maintenance tasks.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 53 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 94 work-hours × $85 per hour = Up to $7,990	$0	$7,990	$423,470

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 40 work-hours × $85 per hour = Up to $3,400	$100	Up to $3,500.

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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–1151; Project Identifier MCAI–2020–01603–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, having serial numbers 4001, 4003, and subsequent.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that electrical bonding jumpers had been installed on fuel scavenge lines even after the removal was required by previous AD rulemaking and electrical bonding jumpers may have been installed in production or in service at other locations. The FAA is issuing this AD to address altered electrical bonding paths, which may lead to lightning strike-induced ignition of the fuel tank.

(f) Compliance

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

(g) Definition

For the purposes of this AD, ''prohibited tasks'' are identified as any task identified in paragraph (j) of this AD and any procedure or task that specifies fuel tank access using non-manufacturer-approved procedures.

(h) Inspection and Modification

(1) For airplanes having serial numbers 4001, and 4003 through 4118 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, inspect wing stations ± 79.7, ± 136.3, ± 173.2, and ± 299.019 in the left and right wings for the presence of brackets and electrical bonding jumpers installed on the fuel scavenge and vent lines, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–29, dated October 1, 2018. If installed, remove or modify the electrical bonding jumpers and brackets as applicable, before further flight, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–29, dated October 17, 2018.

(2) For airplanes having serial numbers 4119 through 4597 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, inspect wing stations ± 79.7, ± 136.3, and ± 173.2 in the left and right wings for the presence of brackets and electrical bonding jumpers on the fuel scavenge and vent lines, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–29, dated October 1, 2018. If installed, remove or modify the electrical bonding jumpers and brackets as applicable, before further flight, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–30, dated October 17, 2018.

(i) Verification and Rework for the Existing Maintenance Program

(1) For airplanes having serial numbers 4001, and 4003 through 4597 inclusive, on which the actions required by paragraph (h)(1) or (2) of this AD have been done before the effective date of this AD: Within 60 days after the effective date of this AD, review the airplane maintenance records to confirm if any of the prohibited tasks (defined in paragraph (g) of this AD) were accomplished during or after compliance with paragraph (h)(1) or (2) of this AD. If any of the

prohibited tasks were accomplished during or after compliance with paragraph (h)(1) or (2) of this AD, or if it cannot be conclusively confirmed that they were not accomplished during or after compliance with paragraph (h)(1) or (2) of this AD: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, do the actions required by paragraph (h)(1) or (2) of this AD, as applicable.

(2) For airplanes having serial numbers 4598 and subsequent, with an airplane date of manufacture, as identified on the identification plate of the airplane, dated before the effective date of this AD: Within 60 days after the effective date of this AD, review the airplane maintenance records to confirm if any of the prohibited tasks (defined in paragraph (g) of this AD) were accomplished on or after the airplane date of manufacture. If any of the prohibited tasks were accomplished on or after the airplane date of manufacture, or if it cannot be conclusively confirmed that they were not accomplished on or after the airplane date of manufacture: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, obtain and follow instructions for rework using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Maintenance Task Prohibitions

For all airplanes: As of the effective date of this AD, comply with the prohibitions specified in paragraphs (j)(1) and (2) of this AD.

(1) It is prohibited to use the Bombardier aircraft maintenance manual (AMM) tasks identified in paragraphs (j)(1)(i) through (vii) of this AD, which are specified in the Bombardier Q400, PSM 1–84–2, Revision 63, dated October 5, 2018, or earlier revisions of these tasks. Temporary Revisions (TRs) including these AMM tasks, dated November 2, 2018, or earlier, are also prohibited for use except as specified in paragraph (j)(1)(i) through (vii) of this AD.

(i) Task 28–12–01–000–801, Removal of the Inboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–170, dated November 2, 2018.

(ii) Task 28–12–01–400–801, Installation of the Inboard Vent Line, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–171, dated November 2, 2018.

(iii) Task 28–11–06–000–801, Removal of the Motive Flow Lines, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–166, dated November 2, 2018.

(iv) Task 28–11–06–400–801, Installation of the Motive Flow Lines, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–167, dated November 2, 2018.

(v) Task 28–11–16–000–801, Removal of the Scavenge Flow Lines, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–168, dated November 2, 2018.

(vi) Task 28–11–16–400–801, Installation of the Scavenge Flow Lines, with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–169 dated November 2, 2018.

(vii) Task 28–10–00–280–806, Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line, LH and RH (FSL #284000–406), with the exception of (Bombardier) Q400 Dash 8 AMM TR 28–163, dated August 1, 2018.

(2) It is prohibited to use the Bombardier Q400 Dash 8 Maintenance Task Card Manual (MTCM) task cards identified in paragraphs (j)(2)(i) and (ii) of this AD that are specified in the Bombardier Q400 Dash 8 MTCM, PSM 1–84–7TC, Revision 43, dated May 5, 2018, or earlier revisions or amendments of these task cards. MTCM task card revisions or amendments dated August 1, 2018, or earlier, are also prohibited for use, except as specified in paragraphs (j)(2)(i) and (ii) of this AD.

(i) Bombardier Q400 Dash 8 MTCM Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), with the exception of (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), Revision 43, Amendment 0001, dated August 1, 2018.

(ii) Bombardier Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), with the exception of (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), Revision 43, Amendment 0001, dated August 1, 2018.

(k) 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. 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 De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–01, dated January 14, 2020, for related information. This MCAI may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1151.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* internet *dehavilland.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.

Issued on August 31, 2022.

Christina Underwood,

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

[FR Doc. 2022–19232 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0815; Project Identifier AD–2021–00679–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of missing shims, a wrong type of shims, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right side at a certain station (STA) frame inner chord and web. This proposed AD would require inspecting for existing repairs, inspecting the area for cracking, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *www.myboeingfleet.com.* You may view this referenced 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 *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0815.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0815; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0815; Project Identifier AD–2021–00679–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that a Boeing quality investigation found missing shims, a wrong type of shims, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right side STA 727 frame inner chord and S–18A web. These conditions could exist on delivered airplanes. The FAA is proposing this AD to address cracking in the left and right side of STA 727 frame inner chord and S–18A web before the cracking reaches a critical length. This condition, if not addressed, could result in cracks in fatigue critical baseline structure (FCBS) and the inability of a principal structural element (PSE) to sustain limit load, which could adversely affect the structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021. This service information specifies procedures for a general visual inspection of the left and right side STA 727 frame inner chord at S–18A for existing repairs, an open hole high frequency eddy current (HFEC) inspection of the left and right side entire stackup of the STA 727 frame inner chord at S–18A for cracking (for certain configurations), a surface HFEC inspection of the left and right side STA 727 frame inner chord at S–18A web for cracking, and applicable on-condition actions. On-condition actions include installing a new shim, a surface HFECD inspection of the STA 727 frame inner chord at S–18A for cracking, 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0815.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,925 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
General visual inspection	2 work-hours × $85 per hour = $170	$0	$170	$327,250
HFEC inspection and shim installation	5 work-hours × $85 per hour = $425	0	425	818,125

The FAA estimates the following costs to do any necessary repairs or inspections that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these repairs or inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	3 work hours × $85 per hour = $255	$0	$255

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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0815; Project Identifier AD–2021–00679–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of missing shims, a wrong type of shims, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right side station (STA) 727 frame inner chord and S–18A web. The FAA is issuing this AD to address cracking in the left and right side of STA 727 frame inner chord and S–18A web before it reaches a critical length. This condition, if not addressed, could result in cracks in fatigue critical baseline structure (FCBS) and the inability of a principal structural element (PSE) to sustain limit load, which 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

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1402, dated July 2, 2021, which is referred to in Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021, use the phrase ''the original issue date of the Requirements Bulletin 737–53A1402 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021, specifies contacting Boeing for repair instructions or for alternative inspections:

This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov.*

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

Issued on July 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–19298 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0978; Project Identifier AD–2022–00460–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) GEnx-1B and GEnx-2B model turbofan engines. This proposed AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) stage 2 disks, forward seals, and stages 6–10 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. This proposed AD would require the replacement of the affected HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 service information identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *https://www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0978; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0978; Project Identifier AD–2022–00460–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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 NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be

placed in the public docket of this NPRM. Submissions containing CBI should be sent to Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in an HPT stage 2 disk manufactured from the same powder metal material used to manufacture certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools for GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2 (GEnx–1B) and GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P (GEnx–2B) model turbofan engines. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain GEnx–1B and GEnx–2B HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure. As a result of its investigation, the manufacturer published service information that specifies procedures for the removal and replacement of certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools installed on GEnx–1B and GEnx–2B model turbofan engines. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed GE GEnx–1B Service Bulletin 72–0505, Revision 02, dated April 5, 2022. The FAA also reviewed GE GEnx–2B Service Bulletin 72–0444, Revision 02, dated April 5, 2022. This service information describes procedures for removing the HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool. These documents are distinct since they apply to different engine models.

Proposed AD Requirements in This NPRM

This proposed AD would require the removal of certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools and replacement with parts eligible for installation.

Differences Between This Proposed AD and the Service Information

GE GEnx–1B Service Bulletin 72–0505, Revision 02, dated April 5, 2022, uses the term ''HPT rotor stage 2 disk,'' while this proposed AD uses the term ''HPT stage 2 disk.''

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 3 engines installed on airplanes of U.S. registry. The FAA estimates that 0 engines installed on airplanes of U.S. registry would require replacement of the forward seal or HPT stage 2 disk.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace stages 6–10 compressor rotor spool.	8 work-hours × $85 per hour = $680.	$846,519 (average pro-rated part cost).	$847,199	$2,541,597
Replace forward seal	8 work-hours × $85 per hour = $680.	$364,558 (average pro-rated part cost).	365,238	0
Replace HPT stage 2 disk	8 work-hours × $85 per hour = $680.	$363,424 (average pro-rated part cost).	364,104	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2022–0978; Project Identifier AD–2022–00460–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P model turbofan engines with an installed high-pressure turbine (HPT) stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a part number (P/N) and serial number (S/N) identified in Table 1 to paragraph (c) of this AD.

Table 1 to Paragraph (c) – Affected HPT Stage 2 Disks, Forward Seals, and Stages 6-10 Compressor Rotor Spools

Part Name	P/N	S/N
HPT stage 2 disk	2300M84P02	TMT4AF08 TMT4AF10 TMT4AF11 TMT4AF12
Forward seal	2417M60P02	VOLF1931 VOLF1933 VOLF1942 VOLF1977 VOLF1993 VOLF2014
Stages 6-10 compressor rotor spool	2340M36G01	GWN0R86N
Stages 6-10 compressor rotor spool	2439M35G01	GWN0RCKT GWN0R62G GWN0R86J
Stages 6-10 compressor rotor spool	2439M35G02	GWN0RA89 GWN0R6K9 GWN0R7G9 GWN0R7K4 GWN0R752 GWN0R98P
Stages 6-10 compressor rotor spool	2610M90G01	GWN0R5EK GWN0R6EH GWN0R7K1 GWN0R89A

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and potential

uncontained failure of certain HPT stage 2 disks, forward seals, and stages 6–10 compressor rotor spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before exceeding 600 flight cycles after the effective date of this AD, remove the affected HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool from service and replace with a part eligible for installation.

(2) For affected engines not in service, before further flight, remove the affected HPT stage 2 disk, forward seal, and stages 6–10 compressor rotor spool and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is any HPT stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a P/N and S/N not identified in Table 1 to paragraph (c) of this AD.

(2) For the purpose of this AD, ''engines not in service'' are engines that are in long-term or short-term storage as of the effective date of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 2 disk, forward seal, or stages 6–10 compressor rotor spool with a P/N and S/N identified in Table 1 to paragraph (c) of this AD onto any engine.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

Issued on July 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–19397 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2021–0001; FRL–10014–01–R8]

Air Plan Approval; Montana; Revisions to Regional Haze State Implementation Plan and Partial Withdrawals to Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Montana on March 25, 2020, addressing regional haze. Specifically, EPA is proposing to approve a SIP revision for the first implementation period of the Clean Air Act's (CAA) regional haze program that addresses the nitrogen oxides (NO_X) and sulfur dioxide (SO_2) Best Available Retrofit Technology (BART) requirements for two electric generating unit (EGU) facilities, as well as proposing to withdraw portions of the Federal Implementation Plan (FIP) promulgated by EPA in 2012 (2012 regional haze FIP) addressing the NO_X, SO_2 and particulate matter (PM) BART requirements for two cement kilns and the PM BART requirements for the same two EGU facilities. This action also addresses the United States Court of Appeals for the Ninth Circuit's June 9, 2015 vacatur and remand of portions of the FIP. EPA is proposing this action pursuant to sections 110 and 169A of the CAA.

DATES: Written comments must be received on or before November 8, 2022. *Public hearing:* If anyone contacts us requesting a public hearing on or before September 26, 2022, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document. Contact Jaslyn Dobrahner at *dobrahner.jaslyn@epa.gov,* to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2021–0001, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6252, email address: *dobrahner.jaslyn@epa.gov.*

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

Table of Contents

I. What action is EPA proposing?

EPA is proposing to approve two Montana Board of Environment Review Orders pertaining to regional haze requirements for four facilities [1] into the state's SIP. Specifically, EPA is proposing to approve: (1) NO_X, SO_2, and PM BART emission limits along with associated requirements for the Ash Grove Cement Company's Montana City Plant (Montana City) and GCC Three Forks, LLC's Trident Plant (Trident); (2) the PM BART emission limits along with associated requirements for Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2 (Colstrip Units 1 and 2); (3) the determination that Colstrip Units' 1 and 2 enforceable shutdown date of July 1, 2022, satisfies the outstanding NO_X and SO_2 BART requirements for that facility; and (4) the determination that the outstanding NO_X and SO_2 BART requirements for Corette (as well as the remaining PM BART requirements for Corette in EPA's FIP) are satisfied because the source is no longer in operation and has been demolished.

Consistent with our proposed approval of Montana's regional haze SIP for the PM BART emission limits and other requirements for Colstrip Units 1 and 2 and Corette along with the NO_X, SO_2, and PM BART emission limits and other requirements for Montana City and Trident, we are also proposing to withdraw those corresponding portions of the 2012 regional haze FIP found at 40 CFR 52.1396.

In addition, through our proposed approval of the NO_X and SO_2 BART determinations for Corette and Colstrip Units 1 and 2, we are addressing the U.S. Court of Appeals for the Ninth Circuit's June 9, 2015 remand of portions of the 2012 regional haze FIP in this action, including EPA's response to a public comment regarding the use of the CALPUFF visibility model in determining BART at Colstrip Units 1 and 2.

II. Background

A. Requirements of the Clean Air Act and EPA's Regional Haze Rule

In CAA section 169A, Congress created a program for protecting visibility in certain national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' [2]

EPA promulgated a rule to address regional haze, a particular type of visibility impairment, on July 1, 1999.[3] The 1999 Regional Haze Rule revised the existing visibility regulations [4] to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–51.309. EPA most recently revised the Regional Haze Rule on January 10, 2017.[5]

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.[6] Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to EPA for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state fails to make a required SIP submittal, or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP within two years to fill this regulatory gap, unless the state corrects the deficiency.[7]

B. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs EPA to require states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires state implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (BART) as determined by the states. Under the Regional Haze Rule, states are directed to conduct source-by-source BART determinations for such ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.[8] States are

[1] Ash Grove Cement Company's Montana City Plant; GCC Three Forks, LLC's Trident Plant; JE Corette Steam Electric Station; and Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2.

[2] 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this section, we mean a ''mandatory Class I Federal area.''

[3] 64 FR 35714 (July 1, 1999) (amending 40 CFR part 51, subpart P).

[4] EPA had previously promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

[5] 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

[6] 42 U.S.C. 7410(a), 7491, and 7492(a).

[7] 42 U.S.C. 7410(c)(1).

[8] 40 CFR 51.308(e). BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but

required to include emission limits and associated requirements (*e.g.,* monitoring, reporting, and recordkeeping requirements) corresponding to their BART determinations in their SIPs.[9]

Rather than requiring source-specific BART controls, states also have the flexibility under the Regional Haze Rule to adopt alternative measures, as long as the alternative provides greater reasonable progress towards natural visibility conditions than BART (*i.e.,* the alternative must be ''better than BART'').[10]

C. Long-Term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA's visibility protection provisions also require that states' regional haze SIPs contain a ''long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal. . . .'' [11] For the first implementation period of the regional haze program, the regulatory requirements governing states' long-term strategies are located at 40 CFR 51.308(d). Under these provisions, the long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.[12] The reasonable progress goals, in turn, are calculated for each Class I area based on the control measures states have selected by analyzing the four statutory ''reasonable progress'' factors, which are ''the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement.'' [13] Thus, a state considers the four reasonable progress factors in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in section 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are necessary for sources and must thus be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,[14] states are required to submit updates to their long-term strategies, including updated four-factor reasonable progress analyses and reasonable progress goals, in the form of SIP revisions on July 31, 2021, and at specific intervals thereafter.[15] In addition, each state must periodically submit a report to EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state's progress towards meeting the reasonable progress goals for each Class I area within the state.[16]

D. Monitoring, Recordkeeping, and Recording

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) states that the monitoring, record keeping, and reporting provisions of states' SIPs must (A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter; . . . (C) include a program to provide for the enforcement of the measures described in paragraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter; . . . (F) require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.[17]

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including ''[p]eriodic testing and inspection of stationary sources,'' [18] and ''legally enforceable procedures'' for recordkeeping and reporting.[19] Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: ''(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels''; and ''(h) Compliance/enforcement strategies, including how compliance will be determined in practice.''

E. Consultation With Federal Land Managers (FLMs)

The Regional Haze Rule requires that a state, or EPA if promulgating a FIP, consult with Federal Land Managers (FLMs) before adopting and submitting a required SIP or SIP revision or a required FIP or FIP revision. Under 40 CFR 51.308(i)(2), a state, or EPA if promulgating a FIP, must provide an opportunity for consultation no less than 60 days prior to holding any public hearing or other public comment opportunity on a SIP or SIP revision, or FIP or FIP revision, for regional haze. Further, when submitting a SIP or SIP revision, a state must include a description of how it addressed any comments provided by the FLMs. Likewise, EPA must include a description of how it addressed any

were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) ''to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.'' 40 CFR part 51, appendix Y, section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and section III explains how to identify BART sources (*i.e.,* sources that are ''subject to BART'').

[9] See 40 CFR 51.301 (defining BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reductions for each pollutant emitted by an existing stationary facility''.

[10] 40 CFR 51.308(e)(2) and (3).

[11] 42 U.S.C. 7491(b)(2)(B).

[12] 40 CFR 51.308(d)(3).

[13] 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

[14] Under the Regional Haze Rule, SIPs are due for each regional haze planning period, or implementation period. The terms ''planning period'' and ''implementation period'' are used interchangeably in this document.

[15] 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

[16] Id. § 51.308(g); § 51.309(d)(10).

[17] 42 U.S.C. 7410(a)(2)(A), (C), and (F).

[18] 40 CFR 51.212(a).

[19] Id. § 51.211.

comments provided by the FLMs when considering a FIP or FIP revision.[20]

F. Clean Air Act 110(l)

Under CAA section 110(*l*), EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [21] CAA section 110(*l*) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(*l*) as applying to all National Ambient Air Quality Standards (NAAQS) that are in effect, including those for which SIP submissions have not been made.[22] However, the level of rigor needed for any CAA section 110(*l*) demonstration will vary depending on the nature and circumstances of the revision.

G. Regulatory and Legal History of the Montana Regional Haze FIP

On September 18, 2012, EPA promulgated a FIP that included NO_X, SO_2, and PM BART emission limits for three units at two power plants and two cement kilns, as well as an emission limit for a natural gas compressor station to satisfy the reasonable progress requirements.[23] EPA promulgated a FIP in this instance because Montana did not submit a regional haze SIP as required under section 110 of the CAA.[24]

Several parties challenged the portion of the FIP addressing EPA's NO_X and SO_2 BART determinations at the power plants, Colstrip Units 1 and 2 and Corette.[25] On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated and remanded the portions of the FIP [26] related to the NO_X and SO_2 BART emission limits for Corette and Colstrip Units 1 and 2 and remanded EPA's response in the 2012 final rule to a public comment regarding the use of the CALPUFF visibility model in determining BART for Colstrip Units 1 and 2.[27] The BART emission limits for the two cement kilns, the PM emissions limits for the EGUs, and the reasonable progress requirements for the compressor station were not at issue in the petitions filed with the Ninth Circuit Court of Appeals.[28]

On September 12, 2017, EPA amended aspects of the remaining 2012 FIP by (1) revising the NO_X emission limit for one of the cement kilns, and (2) correcting errors we made in our original FIP regarding the reasonable progress determination for the natural gas compressor station and the instructions for compliance determinations for PM BART emission limits at the electrical generating units (EGUs) and cement kilns.[29] Ultimately, EPA removed the reasonable progress requirements for the natural gas compressor station from the FIP after correcting the error that resulted in the source no longer being subject to reasonable progress requirements.

III. EPA's Evaluation of Montana's Regional Haze SIP Revision

Montana's regional haze SIP revision contains two Montana Board of Environment Review Orders (Board Orders) pertaining to regional haze requirements for (1) cement kiln sources, and (2) electrical generating unit sources. The emission limits and other requirements in these orders are intended to address the SO_2 and NO_X BART requirements for Colstrip Units 1 and 2 and Corette that were previously vacated by the Ninth Circuit and to replace the limits that currently exist in EPA's FIP with SIP-based limits for PM BART for Colstrip Units 1 and 2 and Corette, and SO_2, NO_X, and PM BART requirements for cement kilns. The 2012 regional haze FIP codified those provisions at 40 CFR 52.1396 *Federal implementation plan for regional haze* and contains the following paragraphs: *(a) Applicability, (b) Definitions, (c) Emissions limitations, (d) Compliance date, (e) Compliance determinations for SO_2 and NO_X, (f) Compliance determinations for particulate matter, (g) Recordkeeping for EGUs, (h) Recordkeeping for cement kilns, (i) Reporting, (j)–(k) Reserved, (l) Notifications, (m) Equipment operation, (n) Credible evidence, (o) CFAC notification, (p) M2Green Redevelopment LLC notification.*

To assess whether the SIP revision is consistent with the regional haze requirements of the CAA, we evaluated the revisions against the regional haze requirements under the CAA and the Regional Haze Rule. For those provisions that are proposed to replace the FIP provisions, we also compared those components of the Board Orders with the corresponding provisions in the FIP as well as the regional haze requirements under the CAA and EPA's regulations.

As noted previously, Montana's 2020 regional haze SIP revision contains enforceable emission limitations and other enforceable requirements intended to replace the FIP-based enforceable requirements in the Code of Federal Regulations. It does not, however, contain the technical analyses and other demonstrations and information required to support BART determinations pursuant to 50 CFR 51.308(e). Thus, if this rulemaking is finalized as proposed, the State's Board Orders will replace the enforceable emission limits and associated requirements in EPA's FIP with SIP-based requirements. However, other regional haze requirements, including analytical requirements associated with both BART and reasonable progress, will remain satisfied by EPA's previously promulgated FIP.

A. Requirements for Cement Kilns

Montana's regional haze requirements for cement kilns are contained in Exhibit A of the Ash Grove Cement Company's Montana City Plant, and GCC Three Forks, LLC's Trident Plant Board Order Plant dated October 18, 2019 (Board Order for cement kilns).

The applicability language of the Board Order for cement kilns is identical to the applicability language of the FIP for cement kilns found at 40 CFR 52.1396(a). EPA's FIP determination that Ash Grove—Montana City Plant and GCC Three Forks—Trident Plant are subject to BART was consistent with the

[20] 40 CFR 51.308(i).

[21] 42 U.S.C. 7410(*l*). Note that ''reasonable further progress'' as used in CAA section 110(*l*) is a reference to that term as defined in section 301(a) (*i.e.,* 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under CAA section 109. This term as used in section 110(*l*) (and defined in section 301(a)) is *not* synonymous with ''reasonable progress'' as that term is used in the regional haze program. Instead, section 110(*l*) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are ''other applicable requirement[s]'' of the CAA.

[22] In general, a section 110(*l*) demonstration should address all pollutants whose emissions and/or ambient concentrations would change because of a plan revision.

[23] 77 FR 57864 (September 18, 2012).

[24] Letter from Richard H. Opper, Director Montana Department of Environmental Quality to Laurel Dygowski, EPA Region 8 Air Program, June 19, 2006. Based off this letter, EPA made a determination finding of failure to submit a SIP by Montana. This triggered a mandatory duty clock to have EPA either promulgate a FIP or approve a SIP within two years of the EPA finding. See 74 FR 2392 (January 15, 2009).

[25] Several parties petitioned the Ninth Circuit Court of Appeals to review EPA's NO_X and SO_2 BART determinations at the power plants, Colstrip and Corette (PPL Montana, LLC, the National Parks Conservation Association, Montana Environmental Information Center, and the Sierra Club). *National Parks Conservation Association* v. *EPA,* 788 F.3d 1134 (9th Cir. 2015).

[26] *Id.*

[27] *National Parks Conservation Association* v. *EPA,* 788 F.3d 1134 (9th Cir. 2015).

[28] *Id.*

[29] 82 FR 42738 (September 12, 2017).

requirement to determine which BART-eligible sources may reasonably be anticipated to cause or contribute to any visibility impairment in any class I area and are thus subject to BART.[30] [31] Therefore, because our FIP analysis and requirements are consistent with the applicable regional haze requirements and because *Section 1—Applicability* of the Board Order for cement kilns is identical to our FIP, we propose to approve *Section 1—Applicability* of the Board Order for cement kilns as satisfying the applicable requirements under 40 CFR 51.308(e).[32] [33] Likewise, the definitions found at 40 CFR 52.1396(b) in the FIP applicable to cement kilns are identical to the definitions in *Section 2—Definitions* Board Order for cement kilns in the FIP. Thus, we also propose to approve *Section 2—Definitions* of the Board Order for cement kilns as meeting the applicable regional haze requirements.

The BART determinations and associated compliance dates contained in the 2012 regional haze FIP at 40 CFR 52.1396(c)(2) and 40 CFR 52.1396(c)(4) were made pursuant to a five-factor analysis consistent with the regional haze regulations at 40 CFR 51.308(e) and Appendix Y (BART Guidelines).[34] The PM, NO_X, and SO_2 emission limitations and associated compliance dates for cement kilns in *Section 3—Emissions Limitations,* and *Section 4—Compliance Dates* of the Board Order for cement kilns are identical to the requirements found in the FIP. Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements under the CAA and the emission limits and compliance dates in *Section 3—Emissions Limitations* and *Section 4—Compliance Dates* of the Board Order for cement kilns are identical to our FIP, we propose to approve these portions of the state's SIP revision as meeting the applicable regional haze requirements.

With respect to the compliance determinations for NO_X and SO_2 for cement kilns, the requirements in *Section 5(1)—Compliance determinations for SO_2 and NO_X* of the Board Order for cement kilns are identical to the requirements found in the FIP at 40 CFR 52.1396(e)(3) and 40 CFR 52.1396(e)(4). With respect to compliance determinations for PM for cement kilns currently found in the FIP at 40 CFR 52.1396(f)(2), Montana is relying on requirements contained in the Board Order for cement kilns (*Section 5(2)—Compliance determinations for particulate matter*) as well as compliance-determination provisions in an applicable National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAPS). Specifically, the state is relying on NESHAPS LLL for portland cement plants,[35] contained in Montana's SIP through the reference of 40 CFR part 63 in ARM 17.8.106, to satisfy applicable requirements related to clinker production determinations, required number of tests per run, and applicable Compliance Assurance Monitoring (CAM) plans. Together, these requirements contain the applicable PM compliance determinations requirements for cement kilns. Because Montana's compliance-determination provisions are the same as the corresponding provisions in EPA's FIP, which were based on the analysis and rationale that meet the applicable regional haze requirements under the CAA at 40 CFR 51.308(e), we propose to approve this section as meeting the applicable regional haze requirements.

The recordkeeping and reporting requirements found in the Board Order for cement kilns (*Section 6—Recordkeeping, Section 7—Reporting*) are identical to the requirements found in the FIP at 40 CFR 52.1396(h) and 40 CFR 52.1396(i), respectively, for cement kilns. Thus, because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e) and *Section 6—Recordkeeping* and *Section 7—Reporting* are identical to our FIP, we propose to approve these sections of the SIP revision as meeting the applicable regional haze requirements. Likewise, the notification and equipment operation requirements contained in the Board Order for cement kilns (*Section 8—Notifications, Section 9—Equipment Operation*) are identical to the requirements found in the FIP at 40 CFR 52.1396(l) and 40 CFR 52.1396(m), respectively. Because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e) and *Section 8—Notifications* and *Section 9—Equipment Operation* of the Board Order for cement kilns are identical to our FIP, we also propose to approve these sections of the SIP revision as meeting the applicable regional haze requirements.[36]

Finally, for the purposes of determining whether a source is in compliance with the requirements of the Board Order for cement kilns, Montana will rely on ARM *17.8.132—Credible Evidence*[37] which does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance if the appropriate compliance test procedures or methods had been performed. We propose to find this language equivalent to the language found in the FIP as well as meeting the applicable requirements at 40 CFR 51.212(c).

In summary, we propose to find that the NO_X, SO_2, and PM BART regional haze requirements pertaining to cement kilns for the first planning period found in the SIP revision are sufficient to replace the FIP provisions for these sources. We therefore propose to approve the Board Order for cement kilns in its entirety.

B. Requirements for Electrical Generating Units

Montana's regional haze requirements for EGUs are contained in Exhibit A of the Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2; and JE Corette Steam Electric Station Board Order dated October 18, 2019 (Board Order for EGUs).

The Corette facility shut down operations and surrendered its permits in 2015 and is now dismantled, thus making its future operation impossible.[38] [39] Therefore, we propose to find that Corette no longer has BART obligations that need to be addressed within Montana's regional haze SIP. Additionally, Colstrip Units 1 and 2 are required, per consent decree, to permanently cease operations by July 1, 2022, and the State is requesting EPA to incorporate the shutdown commitment in its SIP.[40] [41] On January 14, 2020, Talen Montana, LLC informed the Montana Department of Environmental Quality that Colstrip Units 1 and 2 permanently ceased operation on

[30] 40 CFR 51.308(e)(1)(ii).

[31] See Docket EPA–R08–OAR –2011–0851 for EPA's 2012 regional haze FIP for the analysis.

[32] The Trident cement kiln was previously under the ownership of Oldcastle Materials Cement Holdings, Inc. when the FIP was last amended. *See* 82 FR 42738 (September 12, 2017).

[33] The notification requirements found at 40 CFR 52.1396(o) and 40 CFR 52.1396(p) for CFAC and M2Green Redevelopment LLC, respectively, are no longer applicable beyond July 31, 2018. Thus, the SIP submittal does not contain requirements for these sources. Regional haze requirements for these sources may be addressed in future regional haze planning periods, if applicable.

[34] See Docket EPA–R08–OAR –2011–0851 for EPA's 2012 regional haze FIP for the analysis.

[35] 40 CFR 63.1340–63.1359.

[36] 40 CFR 52.1396(j)–(k) are reserved.

[37] ARM 17.8.132 *Credible Evidence* was last updated in Montana's SIP on November 20, 2002. (67 FR 70009)

[38] Board Order for EGUs, Sections 1 and 3.

[39] 81 FR 11727 (March 7, 2016); 81 FR 28718 (May 10, 2016).

[40] The permanent shutdown of Colstrip Units 1 and 2 is required by Consent Decree in Case 1: 13–cv–00032–DLC–JCL filed September 6, 2016.

[41] Board Order for EGUs, Section 3.

January 2, 2020, and January 3, 2020, respectively.[42] However, given that the enforceable shutdown date is still in the future, we are analyzing the Board Order as though Colstrip Units 1 and 2 were still in operation and will shut down by July 1, 2022.

The applicability language of the Board Order for EGUs is identical to the applicability language of the FIP for EGUs found at 40 CFR 52.1396(a). EPA's FIP determination that Corette and Colstrip Units 1 and 2 are subject to BART was consistent with the requirement to determine which BART-eligible sources may reasonably be anticipated to cause or contribute to any visibility impairment in any class I area and are thus subject to BART.[43] [44] Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e)(1)(ii) and *Section 1—Applicability* of the Board Order for EGUs is identical to our FIP, we propose to approve *Section 1—Applicability* of the Board Order for EGUs as satisfying the applicable requirements under 40 CFR 51.308(e).[45] [46] Likewise, except for the exclusion of the definition for *Boiler Operating Day* in the Board Order for EGUs, the definitions found in *Section 2—Definitions* of the Board Order for EGUs are identical to the definitions at 40 CFR 52.1396(b) of the FIP and are based on the analysis and rationale stated in the FIP. Because *Boiler Operating Day* is used exclusively in a section of the FIP pertaining to NO_X and SO_2 compliance determinations for EGUs that is no longer applicable due to the Ninth Circuit vacatur and remand [47] we also propose to approve *Section 2—Definitions* of the Board Order for EGUs.

With respect to NO_X and SO_2 emission limitations and associated compliance dates for Colstrip Units 1 and 2, the original requirements of the 2012 regional haze FIP at 40 CFR 52.1396(c)(1) and 40 CFR 52.1396(c)(4) were vacated by the Ninth Circuit as previously described. Thus, Montana's regional haze SIP revision NO_X and SO_2 BART determinations for Colstrip Units 1 and 2 are original determinations (*i.e.,* BART determinations in the first instance). As described in *Section 3—Emissions Limitations* of the Board Order for EGUs, Montana determined NO_X and SO_2 BART to be an enforceable and permanent shutdown of Colstrip Units 1 and 2 no later than July 1, 2022 [48] due to the request of the owner/operator. Accordingly, Montana included the requirement that Colstrip Units 1 and 2 cease operation no later than July 1, 2022, in the facility's Title V Operating Permit [49] as well as the Board Order for EGUs. Although EPA's regulations do not require states to consider a shutdown of an existing unit as part of their BART analyses, neither the Regional Haze Rule or BART Guidelines prohibit states or EPA from considering a shutdown as part of a BART determination if the strategy is proposed by the source; a state can then include such an option in their SIP as a strategy for reducing emissions. Because the enforceable shutdown of Colstrip Units 1 and 2 eliminates all emissions by July 1, 2022, which is within the statutory timeframe for compliance with BART (''as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section'' [50]), the State may treat the shutdowns as the most stringent control option available. We propose to find that the enforceable shutdown date submitted in section 3(1)(b) of the Board Order for EGUs satisfies Montana's obligation to require SO_2 and NO_X BART for Colstrip Units 1 and 2 per 40 CFR 51.308(e).

In contrast to the SO_2 and NO_X BART emission limits for Colstrip Units 1 and 2, which the Ninth Circuit vacated, the PM limits for these units have remained in effect. Therefore, the State's Board Order for EGUs incorporates the FIP's PM limits for inclusion in the SIP. With respect to the PM emission limitation and associated compliance date for Colstrip Units 1 and 2, the requirements found in the Board Order for EGUs in *Section 3—Emissions Limitations,* and *Section 4—Compliance Dates* are identical to the requirements found in the FIP at 40 CFR 52.1396(c)(1) and 40 CFR 52.1396(c)(4), respectively. EPA's FIP emission limits and compliance dates are based on the analysis and that meet the applicable regional haze requirements under the CAA at 40 CFR 51.308(e)(1)(ii) and the BART Guidelines. Therefore, we propose to approve *Section 3—Emissions Limitations,* and *Section 4—Compliance Dates* of the Board Order for EGUs as meeting the applicable PM BART requirements for Colstrip Units 1 and 2. In addition to the FIP-equivalent PM emission limitation and associated compliance date that we propose to incorporate into Montana's SIP, the requirement that Colstrip Units 1 and 2 cease operation no later than July 1, 2022, is also applicable.

Therefore, and for the reasons stated previously, we are proposing to approve the PM, NO_X, and SO_2 emissions limitations and associated compliance deadlines for EGUs contained in *Section 3—Emissions Limitations* and *Section 4—Compliance Dates* of the Board Order for EGUs of the State's SIP revision in its entirety.

With respect to compliance determinations for PM for EGUs found in the FIP at 40 CFR 52.1396(f)(1), Montana is relying on identical requirements found in the Board Order for EGUs (*Section 5—Compliance Determinations*) as well as compliance determination provisions based in an applicable NESHAP. Specifically, the state is relying on NESHAP UUUUU for coal and oil-fired EGUs [51] contained in Montana's SIP through the reference of 40 CFR part 63 in ARM 17.8.106 to satisfy applicable requirements related to the required number of tests per run and applicable CAM plans. Together, these requirements contain the applicable PM compliance determination requirements for EGUs based on the analysis and rationale stated in the FIP and meet the applicable regional haze requirements at 40 CFR 51.308(e); therefore, we propose to approve *Section 5—Compliance Determinations* of the Board Order for EGUs. We are also proposing to find that compliance determinations for NO_X and SO_2 for EGUs are not necessary, and therefore not contained in the Board Order for EGUs, because Montana determined NO_X and SO_2 BART to be an enforceable and permanent shutdown of Colstrip Units 1 and 2 by July 1, 2022.

The recordkeeping and reporting requirements found in the Board Order for EGUs (*Section 6—Recordkeeping, Section 7—Reporting*) are identical to the requirements found in the FIP at 40

[42] Letter from Talen Montana to MT DEQ, January 14, 2020.

[43] 40 CFR 51.308(e)(1)(ii).

[44] See Docket EPA–R08–OAR –2011–0851 for EPA's 2012 regional haze FIP for the analysis.

[45] As previously noted in the preamble as well as in Montana's Board Order for EGUs, the Corette facility no longer exists.

[46] The Colstrip Steam Electric Station, Units 1 and 2 was previously under the ownership of PPL Montana, LLC.

[47] On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated the NO_X and SO_2 BART emission limits for Corette and Colstrip Units 1 and 2. However, the definition for Boiler Operating Day, used exclusively in the method for compliance determinations for NO_X and SO_2 for EGUs in 40 CFR 52.1396(e)(2), remained in the FIP. See *National Parks Conservation Association* v. *EPA,* 788 F.3d 1134 (9th Cir. 2015).

[48] The permanent shutdown of Colstrip Units 1 and 2 is required by Consent Decree in Case 1: 13–cv–00032–DLC–JCL filed September 6, 2016. The Consent Decree is in effect until January 1, 2023, unless the two parties invoke the Dispute Resolution provisions provided in Section VII of the Consent Decree.

[49] Montana Department of Environmental Quality Final Operating Permit #OP0513–17, February 4, 2021.

[50] 42 U.S.C. 7491(b)(2)(A), (g)(4).

[51] 40 CFR 63.9980–63.10042.

CFR 52.1396(g) and 40 CFR 52.1396(i). EPA's requirements are based on the analysis and rationale stated in the FIP [52] and meet the applicable regional haze requirements under the CAA. Therefore, we are proposing to approve *Section 6—Recordkeeping* and *Section 7—Reporting* of the Board Order for EGUs as meeting the applicable regional haze requirements at 40 CFR 51.308(e). There are no SO_2 and NO_X notification requirements for EGUs in the Board Order for EGUs since the SIP revision relies on unit shutdowns to meet the requirements of NO_X and SO_2 BART.[53] Lastly, the EGU equipment operation requirements in *Section 8—Equipment Operation* of the Board Order for EGUs are the same equipment operation requirements found in the FIP at 40 CFR 52.1396(m) for EGUs. Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements and *Section 8—Equipment Operation* of the Board Order for EGUs is identical to our FIP, we also propose to approve *Section 8—Equipment Operation* of the Board Order for EGUs as meeting the applicable regional haze requirements under 40 CFR 51.308(e).[54]

Finally, for the purposes of determining whether a source is in compliance with the requirements of the Board Order for EGUs, Montana will rely on ARM *17.8.132—Credible Evidence* which does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance if the appropriate compliance test procedures or methods had been performed. We propose to find this language equivalent to the language found in the FIP as well as meeting the applicable requirements at 40 CFR 51.212(c).

In summary, we propose to find that the NO_X, SO_2, and PM BART regional haze requirements pertaining to EGUs for the first planning period found in the SIP revision meet the applicable requirements of the CAA and Regional Haze Rule. These requirements include PM BART emission limits for Colstrip Units 1 and 2 that are identical to the emission limits in EPA's FIP as well as new SO_2 and NO_X BART determinations for Colstrip Units 1 and 2. We also propose to find that the State was not required to make BART determinations or include BART emission limits in its SIP for Corette because the source is no longer in existence. We therefore propose to approve the Board Order for EGUs in its entirety.

C. Consultation With Federal Land Managers

There are 12 Class I Federal areas affected by sources in Montana. The Forest Service manages the Anaconda-Pintler Wilderness Area, Bob Marshall Wilderness Area, Cabinet Mountains Wilderness Area, Gates of the Mountains Wilderness Area, Mission Mountains Wilderness Area, Scapegoat Wilderness Area, and Selway-Bitteroot Wilderness Area. The Fish and Wildlife Service manages the Medicine Lake Wilderness Area, Red Rocks Lake Wilderness Area, and UL Bend Wilderness Area. The National Park Service manages Glacier National Park and Yellowstone National Park.

The Regional Haze Rule grants the FLMs a special role in the review of regional haze FIPs, as summarized in section II.E in this preamble. Because this plan revision includes a proposal to withdraw parts of our 2012 regional haze FIP, we consulted with the Forest Service, Fish and Wildlife Service, and the National Park Service on Thursday, August 26, 2021.[55]

IV. EPA's Proposed Action

A. Montana Regional Haze State Implementation Plan

We are proposing to approve the following elements of Montana's Regional Haze SIP revision as satisfying the applicable requirements for the first regional haze planning period:

- In the Matter of an Order Setting Air Pollutant Emission Limits that the State of Montana may Submit to the Federal Environmental Protection Agency for Revision of the State Implementation Plan Concerning Protection of Visibility, Affecting the Following Facilities: Ash Grove Cement Company's Montana City Plant, and GCC Three Forks, LLC's Trident Plant. Board Order Findings of Fact, Conclusions of Law, and Order. October 18, 2019, Appendix A.
- In the Matter of an Order Setting Air Pollutant Emission Limits that the State of Montana may Submit to the Federal Environmental Protection Agency for Revision of the State Implementation Plan Concerning Protection of Visibility, Affecting the Following Facilities: Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2, and JE Corette Steam Electric Station JE Corette Steam Electric Station. Board Order Findings of Fact, Conclusions of Law, and Order. October 18, 2019, Appendix A.

B. Federal Implementation Plan Withdrawal

Because we are proposing to find that Montana's SIP revision satisfies the applicable requirements related to the obligation for states' regional haze plans to include BART for the first regional haze planning period, we are also proposing to withdraw the corresponding portions of the 2012 regional haze FIP addressing the NO_X, SO_2, and PM BART emission limits and associated requirements for two cement kilns and the PM BART emission limits and associated requirements for the two EGU facilities contained within our 2012 regional haze FIP at 40 CFR 52.1396. While EPA is proposing to approve the emission limits, compliance determination requirements, and other monitoring, reporting, and recordkeeping requirements associated with BART into Montana's SIP as detailed above, other regional haze requirements for the first implementation period, including requirements related to reasonable progress and analytical requirements related to BART will remain satisfied by EPA's FIP.

C. Clean Air Act Section 110(l)

Under CAA section 110(*l*), EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [56] The previous sections of this document, our 2012 and 2017 proposed rules, and our 2012 and 2017 final rules explain how the proposed SIP revision will comply with applicable regional haze requirements and general implementation plan requirements, such as enforceability.[57] Approval of the proposed SIP revision would transfer the NO_X, SO_2, and PM BART emission limits for the cement kilns and the PM BART emission limits for the EGUs along with compliance deadlines, monitoring, recordkeeping, and

[52] Except for the absence of reporting requirements for SO_2 and NO_X because the SIP relies on unit shutdowns within five years in lieu of emission limits for compliance with SO_2 and NO_X BART.

[53] On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated the NO_X and SO_2 BART emission limits for Corette and Colstrip Units 1 and 2; however, EPA has not yet removed the FIP NO_X and SO_2 reporting and notification requirements pertaining to both cement kiln and EGUs found at 40 CFR 52.1396(i) and 40 CFR 52.1396(l), respectively.

[54] 40 CFR 52.1396(j)–(k) are reserved.

[55] We did not receive any formal comments from the FLM agencies.

[56] 42 U.S.C. 7410(*l*).

[57] 77 FR 23988 (April 20, 2012), 77 FR 57864 (September 18, 2012), 82 FR 17948 (April 14, 2017), 82 FR 42738 (September 12, 2017).

reporting requirements, and other associated requirements currently found in EPA's 2012 FIP [58] into Montana's Regional Haze SIP. In addition, the proposed SIP addresses the NO_X and SO_2 BART requirements for Corette and Colstrip Units 1 and 2 in the first instance.[59] The NO_X and SO_2 BART determination for Corette and Colstrip Units 1 and 2 rely on unit shutdowns, which is the most stringent approach to complying with BART since there will be no NO_X or SO_2 emissions (or PM emissions) after the unit shutdowns. As such, the SIP revision will not interfere with attainment of the NAAQS, reasonable further progress, or other CAA requirements as compared to the 2012 FIP including the vacated portions on the FIP. Accordingly, we propose to find that an approval of the proposed SIP as well as concurrent withdrawal of certain portions of the FIP, are not anticipated to interfere with applicable requirements of the CAA and therefore CAA section 110(*l*) does not prohibit approval of this SIP revision.

V. Ninth Circuit Court of Appeals Remand

This proposed action also addresses the U.S. Court of Appeals for the Ninth Circuit's remand of the NO_X and SO_2 emission limits for Colstrip Units 1 and 2 and Corette as well as its remand of EPA's response to a public comment regarding the use of the CALPUFF visibility model in determining BART for Colstrip Units 1 and 2 in the 2012 final rule.

Our proposal, if finalized, will address the Ninth Circuit Court of Appeals' remand of NO_X and SO_2 BART for Colstrip Units 1 and 2 and Corette for the first planning period. The unit shutdowns represent the most stringent BART determinations and emission limits since there will be no NO_X and SO_2 emissions after the unit shutdowns, which have occurred or will occur within the statutory time frame for implementing BART. With respect to the court's finding that we did not provide a sufficiently reasoned response to a public comment submitted by PPL Montana, LLC, stating that the maximum potential visibility benefit of selective non-catalytic reduction (SNCR) at Colstrip Units 1 and 2 is below the range of perceptibility and falls within the CALPUFF model's margin of error, meaning such improvement cannot be ''reasonably . . . anticipated'' as required by the Act, our proposal approving Colstrip Units 1 and 2 shutdown as meeting the requirements of NO_X and SO_2 BART moots this comment. We, however, still disagree with the comment and provide the following clarifying response:

We do not agree with the commenter's assertion that the modeled visibility improvements from the 2012 regional haze FIP are not reasonably anticipated because EPA failed to account for a ''margin of error'' in the CALPUFF model. The notion of a calculated ''margin of error'' or a level at which the model fails to capture visibility improvements that may be ''reasonably anticipated'' is not part of any modeling guidance and has no legal or regulatory basis or applicability. We fundamentally disagree with the commenter's argument that a CALPUFF result within a purported margin of error cannot show that a visibility improvement is ''reasonably anticipated''. The phrase ''reasonably anticipated'' in CAA section 169A(g)(2) is ambiguous and susceptible of interpretation. It is certainly reasonable to anticipate the degree of visibility improvement that results from the correct application (*i.e.,* with an appropriate modeling protocol) of the regulatorily approved modeling tool, even if that degree of improvement is within an alleged margin of error. By contrast, the statutory language of ''reasonably certain'' clearly does not require a result that means ''certain to occur.'' The commenter's implied interpretation of ''reasonably anticipated,'' *i.e.* ''certain to occur,'' would be contrary to the purposes of the statute and write the term ''reasonably'' out of it. One reason is that all models have an inherent uncertainty. As discussed in EPA's modeling guidance, the formulation and application of air quality models are accompanied by several sources of uncertainty. ''Irreducible'' uncertainty stems from the ''unknown'' conditions, which may not be explicitly accounted for in the model (*e.g.,* the turbulent velocity field). Thus, there are likely to be deviations from the observed concentrations in individual events due to variations in the unknown conditions. ''Reducible'' uncertainties are caused by: (1) Uncertainties in the ''known'' input conditions (*e.g.,* emission characteristics and meteorological data); (2) errors in the measured concentrations; and (3) inadequate model physics and formulation.'' 40 CFR part 51, appendix W, 2.1.1.a.

Thus, according to the currently promulgated version of appendix W, there are numerous sources of uncertainties in dispersion models. However, the commenter's implied interpretation of ''reasonably anticipated'' cannot be what Congress intended. This is true even more so in light of the fact that the BART provisions were added in the 1977 Amendments. At the time, uncertainties with modeling were a great concern—for example, many states used unsophisticated rollback models for their attainment plans, resulting in decisions to control sources that were not well supported. *See, e.g., Cleveland Electric Illuminating Co.* v. *EPA,* 572 F.2d 1150, 1160–61 (6th Cir. 1978). Given the context, Congress cannot have intended ''reasonably anticipated'' to mean ''certain to occur.'' A much more plausible interpretation of ''reasonably anticipated'' is ''can be predicted using current models.''

We also note that, viewed properly, this comment was addressed by the BART Guidelines themselves. As shown by the above discussion, the commenter's theory is not about the application of a model to a particular situation, it is about the interpretation of the statute itself. When we promulgated the BART Guidelines, we essentially interpreted the phrase ''degree of improvement in visibility which may reasonably be anticipated'' to be the visibility improvement predicted by CALPUFF, or another appropriate dispersion model. See 40 CFR part 51, appendix Y, IV.D.5 (''Use CALPUFF, or other appropriate dispersion model to *determine the visibility improvement expected at a Class I area from the potential BART control technology applied to the source.*'') (emphasis added).

Finally, the degree of visibility improvement from emissions controls is a relative determination. The determination may be the degree of visibility improvement of one control scenario relative to an uncontrolled baseline, or it may be the degree of visibility improvement of one control scenario relative to another control scenario. CALPUFF is reliable for determining relative differences between situations, even when the difference is small. We recognize that the difference in visibility improvement between a BART control case and a baseline case may in some cases be small and treat it accordingly in the evaluation of the BART visibility improvement factor. This is precisely what Congress intended in determining BART: that states (or EPA in a FIP) consider the degree of visibility improvement that can reasonably be anticipated from the BART control scenarios. That a small visibility improvement might fall within an alleged margin of error is a red herring—

[58] 40 CFR 52.1396.

[59] Those requirements were promulgated under the 2012 FIP but had been vacated by the Ninth Circuit in 2015.

a small visibility improvement will be weighed less in the BART determination, which is perfectly in line with the statute and Congress' intent.

This proposal, if finalized, will wholly resolve the Agency's obligations on remand.

VI. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Montana board orders described in section IV.A of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it applies to only 4 facilities in the State of Montana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA), because it revises the reporting requirements for 4 facilities.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities as no small entities are subject to the requirements of this rule.

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 merely transfers the regional haze requirements found in the 2012 regional haze FIP to a SIP and approve the State's permanent closure of two facilities, thus this action is not subject to the requirements of sections 202 or 205 of UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'', requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' [60] This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this action. However, EPA did send letters to each of the Montana tribes explaining our regional haze action and offering consultation.

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). EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition 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 a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice.[61] Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

In 2012, we determined that our final action would ''not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increased the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.'' [62] Because this proposed rule alters the existing requirements for regional haze in the State of Montana by including the enforceable shutdown of two sources and otherwise only transfers existing requirements from a FIP to the SIP, our determination is unchanged from that in 2012. EPA, however, did perform a screening analysis using the EJScreen tool [63] to evaluate environmental and demographic indicators for the areas impacted by this proposed action. The results of this assessment are in the docket for this action. These results indicate that areas impacted by this proposed action are not potential areas of EJ concern and are not candidates for further EJ review. EPA is providing this information for public information purposes, and not as a basis of our proposed action. We will consider any input regarding environmental justice considerations received during the public comment period.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone,

[60] 65 FR 67249, 67250 (November 9, 2000).

[61] 59 FR 7629 (February 16, 1994).

[62] 77 FR 57914 (September 18, 2012).

[63] EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at *https://www.epa.gov/ejscreen/what-ejscreen.*

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB—Montana

■ 2. Amend § 52.1370 by revising the table in paragraph (d) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(d) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
(1) Cascade County			
1985 December 5 Stipulation and 1985 October 20 Permit for Montana Refining Company. In the matter of the Montana Refining Company, Cascade County; compliance with ARM 16.8.811, ambient air quality standard for carbon monoxide.	12/5/1985	9/7/1990	55 FR 36812.
(2) Deer Lodge County			
1978 November 16 Order for Anaconda Copper Smelter. In the Matter of the Petition of the Department of Health and Environmental Sciences for an Order adopting a Sulfur Oxides Control Strategy for the Anaconda Copper Smelter at Anaconda, Montana, and requiring the Anaconda Company to comply with the Control Strategy.	11/16/1978	1/10/1980	45 FR 2034.
(3) Flathead County			
Air Quality Permit #2667–M, Dated 1/24/92. Plum Creek Manufacturing, Inc	1/24/1992	4/14/1994	59 FR 17700.
Stipulation—A–1 Paving, In the Matter of Compliance of A–1 Paving, Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Equity Supply Company, In the Matter of Compliance of Equity Supply Company.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Flathead Road Department #1, In the Matter of Compliance of Flathead Road Department, Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Flathead Road Department #2, In the Matter of Compliance of Flathead Road Department, Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Klingler Lumber Company, In the Matter of Compliance of Klinger Lumber Company, Inc., Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—McElroy & Wilkens, In the Matter of Compliance of McElroy and Wilkens, Inc., Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Montana Mokko, In the Matter of Compliance of Montana Mokko, Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Pack and Company, In the Matter of Compliance of Pack and Company, Inc., Kalispell, Montana.	9/7/1993	3/19/1996	61 FR 11153.
Stipulation—Pack Concrete, In the Matter of Compliance of Pack Concrete, Inc., Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
Stipulation—Plum Creek, In the Matter of Compliance of Plum Creek Manufacturing, L.P., Kalispell, Montana.	9/17/1993	3/19/1996	61 FR 11153.
(4) Gallatin County			
GCC Three Forks, LLC's Trident Plant October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A.	10/18/2019	[date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule].
(5) Jefferson County			
Ash Grove Cement Company's Montana City Plant October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A.	10/18/2019	[date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule].
(6) Lewis and Clark County			
Total Suspended Particulate NAAQS—East Helena, ASARCO Application for Revisions of Montana State Air Quality Control Implementation Plan—Only as it applies to Total Suspended Particulate.	4/24/1979	1/10/1980	45 FR 2034.
Sulfur Dioxide NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation—1994 March 15.	3/15/1994	1/27/1995	60 FR 5313.

Title/subject	State effective date	Notice of final rule date	NFR citation
Sulfur Dioxide NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A—Asarco Emission Limitations and Conditions, Asarco Incorporated, East Helena, Montana.	3/15/1994	1/27/1995	60 FR 5313.
Asarco Board Order—1994 March 18. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions from the Lead Smelter Located at East Helena, Montana, owned and operated by Asarco Incorporated.	3/18/1994	1/27/1995	60 FR 5313.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, American Chemet Stipulation—1995 June 30.	6/30/1995	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, American Chemet Board Order—1995 August 4.	8/4/1995	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A—American Chemet Emissions Limitations and Conditions, American Chemet Corporation, East Helena, Montana.	6/10/2013	3/28/2018	83 FR 13196.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation—1996 June 11.	6/11/1996	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order—1996 June 26.	6/26/1996	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A—Asarco Emission Limitations and Conditions with attachments 1–7, Asarco Lead Smelter, East Helena, Montana.	6/26/1996	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation—1998 August 13.	8/28/1998	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order—1998 August 28.	8/28/1998	6/18/2001	66 FR 32760.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation—2000 July 18.	9/15/2000	6/18/2001	66 FR 32767.
Lead NAAQS—Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order—2000 September 15.	9/15/2000	6/18/2001	66 FR 32767.
(7) Lincoln County			
Board Order—1994 December 16 (Stimson Lumber). In the Matter of Compliance of Stimson Lumber Company, Libby, Montana.	12/16/1994	9/30/1996	61 FR 51014.
Air Quality Permit #2627–M Dated 7/25/91. Stimson Lumber Company (formerly Champion International Corp).	3/19/1993	8/30/1994	59 FR 44627.
Stipulation—Stimson Lumber. In the Matter of Compliance of Stimson Lumber Company, Libby, Montana.	12/16/1994	9/30/1996	61 FR 51014.
(8) Missoula County			
Air Quality Permit #2303M, Dated 3/20/92. Louisiana-Pacific Corporation	3/20/1992	1/18/1994	59 FR 2537.
Air Quality Permit #2589M, Dated 1/23/92. Stone Container Corporation	1/24/1992	1/18/1994	59 FR 2537.
(9) Rosebud County			
1980 October 22 Permit for Western Energy Company	10/22/1980	4/26/1985	50 FR 16475.
Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2 October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A.	10/18/2019	[date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule].
(10) Silver Bow County			
Air Quality Permit #1636–06 dated 8/22/96. Rhone-Poulenc Basic Chemicals Company.	8/22/1996	12/6/1999	64 FR 68034.
Air Quality Permit #1749–05 dated 1/5/94. Montana Resources, Inc	1/5/1994	3/22/1995	60 FR 15056.
(11) Yellowstone County			
Cenex June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Cenex June 12, 1998 Exhibit A (with 3/17/00 Revisions) Emission Limitations and Other Conditions.	3/17/2000	5/22/2003	68 FR 27908.
Cenex March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	3/17/2000	5/22/2003	68 FR 27908.

Title/subject	State effective date	Notice of final rule date	NFR citation
Conoco June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Conoco June 12, 1998 Exhibit A. Emission Limitations and Other Conditions	6/12/1998	5/2/2002	67 FR 22168.
Exxon June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Exxon June 12, 1998 Exhibit A (with 3/17/00 Revisions). Emission Limitations and Other Conditions.	3/17/2000	5/22/2003	68 FR 27908.
Exxon March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	3/17/2000	5/22/2003	68 FR 27908.
Montana Power June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Montana Power June 12, 1998 Exhibit A, Emission Limitations and Conditions	6/12/1998	5/2/2002	67 FR 22168.
Montana Sulphur & Chemical Company June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Montana Sulphur & Chemical Company June 12, 1998 Exhibit A. Emission Limitations and Other Conditions.	6/12/1998	5/2/2002	67 FR 22168.
Western Sugar June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Western Sugar June 12, 1998 Exhibit A. Emission Limitations and Other Conditions.	6/12/1998	5/2/2002	67 FR 22168.
Yellowstone Energy Limited Partnership June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	6/12/1998	5/2/2002	67 FR 22168.
Yellowstone Energy Limited Partnership June 12, 1998 Exhibit A (with 3/17/00 revisions) Emission Limitations and Other Conditions.	3/17/2000	5/22/2003	68 FR 27908.
Yellowstone Energy Limited Partnership March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area.	3/17/2000	5/22/2003	68 FR 27908.
(12) Other			
JE Corette Steam Electric Station October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A.	10/18/2019	[date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule].

* * * * *

§ 52.1396 [Removed and Reserved]

■ 3. Remove and reserve § 52.1396.

[FR Doc. 2022–18680 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2022–0679, 0680 and EPA–HQ–SFUND–1994–0002; FRL–10160–01–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal of proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public

health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add two sites to the General Superfund section of the NPL. This document also withdraws a previous proposal for NPL addition.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 8, 2022.

As of September 9, 2022, the proposed rule for the East Tenth Street site in Marcus Hook, Pennsylvania, published January 18, 1994, at 59 FR 2568, is withdrawn.

ADDRESSES: Identify the appropriate docket number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
East Basin Road Groundwater	New Castle, DE	EPA–HQ–OLEM–2022–0679
PCE—Carriage Cleaners	Bellevue, NE	EPA–HQ–OLEM–2022–0680

You may send comments, identified by the appropriate docket number, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Agency website: https://www.epa.gov/superfund/current-npl-updates-new-proposed-npl-sites-and-new-npl-sites;* scroll down to the site for which you would like to submit comments and click the ''Comment Now'' link.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Superfund Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the appropriate Docket ID No. for site(s) for which you are submitting comments. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Review/Public Comment'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (202) 566–1048, email: *jeng.terry@epa.gov,* Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, Mail code 5204T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. An electronic version of the public docket is available through *https://www.regulations.gov* (see table above for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities.

B. What documents are available for public review at the EPA Headquarters docket?

The Headquarters docket for this proposed rule contains the following information for the sites proposed in this rule: Hazard Ranking System (HRS) score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record. These documents are also available online at *https://www.regulations.gov.*

C. What documents are available for public review at the EPA regional dockets?

The regional dockets for this proposed rule contain all of the information in the

Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the primary documents that support this proposed rule online at *https://www.regulations.gov* or by contacting the EPA HQ docket. You may view the primary documents plus the references by contacting the regional dockets. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the individual regional dockets for hours. The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; (617) 918–1413.
- James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4342.
- Lorie Baker, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, 4 Penn Center, 1600 John F. Kennedy Boulevard, Mail code 3SD12, Philadelphia, PA 19103; (315) 814–3355.
- Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; (404) 562–8926.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 886–4465.
- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; (214) 665–3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; (913) 551–7956.
- David Fronczak, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8SEM–EM–P, Denver, CO 80202–1129; (303) 312–6096.
- Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105 (415) 972–3160.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 288 Martin Street, Suite 309, Blaine, WA 98230; (360) 366–8868.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing them, oversized maps may be viewed only in-person. The EPA dockets are not equipped to copy and mail out such maps, nor are they equipped to scan them for electronic distribution.

You may use the docket at *https://www.regulations.gov* to access documents in the Headquarters docket. Please note that there are differences between the Headquarters docket and the regional dockets, and those differences are outlined in this preamble above.

E. How do I submit my comments?

Follow the online instructions detailed above in the **ADDRESSES** section for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at *https://www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, CBI or other information whose disclosure is restricted by statute. Once in the public dockets system, select ''search,'' then key in the appropriate docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or

''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. Plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number*.

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, Office of Solid Waste and Emergency Response (OSWER) 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse*.

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In this proposed rule, the EPA is proposing to add two sites to the NPL, both to the General Superfund section. Both sites in this rule are being proposed for NPL addition based on an HRS score of 28.50 or above.

The sites are presented in the tables below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
DE	East Basin Road Groundwater	New Castle.
NE	PCE—Carriage Cleaners	Bellevue.

B. Withdrawal of Previous Proposal for NPL Addition

The EPA is withdrawing its previous proposal to add the East Tenth Street site in Marcus Hook, Pennsylvania, to the NPL because the Pennsylvania Department of Environmental Protection (PADEP) has, and will continue to, ensure all appropriate investigations and cleanup actions are performed pursuant to its state cleanup authority. Cleanup activities continue to be successfully implemented by the responsible party, pursuant to the 2003 Consent Order and Agreement between the responsible party and the state. Cleanup activities, including the partial abatement of asbestos in several buildings, removal of antiquated transformers, construction of fences around contaminated lots, and the removal of PCB-contaminated cements, have reduced the risk of exposure to site contaminants. In April 2022, PADEP approved a plan for additional cleanup activities to address PCB-contaminated soil that will be protective of human health and the environment. The rule proposing to add this site to the NPL can be found at 59 FR 2568 (January 18, 1994). Refer to the Docket ID number EPA–HQ–SFUND–1994–0002 for supporting documentation regarding this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.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.

B. Executive Order 13771: Reducing Regulation 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.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local, or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This rule 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or need contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Date: August 29, 2022.

Barry Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. In appendix B of part 300 amend Table 1 by adding entries for ''DE, East Basin Road Groundwater'' and ''NE, PCE—Carriage Cleaners'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	* * * * * *	*	
DE	East Basin Road Groundwater	New Castle	
*	* * * * * *	*	
NE	PCE—Carriage Cleaners	Bellevue	
*	* * * * * *	*	

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2022–19149 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 220830–0176]

RIN 0648–BL30

List of Fisheries for 2023

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

ACTION: Proposed rule, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2023, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2023 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by October 11, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0041, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0041 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected

Resources, 301–427–8402; Danielle Palmer, Greater Atlantic Region, 978–282–8468; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Suzie Teerlink, Alaska Region, 907–586–7240; Elena Duke, Pacific Islands Region, 808–725–5134. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level 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. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the *List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean* and *List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean* sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction, including information on the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused mortality and serious injury (M/SI) by source. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best

available scientific information used in the SARs and reviewed for the 2023 LOF generally summarizes data from 2015–2019. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program.*

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 with an asterisk (*) after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for 5 years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at *https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: when the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* linked to the ''List of Fisheries Summary'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed

information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take marine mammals incidental to commercial fishing operations. The take of threatened or endangered marine mammals requires an additional authorization. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register, renew and receive my Marine Mammal Authorization Program authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic and Southeast Regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year.

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year, or with renewed fishing licenses, must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION CONTACT**). Authorization certificates may also be obtained by visiting the MMAP website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate*.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION CONTACT**). Forms may be submitted via any of the following means: (1) online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams*. It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Danielle Palmer;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Elena Duke.

Sources of Information Reviewed for the 2023 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were established by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2023 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the final 2021 SARs, which are based on data from 2015–2019. The SARs referenced in this LOF include: 2020 (86 FR 38991; July 23, 2021) and 2021 (87 FR 47385; August 3, 2022). The SARs are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*.

Summary of Changes to the LOF for 2023

The following summarizes changes to the LOF for 2023, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS re-classifies one fishery in the LOF for 2023. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. Many Category III fisheries on the LOF have never been described in the LOF. While detailed information describing each fishery on the LOF has been included within the SARs for some fisheries, a FMP, TRP, or by state agencies, general descriptive information is also included here to clearly define each fishery that is on the LOF. Since the 2016 LOF (80 FR 58427; September 29, 2015), NMFS has been developing Category III fishery fact sheets that are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables*. NMFS is requesting public comment on the fisheries descriptions below to include within the fact sheets. The classifications and definitions of U.S. commercial fisheries for 2023 are identical to those provided in the LOF for 2022 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BBES (Barataria Bay Estuarine System), BSAI (Bering Sea, Aleutian Island), CA (California), FL (Florida), Gulf of Alaska (GOA), HI (Hawaii), OR (Oregon), and WA (Washington).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS proposes to reclassify the Category III Hawaii offshore pen culture fishery to Category II fishery based on a documented monk seal mortality in 2017. A monk seal was found dead in a retired fish pen, which was scheduled for removal from the fishery operation. This mortality resulted in a mean annual estimated mortality and serious injury (M/SI) of 0.2 (4.2 percent of the stock's PBR) for the Hawaii offshore pen culture fishery (Carretta *et al.,* 2021). Therefore, because the estimated M/SI is between 1 and 50 percent of PBR (Tier 2 analysis), NMFS proposes to reclassify the Hawaii offshore pen culture fishery from a Category III to a Category II fishery.

Fishery Name and Organizational Changes and Clarification

NMFS proposes to rename the Category III CA set gillnet (mesh size <3.5 in) fishery to the CA herring set gillnet fishery to indicate herring is the only target species of this fishery.

The fishery targets Pacific herring specifically, operating in and around San Francisco Bay, Crescent City Harbor, Humboldt Bay, and Tomales Bay. California Department of Fish and Wildlife (CDFW) manages this winter fishery running from January 2 until March 15, depending on stock abundance. The traditional product from this fishery, kazunoko, is the roe sac (eggs) removed from the females, which is processed and exported for sale in Japan. There are also local markets for whole herring.

The gear configurations differ in each area where Pacific herring are targeted by gillnets. In San Francisco Bay and Tomales Bay, fishermen use up to two gillnets that are not more than 65 fathoms (390 ft or 118.9 m) long measured at the cork line (float line). The depth of the nets are a maximum of 120 meshes, with mesh size ranging from 2 to 2.5 inches (5.1 to 6.4 cm) maximum. In Crescent City Harbor and Humboldt Bay, fishermen may fish in combination with no more than 150 fathoms (900 ft or 274.3 m) of gillnet. The net depth is also a maximum of 120 meshes deep; however, the mesh size is a minimum of 2.25 inches (5.7 cm) to a maximum of 2.5 inches (6.4 cm). The nets are anchored by 35-pound (15.9 kg) weights on each end and suspended in the water column by attaching buoys on each end. Each buoy is marked with the vessel number.

This is a limited entry fishery, with separate permit caps for each of the four management areas in California. Until recently, San Francisco Bay was managed based on a platoon structure, which separated the fishery into Even and Odd fishing groups based on the permit numbers. Platoons rotated fishing weeks with the first platoon designated by whether the season year is odd or even. New regulations implementing the California Pacific Herring Fishery Management Plan during the 2020–2021 season eliminated the platoon structure. Now, a quota system dictates the maximum catch available to the commercial fishery each season.

NMFS proposes to rename the Category III CA pelagic longline fishery to the West Coast pelagic longline fishery. This fishery is federally-managed, operates outside the U.S. exclusive economic zone (EEZ) and is not associated with the State of California.

This fishery targets bigeye, yellowfin, and skipjack tuna along with opah and other highly migratory species (HMS) in the Eastern Pacific Ocean (EPO) outside of the U.S. EEZ, which extends 3–200 nm (5.6–370.4 km) off the coast. The fishery generally extends south to 20 degrees North latitude, and west to 140

degrees West longitude. Bigeye tuna is normally targeted at depths from anywhere between 250–400 meters (820.2–1312.3 ft) during the daytime.

The gear consists of a 45–60 nm (83.3–111.1 km) long monofilament main line approximately 3.2–3.5 mm (0.1 inch) thick that is set, retrieved, and stored on large hydraulic reels. The main line is suspended at the target fishing depth by orange inflatable floats attached via float lines made of monofilament or braided line. Part of the array used to suspend the main line includes 7 to 9 radio buoys, used to show the location and footprint of the gear on the radar of the fishing vessel. Attached to the main line are 2,000–3,500 monofilament branch lines (usually 15–30 between each float), each 8–15 m (26.2–49.2 ft) in length. These lines culminate in a swivel weight from which a leader line of 0.5–1 m (1.6–3.3 ft) extends to a size 16/0–18/0 baited offset circle hook. The bait used in this fishery consists of either frozen mackerel, saury, sardine, squid, or a combination of all four bait types.

The fishery is managed under the HMS Fishery Management Plant (FMP) by the Pacific Fishery Management Council (PFMC). All U.S West Coast vessels targeting tropical tunas require a Federal HMS permit with a deep-set longline (DSLL) endorsement, and registration with the Inter-American Tropical Tuna Commission (IATTC). Use of either shallow-set or deep-set pelagic longline gear within the U.S. EEZ of the U.S. West Coast is prohibited. The HMS FMP does not permit shallow-set longline (SSLL) fishing, although SSLL vessels fishing under a Hawaii longline permit (under the Pelagics FMP) do make landings into California. Use of a vessel monitoring system (VMS), attendance at protected species workshops, and the possession/use of sea turtle and seabird mitigation gear and safe handling techniques are required. The use of light sticks or any other light emitting devices is prohibited.

The IATTC specifies trip limits (for certain vessel classes/sizes) and yearly catch limits each year for all tuna species in the Convention Area. The West Coast DSLL vessels participating in this fishery are not subject to trip limits due to all of the vessels being under 24 m (78.7 ft) in length; however, these vessels cannot exceed the yearly catch limits set for bigeye tuna and other tuna species. Federal logbooks are required for all fisheries targeting HMS. Observers are mandatory for at least 20 percent of the total trips for the calendar year.

Fishery Descriptions

CA Coonstripe Shrimp Pot Fishery

The Category II CA coonstripe shrimp pot fishery primarily occurs along a relatively narrow depth range, between 20 and 30 fathoms (120–180 ft or 36.6–54.9 m) in northern California and southern Oregon. In California, most of the fishing activity for coonstripe shrimp has taken place within a few miles off Crescent City Harbor with additional effort emerging within the Gulf of the Farallones, although the range of the fishery along the California coast has been expanding recently. The fishery is prohibited from November 1 through April 30. The fishery is relatively new, beginning in 1995.

Fishermen commonly use 300 to 400 traps during the fishing season. The traps are set in strings composed of between 10–30 traps per string, connected to a long line weighted at both ends and marked with a polyball or flagpole. Fishermen tend to leave the strings of traps in the water for several days before tending. Some fishers position their traps at a specific depth, about 25 fathoms (150 ft or 45.7 m), while others vary the depth and prospect as shallow as 12 fathoms (72 ft or 21.9 m). Each trap weighs less than 10 pounds (4.5 kilograms) and is constructed of 1⅜-inch (3.5 cm) mesh wire over a stainless steel frame. The traps are typically 39 inches (1.0 m) in diameter, 16 inches (40.6 cm) tall, and have two entry funnels that are 3 inches (7.6 cm) in diameter.

Every buoy marking a commercial trap, or the end of a string of traps, is marked with a commercial fishing license identification number followed by the letter ''C'', which is specific to this fishery.

This is an open access fishery managed by the State of California that varies in fleet size and composition every year. To participate in the commercial fishery, a fisherman must be a registered commercial fisherman, have a commercial vessel registration, and a general trap permit. In addition, fishermen must comply with all California regulations for all pot/trap fisheries regarding size of traps, destructive devices, marking the gear, and trap servicing.

WA Grays Harbor Salmon Drift Gillnet (Excluding Treaty Tribal Fishing) Fishery

The Category III WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing) fishery mainly targets salmon (Chinook, coho, and chum) and shad. Grays Harbor, situated just north of Willapa Bay in the southwest corner of Washington, is divided into four distinct management areas shown in the following map: *https://wdfw.wa.gov/sites/default/files/2019-02/2012_gh_map.pdf*.

It is a fall fishery, open from October 1 to November 30 each year, with time limits set for each area and adjusted for each season depending on fish stock abundance. The time limits include certain days open for fishing each month, with constraints on the specific hours when fishing is allowed on these days.

The net is constructed of synthetic multifilament mesh, which may not exceed 1,500 feet (457.2 m) in length. Nets are attached at one end of the vessel, drifting with the vessel. The mesh size does not exceed 6.5 inches (16.5 cm) in areas 2A, 2B and 2D. In area 2C, the maximum mesh size is 9.0 inches (22.9 cm). The drift times vary depending on the fishing area, tidal condition, and target catch, but are ultimately limited to no more than 45 minutes.

This is a limited entry fishery managed by the Washington Department of Fish and Wildlife (WDFW). However, the PFMC and NMFS co-manage the fishery with WDFW for implementing management actions such as season length, bag limits, and quotas.

WA/OR Mainstem Columbia River Eulachon Gillnet Fishery

The Category III WA/OR Mainstem Columbia River eulachon gillnet fishery targets eulachon (candlefish), which is a member of the typical smelts, in the lower Columbia River downstream from Bonneville Dam. Effort takes place during winter and spring, from December 1 to March 31, to supply both the bait demand for sport sturgeon anglers and the fresh food market. The Columbia River fishery typically drops off dramatically after the eulachon enters the Cowlitz River and other lower Columbia tributaries, as markets fill with fish landed from tributary commercial fisheries. In the past, fishing used to be allowed 7 days a week, but has been restricted to fewer days a week for fishery management.

The fishery is primarily conducted using 2 inch (5.1 cm) stretched bobber gill nets, required under Washington and Oregon rules, which are set during the turn of the tide and during the flood tide when the fish are present at intermediate depths. The nets are suspended below the surface by dropper lines. Usually two or more gillnets are used, each net being fished by repeatedly drifting through the fishing area until the net is full.

Oregon and Washington jointly manage Columbia River fish and fisheries in the transboundary mainstem reaches of the lower basin. Oregon and Washington manage the fishery under the Congressionally-approved Columbia River Compact. The Compact States can open a commercial fishery only with the mutual consent and approbation of both states. The Compact does not restrict the right of either state to adopt regulations that are more conservative than that of the other, though such regulations can be enforced only in the adopting state's waters.

Washington commercial fishermen are required to have a Columbia River smelt license when targeting eulachon for either human consumption or bait-fishing. Oregon does not require a separate smelt license; however, fishermen must possess a commercial fishing license and a commercial fishing boat license. If eulachon are targeted only for bait sales, fishers may purchase a bait-fishing license only instead of a commercial fishing license and a commercial fishing boat license.

WA/OR Lower Columbia River (Includes Tributaries) Drift Gillnet Fishery

The Category III WA/OR lower Columbia River (includes tributaries) drift gillnet fishery targets coho (fin-clipped only), pink, and Chinook salmon from the mouth of the Columbia River upstream to Kelley Point, Oregon. The area of the lower Columbia river where effort occurs is divided into four zones, which includes approximately 140 river miles (225.3 km) available to commercial salmon drift gillnet fishing. A clear depiction of each of the zones can be found at: *https://www.dfw.state.or.us/fish/OSCRP/CRM/docs/2013/Columbia%20River%20Commercial%20Zone%201-6%20Map.pdf*.

Gear includes multifilament drift gillnets with a maximum length of 150 fathoms (900 ft or 274.3 m), and a maximum mesh size of 3¾ inches (9.5 cm). No slacker or stringer lines may be used to slacken the net vertically, but the gillnet hang ratio is not restricted. The nets may include an optional steelhead excluder device that must adhere to particular specifications if used, including placement of two red corks at each end of the net using one. The soak times are limited to 30 minutes.

This is a limited entry fishery, but permits are transferable if certain requirements are met. Standard regulations include: maximum allowable net length, use of recovery boxes, limited soak times, use of red floats at 25 fathom (150 ft or 45.7 m) intervals, lighted buoys (if fishing occurs at night), and tangle net certification that indicates at least one person on board is able to handle an undersized fish in such a way that it can successfully be released alive. State management observers must be taken upon request.

The fishery is managed in conjunction with other State salmon fisheries, and co-managed with Federal salmon fisheries by the PFMC and NMFS. Catch reporting is required within 24 hours. Targeting white sturgeon and shad is prohibited.

WA Willapa Bay Drift Gillnet Fishery

The Category III WA Willapa Bay drift gillnet fishery targets coho, chum, and Chinook salmon during the fall within Willapa Bay, situated just south of Grays Harbor in the southwest corner of Washington. A detailed depiction of the commercial fishing areas in Washington can be found here: *https://wdfw.wa.gov/sites/default/files/2019-02/2013_wb_map.pdf*.

Drift gillnets are the only gear allowed in the fishery. These nets must adhere to specific mesh size and length requirements. The net length can be up to 1,500 feet (457.2 m), and the mesh size ranges from a stretched length of 4¼ inches to 6½ inches (10.8–16.5 cm). Mesh size requirements may vary within the various areas, on specific days and at certain times, depending on salmon stock status and size limits. Soak times are limited to 45 minutes.

This is a limited entry fishery managed primarily by the WDFW, in concert with salmon fisheries management by the PFMC and NMFS. The retention of any species other than the intended target species is prohibited, and any encounters with white sturgeon, green sturgeon, and steelhead, has to be reported. The use of recovery boxes to improve survival of fish bycatch is mandatory, with the number and type used depending on the area fished. A vessel operator cannot fish unless they have attended a best fishing practices workshop and have a department issued certification card in their possession at all times while conducting fishing operations. State observers must be taken if requested to do so. Each vessel is allowed to have more than one net on board.

WA/OR Sardine Purse Seine Fishery

The Category III WA/OR sardine purse seine fishery targets Pacific sardines, a coastal pelagic species (CPS), in the water column above the continental shelf off the coast of Oregon and Washington. Federal harvest guidelines for directed fisheries may be allocated across different seasonal periods throughout the year, although effort is generally constrained to time periods of favorable weather during the late spring and summer.

Purse seine gear is the main gear used to harvest CPS. A purse seine is a large wall of netting deployed around an entire school of fish. It consists of floats adhered to the ''float line'' of the seine with a lead line threaded through rings at the bottom. When a school of target species is located, a skiff will encircle the school with one end of the seine attached to the skiff while the other end is attached to the fishing vessel itself, and circle back to the fishing vessel. Once the skiff reaches the vessel, the lead line at the bottom of the seine is pulled in, ''pursing'' the net closed on the bottom, thus preventing the fish from escaping when swimming downward.

In Oregon, vessels using purse seine gear to take any CPS except market squid must place a grate over the intake of the hold of the vessel to sort out larger species of fish. None of the openings between the bars in the grate may exceed 2⅜ inches (6.0 cm).

CPS fisheries, including Pacific sardine, are jointly managed by the PFMC and the states of Oregon and Washington. This is an open access fishery, although State permits are required. Pacific sardines (and Pacific mackerel) are actively managed stocks under the Federal CPS FMP with catch limits based on regular stock assessments. For sardine, PFMC establishes harvest guidelines that are allocated by seasonal periods, with releases on July 1st, September 15th and January 1st. If the period allocation is not attained, it and any remaining incidental fishery set aside is rolled to the next period. However, it cannot be rolled into the next fishing year.

The primary directed Pacific sardine fishery has been closed since 2015 because the estimated biomass has been below the harvest cutoff value of 150,000 metric tons. Incidental allowances for sardine are still allowed, along with live bait fishing. Starting in 2018, the CPS FMP has also allowed for ''minor'' directed fishing for sardines and other CPS when the primary directed fishery has closed. The allowance for minor directed fishing is that no vessel or person may land more than one metric ton per day, and vessels may not make more than one trip per day. Directed purse fishing for Pacific mackerel in Washington requires a State permit that cannot be transferred or stacked (*i.e.,* having more than one permit associated with a single vessel).

CA Tuna Purse Seine Fishery

The Category III CA tuna purse seine fishery targets yellowfin, Pacific bluefin, skipjack, and Pacific bonito mostly caught within Federal waters when the stocks occur in U.S. waters off California.

Purse seines are used, which are large walls of netting deployed around an entire school of fish. Purse seines consist of floats adhered to the ''float line'' of the seine with a lead line threaded through rings at the bottom. When a school of tuna is located, a skiff will encircle the school with one end of the purse seine attached to the skiff, while the other end is attached to the purse seine vessel. Once the skiff circles around and reaches the purse seine vessel, the lead line at the bottom of the seine is pulled in, ''pursing'' the net closed on the bottom and preventing the tuna from escaping when swimming downward.

Purse seines in this fishery can be more than 6,500 ft (1981.2 m) in length. The minimum length depends on the length of the purse seine vessel. The maximum depth where fish are targeted is about 300 m (984.3 ft). The mesh size used depends on the species targeted; it is important that the mesh size is not too large, in order to prevent gilling the fish, but is big enough to enable undersized fish to escape. The mesh size for this specific fishery ranges from 2–2¾ inches (5.1–7.0 cm).

All fisheries targeting highly migratory species (HMS), including tuna, require a Federal HMS permit, and additional state permits may apply. This is an open access fishery. The IATTC specifies trip limits and catch limits each year for most target species. Trip limits are based on the cumulative catches for each quarter, and are adjusted accordingly. There is also a requirement to submit, within 24 hours of landing, electronic landings receipts for Pacific bluefin tuna landings in California ports. The IATTC groups purse seine vessels into 2 fleet types, large seiners (Classes 4–6) and small seiners (Classes 1–3). The large seiners are held to more restrictive measures than the small seiners regarding area closures, closure dates, and catch limits. The smaller coastal purse seine vessels that plan to target HMS must register with the IATTC purse seine vessel registry. Logbooks are required, and all logbook and observer data is collected by the IATTC and NMFS. The State of California also requires that no Pacific bluefin tuna weighing less than 7.5 pounds (3.4 kg) may be sold, purchased, or processed.

WA/OR Lower Columbia River Salmon Seine Fishery

The Category III WA/OR Lower Columbia River salmon seine fishery is located in the lower mainstem of the Columbia River in both Oregon and Washington. This includes the stretch of the Columbia River between the Bonneville Dam and the river mouth to the Pacific Ocean. The fishery targets coho and adipose fin-clipped Chinook salmon. The season is from mid-August to late September.

These seine nets are made of 3-strand nylon with a stretched mesh size no larger than 3½ inches (8.9 cm). The seines cannot be longer than 200 fathoms (1,200 ft or 365.8 m) or have a depth greater than 200 meshes. The seine can include a chafing strip panel at the bottom of the net with a maximum panel depth of 5 feet (1.5 m). The chafing mesh cannot be greater than 3.5 inches (8.9 cm) for beach seines, and 5 inches (12.7 cm) stretched for purse seines. Red corks are required at 25 fathom (150 ft or 45.7 m) intervals and must contrast with other corks used on the net.

WDFW and Oregon Department of Fish and Wildlife (ODFW) jointly manage the limited-entry fishery and authorize participants. An Emerging Fishery license and Experimental Fishery Permit from Washington and an Experimental Gear Permit from Oregon are needed to participate. The managers divide the Columbia River into management zones. This fishery historically has taken place in Zones 1–5. Different quota limits are set for adipose fin-clipped Chinook and coho for beach seines and purse seines. Any wild Chinook or steelhead are required to be released. An observer is required by the States if requested.

WA Salmon Reef Net Fishery

The Category III WA salmon reef net fishery targets sockeye, Chinook, pink, coho, and chum salmon within Puget Sound. Currently reef nets are only allowed in an area around the San Juan Islands. The fishery usually starts around mid-September and extends into early November.

Reef nets are suspended between two anchored boats upstream from the river mouth that the salmon use to pass through on their way to freshwater spawning grounds. The bottom ropes are much lower than the bunt to create an incline, which gradually raises up to catch the salmon when passing over the net. The lead lines of the reef net are floating at all times in order to keep the net suspended at its required target depth. Reef nets are set so that the dominant daytime tide, ''flood'' tide, pushes the salmon to follow the lead lines over webbing and into the bunt of the net. Streamers are woven into the side and bottom ropes in order to potentially trick salmon by giving the illusion of an eelgrass bed. The net is pulled to the surface by a system of battery powered winches, all salmon trapped in the bunt are maneuvered into a live well of the outside vessel. The vessels and gear are anchored in one place for the duration of the summer or fall fishing seasons and set year after year in the same locations. The nets cannot be anchored to pilings. The reef nets are a maximum of 300 meshes on either side, have only two leads, and the mesh size is equal to or greater than 3.5 inches (8.9 cm). The leads are a maximum of 200 feet (61.0 m) in length from the anchor boat bows to the nearest end of the head buoys.

The fishery requires a limited entry permit that is transferable. WDFW, Puget Sound Treaty Tribes, and NMFS jointly manage salmon harvest, generally through season openings, mesh size limits, and limits regarding the amount of time and effort is allowed each day or night within the various areas. A portion of the fishery is managed by the Fraser River Panel, which is composed of representatives from the U.S. and Canada.

Fishermen cannot keep any unmarked (clipped adipose fin and a healed scar at the site of the clipped fin) Chinook during the season or any chum caught before October 1st. Fishermen must attend a fish friendly workshop to fish in certain areas. Fishermen must submit logbooks to WDFW for any retained Chinook salmon. Every fisherman is required to report lost netting to WDFW. Emergency regulation and in-season changes can occur based on stock allocations and conservation objectives.

CA Squid Dip Net Fishery

The Category III CA squid dip net fishery targets market squid in nearshore waters, typically over sandy bottom habitat. Generally, the fishery north of Point Conception, mainly around Monterey Bay, operates from April through September. The fishery south of Point Conception is most active from October through March. The fishery is closed during the weekends (from Friday noon until Sunday noon) to allow for uninterrupted spawning. The majority of the fishing effort takes place at night relatively close to shore. Landings decrease during warm water trends of El Niño years, as squid are affected by warm waters associated with these ecosystem conditions. Strong El Niño periods can lead to substantial

reductions in primary production. Catches usually increase during cooler La Niña phases and periods of increased upwelling.

Brail gear such as dip nets and scoop nets are used to harvest market squid in this fishery. Both of these are similar types of hand nets, which consists of a net or mesh basket, made from either wire, nylon mesh or cloth mesh, held open by a hoop. This hoop may or may not be connected to a handle that can differ in length. Generally speaking, hand nets with the hoop attached to a long handle are called dip nets and hand nets with no handle are called a scoop net. Lights of up to 30,000 watts may be used to attract squid.

Market squid is included under the PFMC CPS FMP, which specifies a management framework for all CPS. However, since 2005, this fishery is principally managed by the State of California under the Market Squid Fishery Management Plan (MSFMP). The squid brail fishery is a restricted access fishery, consisting of transferable and non-transferable market brail permits that must be renewed annually. There is also a market squid vessel permit that authorizes the use of round haul gear, including purse seine, drum seine, and lampara nets, along with use of brail gear. To use light to aggregate squid for commercial harvest, either a market squid brail permit, market squid vessel permit, or a market squid light boat permit is required. No permit is required for the transfer of squid at sea for live bait in an amount less than 200 pounds (90.7 kg) in a calendar day.

WA/OR/CA Albacore Surface Hook and Line/Troll Fishery

The Category III WA/OR/CA albacore surface hook and line/troll fishery targets North Pacific albacore tuna with troll or poll and line gear. This fishery is active throughout the continental west coast of the U.S. Prior to 2000, fishing for albacore was common off California. However, the stock has moved north, making Oregon and Washington the current focus for albacore tuna trolling on the West Coast. Fishing generally occurs 30–100 nautical miles (55.6–185.2 km) offshore. While fishing for albacore tuna is allowed year round, most effort occurs from late summer to early fall when fish are present in the area due to warm currents in the region. Surface albacore tuna fishing focuses on juvenile tuna that are found at or near the surface.

Two types of hook and line gear configurations are generally used along the West Coast for albacore tuna fishing. Troll includes one or more lines with lures or baited hooks attached that are drawn (''trolled'') through the water column. Pole-and-Line use rigid rods or poles with lines and baited hooks.

The majority of fishermen that troll for surface albacore tuna tow 10–20 lines. The lines are pulled through the surface waters at speeds of 4–8 knots (7.4–14.8 km/hr) to attract the albacore. Trollers that fish inshore use smaller boats (30–50 ft or 9.1–15.2 m in length) and spend 1 to 3 weeks at sea. Offshore fishermen use larger boats (50–90 ft or 15.2–27.4 in length) and spend 1 to 2 months at sea.

Both gears are open access and require a Federal HMS permit in addition to a state commercial fishing permit. The fishery is managed under the HMS FMP by the PFMC. HMS permits are issued to a specific vessel, are non-transferable, and are valid for two years. Federal logbooks are required.

The albacore fishery is also managed by two international organizations, the IATTC and the Western and Central Pacific Fisheries Commission. Additionally, the U.S.-Canada Albacore Treaty bilateral agreement allows for U.S. vessels to fish for albacore tuna in Canadian waters seaward of 12 nautical miles (22.2 km) from shore, and allows Canadian vessels to fish for albacore tuna in U.S. waters seaward of 12 nautical miles (22.2 km) from shore. The treaty also allows Canadian vessels to use certain U.S. ports to obtain supplies and services and to land fish. Similarly, it allows U.S. vessels to use certain Canadian ports for the same purposes. In addition, the treaty calls for the exchange of fisheries data between the two governments. U.S. vessels wishing to fish in Canadian waters pursuant to the treaty must register with NMFS seven days prior to the first planned fishing day in Canada.

CA/OR/WA Salmon Troll Fishery

The Category III CA/OR/WA salmon troll fishery primarily targets Chinook and coho salmon in Oregon and Washington. Retention of coho salmon is prohibited in California, leaving Chinook as the primary target for the California fishery. Pacific halibut may also be caught and landed incidentally in all three states under an incidental take permit. Effort occurs across all three U.S. West Coast States, primarily during the summer and fall, with limited effort occurring during the spring in certain areas during certain years. In California, the majority of effort takes place in the central and northern coast, but can extend all the way into the Southern California Bight. Generally, most of the salmon trolling effort occurs within 15–20 nautical miles (27.8–37.0 km) from shore including both State and Federal waters.

Trollers fish for salmon by towing lures or baited hooks through the water. Fishing lines are rigged to outriggers that prevent the lines from being entangled or caught in the vessel prop. Up to six stainless steel lines are fished from each outrigger, each of these lines containing up to four baited hooks or lures weighted to depth by 10–50 pound (4.5–22.7 kg) weights. The barbless lures can be fished from just under the surface, down to 80 fathoms (480 ft or 146.3 m), trolled at speeds of 1–4 knots (1.9–7.4 km/hr). Natural bait used includes anchovy or herring. Fishing depth, troll speed, type of lure, and area fished all help to determine the number and species of salmon caught. For example, Chinook salmon are generally caught deeper than coho salmon.

Ocean salmon fisheries conducted off of California, Oregon, and Washington are managed under the Federal Pacific Coast Salmon FMP along with individual state regulations. The Salmon FMP provides a framework for managing ocean salmon fisheries in a sustainable manner as required under the Magnuson–Stevens Fishery Conservation and Management Act through the use of conservation objectives, annual catch limits, and other status determination criteria described in the FMP. Fishermen in all three U.S. West Coast states are issued limited entry permits. It is important to note that quota and size limits change every season, as do the timing and duration of seasons, depending on stock assessments and other management considerations.

WA/OR/CA Groundfish, Bottomfish Longline/Set Line Fishery

The Category III WA/OR/CA groundfish, bottomfish longline/set line fishery primarily targets sablefish using bottom longline gear, especially during the main season from April through October, however, rockfish are also targeted. There are over 60 different species of rockfish that may be taken, although a handful of species make up the majority of the catch. This includes thornyheads, rougheye, and blackgill rockfish. Other species commonly landed include lingcod, grenadier, and skates. The fishery takes place all along the U.S. West Coast at depths that range from 11–722 fathoms (66–4,332 ft or 20.1–1, 20.4 m).

The gear consists of a mainline made of multifilament line/rope or monofilament line that is typically spooled on a hydraulic drum and set from the stern of a vessel. The main line extends for up to two nautical miles

horizontally along the seafloor. It can be fitted with up to 2,000 small gangions tied at intervals along the mainline terminating in a baited hook. The longline is marked on the ocean surface with a float and flagpole at each end that is anchored to the sea floor. Any gear that is not attached to the vessel must be attached to buoys floating on the surface and marked on the upper half with the commercial fishing license identification number at least 2 inches (5.1 cm) in height.

Three options exist under which sablefish or other groundfish such as rockfish may be the target species or incidentally taken. These include: a limited entry permit with fixed gear endorsement and a sablefish quota; a limited entry permit with fixed gear endorsement without a sablefish quota that includes trip limits for different species; and an open access fishery that includes trip limits for different species. Recent regulations in the Groundfish Catch Share sector permit trawl fishermen with Individual Fishery Quotas to harvest sablefish or other groundfish by using other gear types (aka gear switching) that include bottom longlines. There are applicable Federal and state regulations that describe where fishing can take place, including various area and time closures (*e.g.,* Rockfish Conservation Areas).

CA Halibut Bottom Trawl Fishery

The Category III CA halibut bottom trawl fishery generally targets California halibut in Federal waters predominantly off central California from Point Reyes southward to Point Sal, and throughout the Southern California Bight. Very little effort occurs in northern California. While this is primarily a daytime fishery, some activity occurs at night.

The majority of effort in southern California occurs within the California Halibut Trawl Grounds (CHTG), which is limited to State of California waters from 1–3 nm (1.9–5.6 km) along the mainland shore between Port Arguello and Point Mugu. There are four sub-areas within the CHTG that are permanently closed, resulting in roughly 87 percent of the CHTG available for fishing during the allowable trawl season from June 16 to March 14, though not all of that 87 percent is fishable due to bottom debris and obstructions left from oil extraction or rocky reefs. Trawling for California halibut can be conducted year round in Federal waters, but is prohibited in State of California waters outside the CHTG.

Vessels use otter trawl gear consisting of two doors, with one door deployed on each side of the net to spread the mouth of the net open. The mouth of the net is held open vertically with floats attached to the head rope (top of the net) and weights on the footrope (bottom of the net). The majority of trawlers in southern California use a ''dropped-loop'' style chain that consists of chain link loops that hang from the footrope to provide weight, while decreasing the surface area that comes in contact with the bottom.

Only light touch trawl gear adhering to the following gear specifications may be used to catch California halibut in the CHTG. The gear must consist of trawl doors weighing no more than 500 pounds (226.8 kg). The headrope can only be up to 90 feet (27.4 m) in length and may consist of chain, rope, or wire. The footrope may consist of rope or wire. Any chain attached to the footrope shall not exceed ¼ inch (0.6 cm). There are no rollers or bobbins on the footrope. The webbing material itself is up to 7 mm (0.3 inches) in diameter, and the mesh size for the codend is a minimum of 7.5 inches (19.1 cm). When trawling in Federal waters, the codend net mesh size is a minimum of 4.5 inches (11.4 cm).

This is a state managed fishery requiring a limited entry non-transferable California halibut bottom trawl vessel permit and a commercial fishing license. The minimum size limit is 22 inches (55.9 cm) total length for landed California halibut. Logbook reporting is mandatory.

When targeting California halibut in Federal waters, trawlers are subject to Federal groundfish regulations such as conservation area restrictions and requirements, daily and monthly incidental trip limits for groundfish species, Federal at-sea observer coverage, and a vessel monitoring system requirements to monitor compliance with closed areas. There is no limit on the amount of catch that can be landed under a California halibut permit; however, individuals who possess a Federal groundfish trawl permit, but not a halibut trawl permit, can only land up to a 150 pounds (68.0 kg) of California halibut incidentally.

CA Sea Cucumber Trawl Fishery

The Category III CA sea cucumber trawl fishery predominantly targets the California sea cucumber/giant red sea cucumber, although warty sea cucumber is also harvested on rare occasions. Trawling for any sea cucumber is only allowed in Southern California, from Point Conception to San Diego. The trawl fishery operates primarily in waters between depths of 30–70 fathoms (180–420 ft or 54.9–128.0 m), with an average depth of 45 fathoms (270 ft or 82.3 m).

Trawling for California sea cucumber is open year round in Federal waters. Any trawling for warty sea cucumber is closed for fishing in Federal waters from March 1 until June 14. Sea cucumber trawling is closed in the CHTG, which comprise California State waters not less than one nm from shore between Point Arguello and Point Mugu, from March 1 until June 15. Additional information regarding Federal area closures can be found at: *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/west-coast-groundfish-closed-areas*.

In California, trawl nets consist of either single-walled or double-walled cod ends deployed via a single or double rigged trawl vessel with mesh sizes ranging from 1.75–2.25 inches (4.5–5.7 cm). In Federal waters, trawl nets used to take California sea cucumber must follow a minimum allowable mesh size of 4.5 inches (11.4 cm). In the CHTG, use of ''light touch'' trawl gear is required.

The California sea cucumber fishery is a limited entry fishery managed by the State of California with transferable permits. There are currently no catch limits, or other size/sex-based restrictions. Historically, it was viewed as an incidental species taken in the California halibut and ridgeback prawn trawl fisheries. When separate sea cucumber dive and trawl permits were established in 1997, a provision was created that allowed individuals purchasing a sea cucumber trawl permit to either keep the permit as a trawl permit or convert the permit into a dive permit. The conversion of a sea cucumber dive permit to a trawl permit is not permissible. The permit is tied to the operator, and there is a requirement to submit a daily trawl log.

WA/OR/CA Shrimp Trawl Fishery

The Category III WA/OR/CA shrimp trawl fishery in all three U.S. West Coast states generally occurs in Federal waters (3–200 nm or 5.6–370.4 km); however, there is a small amount of effort in Oregon state waters. The main target in the coastal fishery is pink shrimp, although other shrimp species such as ridgeback and golden prawns are landed as well. Pink shrimp are generally caught at depths of between 40–150 fathoms (240–900 feet or 73.2–274.3 m) on sandy and muddy bottoms during daylight hours due to their vertical migration to the ocean floor during the day. The fishery is closed in all three states from November 1 through March 31. The main target in the coastal fishery in southern California south of

Point Conception is ridgeback prawn, and this species is caught at depths between 10–110 fathoms (60–660 ft or 18.3–201.2 m) on sandy and muddy bottoms. The fishery for ridgeback and golden prawns in southern California is closed from June 1 through September 31.

Fishing effort also occurs in Puget Sound, Washington. The Puget Sound shrimp trawl focuses on northern pink shrimp in the Strait of Juan de Fuca. The main target species in the San Juan Islands are coonstripe shrimp, northern pink shrimp, and sidestripe shrimp, although humpback shrimp can compose a large portion of the catch in some years. The season generally takes place from May 1 through September 30 in the Strait of Juan de Fuca and from May 16 to October 15 in the San Juan Islands. Trawling cannot occur in waters shallower than 100 feet (30.5 m) in Puget Sound.

In California, Oregon, and Washington, benthic trawl gear is used. In Northern California, Oregon, and Washington, double rigged (*i.e.,* having two otter trawl nets) vessels with semi-pelagic fine-meshed shrimp nets are used the majority of the time. In southern California, single rigged (one net) vessels are most common. The net contains a footrope (roller/ladder style) on average 25 feet (7.6 m) in length, configured in such a way that it is elevated above the sea floor at 1–3 feet (0.3–0.9 m).

A bycatch reduction device (BRD) consisting of either a rigid gate excluder (preferred) or a soft-panel excluder, along with footrope lighting devices, can be mandatory constituents of the gear configurations as well. The minimum mesh size for California shrimp and prawn trawl fisheries is 1 ⅜ inches (3.5 cm) while it is 1 ½ inches (3.8 cm) in Puget Sound. Only beam trawls are allowed in Puget Sound; in the Strait of Juan de Fuca, the maximum beam size is 60 feet (18.3 m), while the maximum beam size in the San Juan Islands is 25 feet (7.6 m).

The fishery is principally State-managed across the U.S West Coast, with different permitting, landing, and mesh size requirements depending upon location. California, Oregon, and Washington share mandatory Federal regulations limiting the take of eulachon, salmon and groundfish species that commonly occur as incidental catch. The coastal shrimp fishery requires a limited entry shrimp trawl fishery permit in all three respective states, except that the southern pink shrimp fishery (south of Pt. Conception) and ridgeback prawn fisheries are both open access fisheries. The States of Washington, Oregon, and California established a common season and a maximum count of 160 pink shrimp per pound (72 per kg) regulation to minimize regulatory conflict. Daily and monthly trip limits, logbooks, use of a vessel monitoring system, onboard observer coverage and area restrictions regarding groundfish essential fish habitat (EFH) is also mandatory.

The harvest of shrimp in Puget Sound is co-managed by Washington State and the Puget Sound Treaty Tribes. The fishery is managed by emergency regulation and is permanently closed unless opened by emergency regulation. Fishing in the area requires a limited entry Puget Sound shrimp trawl license. Specific quotas are established each year for the Strait of Juan de Fuca and the San Juan Islands. State fishery observers are required on 10 percent of the commercial shrimp trawl trips in Puget Sound. BRDs to decrease bycatch of spot shrimp are not required, but are encouraged and utilized by some participating vessels. License holders must maintain shrimp beam trawl logbooks.

WA/OR/CA Groundfish Trawl Fishery

The Category III WA/OR/CA groundfish trawl fishery occurs year round in Federal waters (3–200 nm or 5.6–370.4 km) off Washington, Oregon, and California. There are two sectors; namely the Pacific whiting (whiting) and non-Pacific whiting sector. The whiting sector generally targets whiting farther off the coast than other groundfish species. Fishing consists of catcher-processor vessels that catch and process whiting, whereas motherships receive whiting from other vessels and process it. Shore-side vessels catch and deliver whiting to a shore-side plant for processing.

The non-whiting sector targets a variety of groundfish species, with the main and most profitable being sablefish, widow rockfish, yellowtail rockfish, thornyheads, Dover sole, petrale sole, and lingcod. The bulk of the biomass resulting from this fishery is caught off Oregon and Washington. Trawling is not allowed in Rockfish Conservation Areas (RCA), Cowcod Conservation Areas, and EFH designated areas.

Trawl gear is a cone or funnel-shaped net either towed through the water column or drawn over the ocean floor by the vessel. Two types of trawl gear are used in this fishery: midwater and bottom trawl nets. The gear used to target whiting is midwater trawl nets. In the non- whiting sector, midwater trawl and bottom trawl nets are used to target groundfish. Midwater trawl gear is primarily used to target widow and yellowtail rockfish, while bottom trawlers typically target sablefish, Dover sole, thornyheads and other flatfish species.

Large footrope gear with a diameter larger than eight inches (20.3 cm) allows bottom trawlers to access rockier areas by bouncing the bottom of the trawl net over larger obstructions without tearing. Small footrope gear with a diameter of eight inches (20.3 cm) or smaller is also used on bottom trawls. Pelagic trawl gear has unprotected footrope gear that is not encircled with chains, rollers, bobbins, or other material. Bottom trawl nets are required to have a minimum mesh size of 4½ inches (11.4 cm), and pelagic trawl nets are required to have a minimum mesh size of 3 inches (7.6 cm).

The fishery is jointly managed by NMFS and U.S. West Coast states through the PFMC. There also exists a bilateral Pacific Whiting Agreement between the U.S. and Canada for managing the Pacific whiting coastal stock. A transferable, limited entry west coast trawl permit known as a ''Catch Shares'' permit that involves an Individual Fishery Quota system, is required in order to participate in this fishery. Federal observer coverage, logbooks, and vessel monitoring systems are mandatory.

All U.S. commercial fishing vessels are required to have permits from the appropriate state agency in order to land groundfish in Washington, Oregon, and California. The use of bottom trawl footrope gear with a footrope diameter larger than 19 inches (48.3 cm) is prohibited. Only small footrope gear is allowed shoreward of a line approximating the 100 fathom (600 ft or 182.9m) depth contour, which is intended to reduce trawl access to newly-designated overfished species and their rockier habitats. States may implement parallel measures within their state waters (0–3 nm or 0–5.6 km).

WA/OR/CA Hagfish Pot Fishery

The Category III WA/OR/CA hagfish pot fishery targets Pacific hagfish and black hagfish. Even though hagfish generally occur as shallow as 9 fathoms (54 ft or 16.5 m), hagfish are found across most of the outer continental slope in marketable quantities. Hagfish are generally found in muddy substrate, but may occupy a variety of bottom types.

In Washington, the fishery is open year round in Pacific Ocean waters only, and effort is prohibited in waters less than 50 fathoms (300 ft or 91.4 m). In Oregon, the fishery is open year round, and there is no depth limit at which the

fish may be targeted. The ports with the most landings are on the south coast of Oregon. The fishery peaks during spring and fall, with less effort during the winter. In California, the fishery is open year round, but similar to Oregon it peaks during the spring and fall with less effort in the winter due to poor weather and fishermen participating in the Dungeness crab fishery. There is no depth limit to where the fish may be targeted, but high hagfish densities are generally located in deeper waters. Effort occurs statewide from southern California to northern California.

The gear consists mostly of high-volume buckets (5 gallon or 18.9 liters) or barrel gear (large plastic drums with removable ends), although Korean-style traps are also used. Korean-style traps are small and tubular traps with little volume; as a result, hundreds are needed to achieve a marketable yield. All traps consist of an opening (entrance tunnel), with some states requiring specified dimensions, a cavity drilled with a number of smaller holes (dewatering and escape holes), and at least one escape exit, with some states requiring specified dimensions.

In Washington, no more than a 100 barrels or buckets are used at any one time. They can be set individually or strung together by a common ground line. The entrance tunnel is no larger than 11 inches^2 (71.0 cm^2) and can be any shape. There must be at least one escape exit that has an opening of no less than 9½ inches^2 (61.3 cm^2). The gear is marked with buoys equipped with a pole, flag, radar reflector and a light. When ground lines are used, the end marker buoys display the identification number of the permittee and the number of pots on the ground line.

In Oregon, fishermen use barrel gear, setting up to 200 barrels. There is no minimum size requirement for the escape hole, but the use of a hole with ⅝ inch (1.6 cm) in diameter is nearly universal. A groundline with 10–25 barrels is set and soaked for 4 or more hours. The biodegradable opening has a minimum diameter of 3 inches (7.6 cm).

In California, fishermen can use (gear limited per vessel) 25 barrels, 200 buckets, or 500 Korean-style traps, but never a combination of gear types. The escape holes are at least 9/16 inches (1.4 cm) in diameter to allow smaller hagfish to escape. Barrels are 45 inches (114.3 cm) long and the diameter is 25 inches (63.5 cm) or less. Barrels may be attached to a maximum of three groundlines. There is no limitation on the number of bucket groundlines. Marking buoys must have the fisherman's commercial license number and vessel commercial registration number.

In Washington, the fishery is open access managed as a trial fishery under the state's Emerging Commercial Fishery Act requiring an emerging commercial fishery license and a hagfish pot trial fishery permit. There is no limit to the amount of hagfish that can be landed, although no incidental catch of other species is allowed. Fishermen must notify the state 24 hours in advance of landing for dockside sampling, and must submit logbooks once a month.

In Oregon, the fishery is a state-managed open access fishery requiring a hagfish permit and submission of logbooks quarterly. An annual harvest guideline of 1.6 million pounds (726,000 kg) exists for the state, which could trigger additional management measures.

In CA, the fishery is a state-managed open access fishery requiring a general trap permit for all participants. Logbooks are not required.

WA/OR Shrimp Pot/Trap Fishery

The Category III WA/OR shrimp pot/trap fishery targets coonstripe shrimp and spot shrimp in both Oregon and Washington. However, humpback and pink shrimp are also targeted to a lesser degree in Washington. Shrimp pot fishing in Oregon, which primarily takes place near the Oregon/Washington border, is allowed year round although most landings occur in the spring and summer months. Limited fishing effort in southern Oregon has only recently developed in the last few years.

Shrimp pot fishing in Washington (generally divided into a spot shrimp and non-spot shrimp pot fishery) is managed as separate fisheries with the coastal Washington shrimp pot fishery west of the Bonilla-Tatoosh line and the Puget Sound fishery east of the Bonilla-Tatoosh line. Coastal shrimp pot fishing generally occurs 20–40 miles (37.0–74.1 km) offshore at depths of 70 to 100 fathoms (420–600 ft or 128.0–182.9 m). Puget Sound is divided into 6 management regions. Commercial fishing in Puget Sound can only commence once the recreational seasons have ended, generally running from early July through September. Effort is concentrated in the Strait of Juan de Fuca and near the San Juan Islands for both spot shrimp and non-spot shrimp, but a limited amount of fishing also occurs in Central Puget Sound.

In Oregon, traps are tapered and circular in shape, with a ½-inch (1.3 cm) square cord mesh over a steel frame 39 inch (99.1 cm) diameter and 16 inches (40.6 cm) tall. The entrance tunnels must be between 1.5 and 3 inches (3.8 and 7.6 cm) at the widest point. The law requires a destructive device on traps that degrades rapidly enough to facilitate escape of a substantial proportion of all species confined in the trap from any trap that cannot be raised. The typical configuration involves a set of 10–15 traps connected to a long line weighted at both ends and marked with a polyball or flagpole. In Oregon and coastal Washington, each terminal end must be marked with a pole, flag, light, radar reflector, and a buoy showing clear identification of the owner or operator.

In coastal Washington, pots/traps cannot have a bottom perimeter greater than 153 inches (12.85 ft or 3.9 m) or a height greater than 24 inches (61.0 cm). The minimum mesh size is ⅞ inch (2.2 cm). All pots are required to have an escape mechanism. A string of up to 50 pots is typical. The pots are left to soak for a minimum of 24 hours. In Puget Sound, the maximum pot perimeter is 10 feet (3.0 m) and a maximum height of 18 inches (45.7 cm). The minimum mesh size is ½ inch (1.3 cm), although a 1⅛ inch (2.9 cm) stretch measure is allowable for flexible mesh pots, and shrimp pot buoys are required to be orange.

In Oregon, the shrimp pot fishery is an open access permit fishery with minimum landing size requirements and obligations to retain and land all target species, along with mandatory logbook reporting. There are no individual or total landing quotas.

In Washington, shrimp pot fisheries are limited entry fisheries, but permits are transferable. There are annual harvest quotas and regional harvest shares established annually through co-management agreements with Tribes and recreational fishermen. Minimum landing size requirements, landing obligations, and logbook reporting are required. In Puget Sound, the fishery is managed through individual quotas for each license and with biweekly quotas for each area. Individuals cannot hold more than two licenses. Each license allows the designated vessel to fish with a maximum of 100 pots per area.

WA Puget Sound Dungeness Crab Pot/Trap Fishery

The Category III WA Puget Sound Dungeness crab pot/trap fishery effort takes place in inland waters typically less than 20 fathoms (120 ft or 36.6 m) throughout the Salish Sea. Commercial Dungeness crab fishing is allowed in the Strait of Juan de Fuca, San Juan Islands, and northern Puget Sound to Point Edwards. Fishing is not allowed in central and southern Puget Sound. The fishery generally runs from October 1st

through April 15th each year, although the duration of each season can vary depending on a number of factors.

Fishermen may use crab pots or crab ring nets; however, most participants use pots. Crab pots can have a maximum volume of 13 cubic feet (368.1 liters). The pots consist of two or more escape rings or ports of at least 4¼ inches (10.8 cm) inside diameter, located in the upper half of the pot. The pots are set individually and not connected to one another. Each pot is required to have a pot tag attached and a buoy tag attached to the buoy. Each pot tag must be permanently marked with the license owner's name or license number and telephone number. The buoys may not be both red and white to ensure that commercial and recreational buoys can be distinguished (recreational crab buoys are white and red). Buoys used to mark pots have to be able to float at least 5 pounds (2.3 kg).

The Puget Sound Dungeness crab pot/trap fishery is a limited entry fishery. Fishermen may hold more than one license, and current license holders may transfer an existing license to a new party. Up to three licenses can be stacked on a single designated vessel. Each Puget Sound Dungeness crab license has a maximum limit of 100 pots or ring nets. Individual areas within the Salish Sea have a maximum number of pots allowed per license. Puget Sound crab harvest is co-managed by the State of Washington and the Treaty Tribes.

CA Nearshore Finfish Trap Fishery

The Category III CA nearshore finfish trap fishery targets nearshore species (cabezon, California sheephead, greenlings, and black, blue, brown, calico, China, copper, gopher, grass, kelp, olive, quillback, and treefish rockfishes) statewide using pot gear in shallow depths from 5–30 fathoms (30–180 ft or 9.1–54.9 m), usually within state waters. Because these species are caught for the live fish market, the gear is closely monitored with fishermen checking their gear every few hours to ensure quality product.

Pots used in the nearshore fishery vary and may be the same pots used in other fisheries (*e.g.,* rock crab, CA spiny lobster, spot prawn). Finfish pots have a minimum mesh size of 2 x 2 inches (5.1 x 5.1 cm) and range in size from 2–3 feet (0.6–0.9 m) on a side and 1–2 feet (0.3–0.6 m) high. Fishermen targeting nearshore species are limited to 50 traps within state waters along the mainland shore. Finfish pots cannot be fished during the period from one hour after sunset to one hour before sunrise. Whether pots are used individually or in a string, it is mandatory that the surface end(s) be marked with a buoy. The buoy is marked with the commercial fishing license identification number followed by the letter ''Z''.

California's nearshore fishery is managed under the state's Nearshore Fishery Management Plan (NFMP) as well as the Federal Pacific Coast Groundfish Management Plan and uses pots as well as hook and line gears in state waters. In addition to a state commercial fishing license, a regional Nearshore Fishery Permit or Deeper Nearshore Species Fishery Permit is required, as is a General Trap Permit and regional Nearshore Fishery trap endorsement (no trap endorsement is required for taking, blue, black, brown, calico, copper, olive, quillback and treefish rockfish). Most nearshore fishermen operate under the Open Access sector of the Federal groundfish fishery, although some have limited entry permits. Prior to 2021, the commercial fishery was closed in March/April, but became year round in 2021.

Number of Vessels/Persons

NMFS proposes to update the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 143 to 150 vessels/persons;

Category II

- HI shallow-set longline fishery from 11 to 14 vessels/persons;
- American Samoa longline fishery from 13 to 18 vessels/persons;
- HI shortline fishery from 5 to 11 vessels/persons;

Category III

- HI inshore gillnet fishery from 29 to 27 vessels/persons;
- HI lift net fishery from 15 to 14 vessels/persons;
- HI throw net, cast net fishery from 15 to 16 vessels/persons;
- HI seine net fishery from 17 to 16 vessels/persons;
- American Samoa tuna troll from 13 to 3 vessels/persons;
- HI troll fishery from 1,380 to 1,293 vessels/persons;
- HI rod and reel fishery from 237 to 246 vessels/persons;
- Commonwealth of the Northern Mariana Islands tuna troll fishery from 40 to 9 vessels/persons;
- Guam tuna troll fishery from 398 to 465 vessels/persons;
- HI kaka line fishery from 5 to 6 vessels/persons;
- HI vertical line fishery from none recorded to 5 vessels/persons;
- HI crab trap fishery from 4 to 3 vessels/persons;
- HI lobster trap fishery from none recorded to less than 3 vessels/persons;
- HI crab net fishery from none recorded to 3 vessels/persons;
- HI kona crab loop net fishery from 20 to 24 vessels/persons;
- American Samoa bottomfish handline fishery from 9 to 6 vessels/persons;
- Commonwealth of the Northern Mariana Islands bottomfish fishery from 11 to 12 vessels/persons;
- Guam bottomfish fishery from 67 to 84 vessels/persons;
- HI bottomfish handline fishery from 385 to 404 vessels/persons;
- HI inshore handline fishery from 206 to 192 vessels/persons;
- HI pelagic handline fishery from 300 to 311 vessels/persons;
- HI bullpen trap fishery from none recorded to less than 3 vessels/persons;
- HI black coral diving fishery from none recorded to less than 3 vessels/persons;
- HI handpick fishery from 25 to 28 vessels/persons;
- HI lobster diving fishery from 12 to 10 vessels/persons;
- HI spearfishing fishery from 82 to 79 vessels/persons;
- CA nearshore finfish trap from 93 to 42 vessels/persons; and
- HI aquarium collecting fishery from 34 to 39 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS corrects an administrative error and proposes to add the HI stock of fin whale and Guadalupe fur seal to the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery. Both stocks were added to the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component) in the 2018 LOF. The Western Pacific Pelagic longline fishery (HI shallow-set component) is a component of the Category II HI shallow-set longline fishery. As noted in Table 3, the list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters. Therefore, NMFS proposes to add the two stocks to the U.S. waters component of the fishery, the Category II HI shallow-set longline fishery.

NMFS proposes to add the CA breeding stock of Northern elephant seal to the list of species/stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery. In 2020, a mummified northern elephant seal in California was reported entangled with lines that included a red plastic CA Dungeness crab buoy tag (Carretta *et al.,* 2022).

NMFS proposes to add the Western U.S. stock of Steller sea lion to the list of species/stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery based on two observed mortalities in 2019 (Freed *et al.,* 2021).

NMFS proposes to add the North Pacific stock of Pacific white-sided dolphin to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea Aleutian Islands pollock trawl fishery based on two observed mortalities in 2019 (Freed *et al.,* 2021).

NMFS proposes to remove the Central North Pacific stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery. From 2015–2019, there have been no reported or observed M/SI within the EEZ in the HI deep-set longline fishery (Carretta *et al.,* 2022).

NMFS proposes to remove the unknown stock of short-finned pilot whale from the list of species/stocks incidentally killed or injured in the Category II American Samoa longline fishery. From 2015–2019, there have been no reported or observed M/SI in the American Samoa longline fishery (Carretta *et al.,* 2022).

NMFS proposes to revise marine mammal stock names on the list of species/stocks incidentally killed or injured for consistency with the current stock names in the SARs as follows:

Category II AK Bristol Bay Salmon Drift Gillnet Fishery

- Spotted seal, AK to spotted seal, Bering;

Category II AK Bristol Bay Salmon Set Gillnet Fishery

- Harbor seal, Bering Sea to harbor seal, Bristol Bay; and
- Spotted seal, AK to spotted seal, Bering.

Following consultation with the U.S. Fish and Wildlife Service, NMFS also proposes to revise marine mammal stock names on the list of species/stocks incidentally killed or injured for consistency with the current stock names in the SARs as follows:

Category II CA Halibut/White Seabass and Other Species Set Gillnet (>3.5 in Mesh) Fishery

- Sea otter, CA to southern sea otter, CA;

Category II AK Kodiak Salmon Set Gillnet Fishery

- Sea otter, Southwest AK to northern sea otter, Southwest AK;

Category II AK Cook Inlet Salmon Set Gillnet Fishery

- Sea otter, South central AK to northern sea otter, South Central AK;
- Category II AK Prince William Sound salmon drift gillnet fishery Sea otter, South Central AK to northern sea otter, South Central AK;

Category II CA Spiny Lobster Fishery

- Southern sea otter to southern sea otter, CA, and

Category III AK Prince William Sound Salmon Set Gillnet Fishery

- Sea otter, South central AK to northern sea otter, South Central AK.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS proposes to add the MS Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Gulf of Mexico gillnet fishery. In 2015 and 2016, two dead stranded dolphins from the MS Sound, Lake Borgne, Bay Boudreau stock were recovered with gillnet gear markings (Hayes *et al.,* 2022). Both animals were recovered on an Alabama coastline where only commercial gillnets have access to the surrounding Gulf waters, and recreational gillnets are prohibited.

NMFS proposes to add the Barataria Bay Estuarine System (BBES) stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. In 2015, chaffing gear from a commercial shrimp trawl was recovered in a stranded dolphin carcass. The dolphin likely ingested the gear while removing gilled fish that were caught in the trawl net. This animal was ascribed to both the BBES and Western Coastal stocks (Hayes *et al.,* 2022).

NMFS proposes to add both the Caloosahatchee River and Waccasassa Bay, Withlacoochee Bay, Crystal Bay stocks of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category III Gulf of Mexico blue crab trap/pot fishery based on two serious injuries and one mortality. In 2019, a seriously injured dolphin (Callosahatchee River stock) was disentangled from commercial blue crab trap/pot gear and released alive. In addition, during 2017, one mortality (Callosahatchee River stock) occurred due to entanglement in commercial blue crab trap/pot gear (Hayes *et al.,* 2022). Also in 2017, a dolphin (Waccasassa Bay, Withlacoochee Bay, Crystal Bay stock) was seriously injured due to entanglement in commercial blue crab trap/pot gear (Hayes *et al.,* 2022).

NMFS proposes to add the Galveston Bay, East Bay, Trinity Bay stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category III U.S. Atlantic, Gulf of Mexico trotline fishery. In 2018, a female dolphin observed with a young calf died due to an entanglement in trotline gear (Hayes *et al.,* 2022).

NMFS corrects an administrative error and proposes to remove the Northern Gulf of Mexico coastal stock of bottlenose dolphin from the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico stone crab fishery. Upon review of records, it appears this stock was erroneously added. There have been no documented mortalities or injuries of this stock in this fishery.

NMFS corrects an administrative error and proposes to remove the Eastern Gulf of Mexico coastal stock of bottlenose dolphin from the list of species/stocks incidentally killed or injured in the Category III FL West Coast sardine purse seine fishery. Upon review of records, it appears this stock was erroneously added. There have been no documented mortalities or injuries of this stock in this fishery. The list of species/stocks incidentally killed or injured in this fishery is updated to state none documented.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS proposes to update the estimated number of HSFCA permits for high seas fisheries (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 39 to 30 HSFCA permits;
- Western Pacific pelagic (HI deep-set component) longline fishery from 143 to 150 HSFCA permits;

Category II

- Pacific highly migratory species drift gillnet fishery from 5 to 3 HSFCA permits;
- Atlantic highly migratory species trawl fishery from 1 to 0 HSFCA permits;
- Western and Central Pacific Ocean tuna purse seine fishery from 20 to 34 HSFCA permits;
- Western Pacific pelagic purse seine fishery from 1 to 0 HSFCA permits;
- South Pacific albacore troll longline fishery from 6 to 8 HSFCA permits;
- Western Pacific pelagic (HI shallow-set component) longline fishery from 11 to 14 HSFCA permits;
- Atlantic highly migratory species handline/pole and line fishery from 1 to 0 HSFCA permits;
- Pacific highly migratory species handline/pole and line fishery from 44 to 45 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from 9 to 7 HSFCA permits;
- Western Pacific pelagic handline/pole and line fishery from 5 to 1 HSFCA permits;
- South Pacific albacore troll fishery from 20 to 24 HSFCA permits;
- Western Pacific pelagic troll fishery from 6 to 7 HSFCA permits;

Category III

- Pacific highly migratory species longline fishery from 111 to 127 HSFCA permits;
- Pacific highly migratory species purse seine fishery from 5 to 2 HSFCA permits;
- Northwest Atlantic trawl fishery from 4 to 3 HSFCA permits; and
- Pacific highly migratory species troll fishery from 107 to 93 HSFCA permits.

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS corrects an administrative error and proposes to add the HI stock of rough-toothed dolphin to the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic longline fishery (HI deep-set component). The Western Pacific Pelagic longline fishery (HI deep-set component) is a component of the Category I HI deep-set longline fishery. As noted in Table 3, the list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters. The HI stock of rough-toothed dolphin is included on the list of species and/or stocks killed or injured Category I HI deep-set longline fishery and therefore NMFS proposes to add the stock to in the high seas component (Category I Western Pacific Pelagic (HI deep-set component) fishery).

NMFS proposes to remove the Central North Pacific stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic longline fishery (HI deep-set component). As noted in Table 3, the list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters. From 2015–2019, there have been no reported or observed M/SI within the EEZ in the HI deep-set longline fishery (Carretta *et al.,* 2022). Therefore, NMFS proposed to remove the stock from both the HI deep-set longline fishery and the Western Pacific Pelagic longline fishery (HI deep-set component).

NMFS proposes to remove three stocks from the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component). The three stocks are: (1) Ginkgo-toothed beaked whale, (2) CA breeding stock of Northern elephant seal and (3) CA/OR/WA stock of short-beaked common dolphin. From 2015–2019, there were no observed moralities or injuries of these stocks in the HI shallow-set component of the Western Pacific Pelagic longline fishery (Carretta *et al.,* 2022).

NMFS proposes to remove the unknown stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category II Western and Central Pacific Ocean tuna purse seine fishery. From 2015–2019, there were no observed moralities or injuries of these stocks in the Western and Central Pacific Ocean tuna purse seine fishery (Carretta *et al.,* 2022).

NMFS proposes to revise the following marine mammal stock names to ''unknown'' stock on the list of species/stocks incidentally killed or injured in the Category II Western and Central Pacific Ocean tuna purse seine fishery based on more recent observer data:

- Bottlenose dolphin, HI pelagic
- Bryde's whale, HI
- False killer whale, HI pelagic
- Fin whale, HI
- Long-beaked common dolphin, CA
- Minke whale, HI
- Pygmy killer whale, HI
- Sei whale, HI, and
- Sperm whale, HI.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to gather more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact

information included above in Where can I find more information about the LOF and the MMAP? section).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2019. This list includes all species and/or stocks known to be killed or injured in a given fishery, but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by adding a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table with an asterisk (*) after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
Longline/Set Line Fisheries:		
HI deep-set longline * ^	150	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] False killer whale, MHI Insular. False killer whale, NWHI. Kogia *spp.* (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
CATEGORY II		
Gillnet Fisheries:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	21	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Dall's porpoise, CA/OR/WA. Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA. Long-beaked common dolphin, CA. Minke whale, CA/OR/WA.[1] Northern elephant seal, CA breeding. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA.[1] Sperm Whale, CA/OR/WA.[1]
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	39	California sea lion, U.S. Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, CA/OR/WA.[1]

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
		Long-beaked common dolphin, CA.
		Northern elephant seal, CA breeding.
		Southern sea otter, CA.
		Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2].	20	California sea lion, U.S.
		Long-beaked common dolphin, CA.
		Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet [2]	1,862	Beluga whale, Bristol Bay.
		Gray whale, Eastern North Pacific.
		Harbor seal, Bering Sea.
		Northern fur seal, Eastern Pacific.
		Pacific white-sided dolphin, North Pacific.
		Spotted seal, Bering.
		Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet [2]	979	Beluga whale, Bristol Bay.
		Gray whale, Eastern North Pacific.
		Harbor seal, Bristol Bay.
		Northern fur seal, Eastern Pacific.
		Spotted seal, Bering.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA.[1]
		Harbor seal, GOA.
		Humpback whale, Central North Pacific.
		Humpback whale, Western North Pacific.
		Northern sea otter, Southwest AK.
		Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet.
		Dall's porpoise, AK.
		Harbor porpoise, GOA.
		Harbor seal, Cook Inlet/Shelikof Strait.
		Humpback whale, Central North Pacific.[1]
		Northern sea otter, South central AK.
		Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet.
		Dall's porpoise, AK.
		Harbor porpoise, GOA.[1]
		Harbor seal, GOA.
		Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet [2]	162	Dall's porpoise, AK.
		Harbor porpoise, GOA.
		Harbor seal, GOA.
		Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet [2]	113	Harbor porpoise, Bering Sea.
		Northern sea otter, Southwest AK.
		Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK.
		Gray whale, Eastern North Pacific.
		Harbor porpoise, GOA.[1]
		Harbor seal, Prince William Sound.
		Humpback whale, Central North Pacific.
		Northern fur seal, Eastern Pacific.
		Pacific white-sided dolphin, North Pacific.
		Northern sea otter, South central AK.
		Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK.
		Harbor porpoise, Southeast AK.
		Harbor seal, Southeast AK.
		Humpback whale, Central North Pacific.[1]
		Pacific white-sided dolphin, North Pacific.
		Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet [2]	168	Gray whale, Eastern North Pacific.
		Harbor Porpoise, Southeastern AK.
		Harbor seal, Southeast AK.
		Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	136	Dall's porpoise, CA/OR/WA.
		Harbor porpoise, inland WA.[1]
		Harbor seal, WA inland.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, Beringia.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
		Gray whale, Eastern North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bristol Bay. Humpback whale, Western North Pacific.[1] Killer whale, Eastern North Pacific Alaska resident.[1] Killer whale, Eastern North Pacific GOA, AI, BS transient.[1] Northern fur seal, Eastern Pacific. Ringed seal, Arctic. Ribbon seal. Spotted seal, Bering. Steller sea lion, Western U.S.[1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Harbor seal, Bristol Bay. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Pacific white-sided dolphin, North Pacific. Ribbon seal. Ringed seal, Arctic. Steller sea lion, Western U.S.[1]
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands Pacific cod pot	59	Harbor seal, Bristol Bay. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
CA coonstripe shrimp pot	9	Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, CA/OR/WA.[1]
CA spiny lobster	189	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Humpback whale, CA/OR/WA.[1] Gray whale, Eastern North Pacific. Southern sea otter, CA.
CA spot prawn pot	22	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1] Long-beaked common dolphin, CA.
CA Dungeness crab pot	471	Blue whale, Eastern North Pacific.[1] Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1] Killer whale, Eastern North Pacific GOA, BSAI transient. Killer whale, West Coast transient. Northern elephant seal, CA breeding.
OR Dungeness crab pot	323	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	144	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	204	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
Longline/Set Line Fisheries:		
AK Gulf of Alaska sablefish longline	295	Northern elephant seal, California. Sperm whale, North Pacific. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI shallow-set longline *^	14	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] Fin whale, HI. Guadalupe fur seal. Humpback whale, Central North Pacific. Risso's dolphin, HI. Striped dolphin, HI.
American Samoa longline[2]	18	False killer whale, American Samoa. Rough-toothed dolphin, American Samoa. Striped dolphin, unknown.
HI shortline[2]	11	None documented.
Marine Aquaculture Fisheries:		
HI offshore pen culture	1	Hawaiian monk seal.
CATEGORY III		
Gillnet Fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA. Northern sea otter, South central AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA herring set gillnet	11	None documented.
HI inshore gillnet	27	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	19	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	10	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	244	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	57	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
Miscellaneous Net Fisheries:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Dall's porpoise, AK. Harbor seal, North Kodiak. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Steller sea lion, Western U.S.
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA. Harbor seal, Prince William Sound.
WA/OR sardine purse seine	6	None documented.
CA anchovy, mackerel, sardine purse seine	53	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	68	California sea lion, U.S. Long-beaked common dolphin, CA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	14	None documented.
WA/OR Lower Columbia River salmon seine	1	None documented.
WA/OR herring, anchovy, smelt, squid purse seine or lampara.	41	None documented.
WA salmon seine	81	None documented.
WA salmon reef net	11	None documented.
HI lift net	14	None documented.
HI inshore purse seine	None recorded	None documented.
HI throw net, cast net	16	None documented.
HI seine net	16	None documented.
Dip Net Fisheries:		
CA squid dip net	19	None documented.
Marine Aquaculture Fisheries:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
WA salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
Troll Fisheries:		
WA/OR/CA albacore surface hook and line/troll	556	None documented.
CA halibut, white seabass, and yellowtail hook and line/ handline.	388	None documented.
CA/OR/WA non-albacore HMS hook and line	124	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	3	None documented.
CA/OR/WA salmon troll	1,030	None documented.
HI troll	1,293	Pantropical spotted dolphin, HI.
HI rod and reel	246	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	9	None documented.
Guam tuna troll	465	None documented.
Longline/Set Line Fisheries:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, GOA, AI, BS transient.
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Northern fur seal, Eastern Pacific. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific. Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	Harbor seal, Clarence Strait. Harbor seal, Cook Inlet. Steller sea lion, Eastern U.S.
AK Gulf of Alaska Pacific cod longline	92	Harbor seal, Cook Inlet/Shelikof Strait. Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	314	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Northern elephant seal, California breeding. Sperm whale, CA/OR/WA. Steller sea lion, Eastern U.S.
WA/OR/CA Pacific halibut longline	130	None documented.
West Coast pelagic longline	4	None documented in the most recent 5 years of data.
HI kaka line	6	None documented.
HI vertical line	5	None documented.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Harbor seal, Aleutian Islands. Northern elephant seal, California. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Bearded seal, AK. Ribbon seal. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	17	Harbor seal, Aleutian Islands. Ribbon seal.
AK Gulf of Alaska flatfish trawl	36	Harbor seal, Cook Inlet/Shelikof Strait. Harbor seal, North Kodiak. Harbor seal, South Kodiak. Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	23	California sea lion, U.S. Harbor porpoise, unknown. Harbor seal, unknown. Northern elephant seal, CA breeding. Steller sea lion, unknown.
CA sea cucumber trawl	11	None documented.
WA/OR/CA shrimp trawl	130	California sea lion, U.S.
WA/OR/CA groundfish trawl	118	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern elephant seal, CA breeding. Northern fur seal, Eastern Pacific. Northern right whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands sablefish pot	6	Sperm whale, North Pacific.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic. Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	None documented in most recent 5 years of data.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CA rock crab pot	113	Gray whale, Eastern North Pacific. Harbor seal, CA.
CA Tanner crab pot fishery	1	None documented.
WA/OR/CA hagfish pot	63	None documented.
WA/OR shrimp pot/trap	28	None documented.
WA Puget Sound Dungeness crab pot/trap	145	None documented.
HI crab trap	3	Humpback whale, Central North Pacific.
HI fish trap	4	None documented.
HI lobster trap	Less than 3	None documented in recent years.
HI shrimp trap	3	None documented.
HI crab net	3	None documented.
HI Kona crab loop net	24	None documented.
Hook and Line, Handline, and Jig Fisheries:		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	None documented in most recent 5 years of data.
AK halibut jig	71	None documented.
American Samoa bottomfish	6	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	12	None documented.
Guam bottomfish	84	None documented.
HI aku boat, pole, and line	None recorded	None documented.
HI bottomfish handline	404	None documented in recent years.
HI inshore handline	192	None documented.
HI pelagic handline	311	None documented.
WA/OR/CA groundfish/finfish hook and line	689	California sea lion, U.S.
Western Pacific squid jig	0	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	21	None documented.
Pound Net/Weir Fisheries:		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	Less than 3	None documented.
Bait Pens:		
WA/OR/CA bait pens	13	California sea lion, U.S.
Dredge Fisheries:		
AK scallop dredge	108 (5 AK)	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
CA/OR/WA dive collection	186	None documented.
CA/WA kelp, seaweed and algae	4	None documented.
HI black coral diving	Less than 3	None documented.
HI fish pond	None recorded	None documented.
HI handpick	28	None documented.
HI lobster diving	10	None documented.
HI spearfishing	79	None documented.
WA/OR/CA hand/mechanical collection	320	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK).	Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
Live Finfish/Shellfish Fisheries:		
CA nearshore finfish trap	42	None documented.
HI aquarium collecting	39	None documented.

List of Abbreviations and Symbols Used in Table 1:

AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington;

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;

[2] Fishery classified by analogy;

* Fishery has an associated high seas component listed in Table 3; and

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
Gillnet Fisheries:		
Mid-Atlantic gillnet	4,020	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1] Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Hooded seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast.
Northeast sink gillnet	4,072	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA.[1] Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.
Trap/Pot Fisheries:		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA.[1]
Longline Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	201	Atlantic spotted dolphin, Northern GMX. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Harbor porpoise, GME, BF. Kogia *spp.* (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, Northern GMX. Pygmy sperm whale, GMX. Risso's dolphin, Northern GMX. Risso's dolphin, WNA. Rough-toothed dolphin, Northern GMX. Short-finned pilot whale, Northern GMX. Short-finned pilot whale, WNA.[1] Sperm whale, Northern GMX.
CATEGORY II		
Gillnet Fisheries:		
Chesapeake Bay inshore gillnet[2]	265	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet[2]	248	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, and estuarine. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, MS Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,676	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1]
Northeast anchored float gillnet[2]	852	Harbor seal, WNA. Humpback whale, Gulf of Maine. White-sided dolphin, WNA.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Northeast drift gillnet[2]	1,036	None documented.
Southeast Atlantic gillnet[2]	273	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	21	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal). North Atlantic right whale, WNA.
Trawl Fisheries:		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Bottlenose dolphin, WNA offshore. Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	Bottlenose dolphin, WNA offshore.[1] Common dolphin, WNA.[1] Gray seal, WNA.[1] Harbor seal, WNA. Risso's dolphin, WNA.[1] White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA. Gray seal, WNA. Harbor seal, WNA. Long-finned pilot whale, WNA.[1]
Northeast bottom trawl	968	Bottlenose dolphin, WNA offshore.[1] Common dolphin, WNA. Gray seal, WNA.[1] Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA.[1] Risso's dolphin, WNA.[1] White-sided dolphin, WNA.[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	10,824	Atlantic spotted dolphin, Northern Gulf of Mexico. Bottlenose dolphin, Barataria Bay Estuarine System. Bottlenose dolphin, Charleston estuarine system. Bottlenose dolphin, Eastern GMX coastal.[1] Bottlenose dolphin, GMX bay, sound, estuarine.[1] Bottlenose dolphin, GMX continental shelf. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GMX coastal.[1] Bottlenose dolphin, Pensacola Bay, East Bay. Bottlenose dolphin, Perdido Bay. Bottlenose dolphin, SC/GA coastal.[1] Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Western GMX coastal.[1]
Trap/Pot Fisheries:		
MA mixed species trap/pot	1,240	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2].	1,101	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay.
Atlantic mixed species trap/pot[2]	3,493	Fin whale, WNA. Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	6,679	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Central GA estuarine system.[1] Bottlenose dolphin, Charleston estuarine system.[1] Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal.[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system. Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Northern SC estuarine system.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
		Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern GA estuarine system. Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Southern NC estuarine system. West Indian manatee, FL.
Purse Seine Fisheries:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal.[1] Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine[2]	17	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.
Haul/Beach Seine Fisheries:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	22	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.
Stop Net Fisheries:		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
Pound Net Fisheries:		
VA pound net	20	Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, Southern Migratory coastal.[1]
CATEGORY III		
Gillnet Fisheries:		
Caribbean gillnet	127	None documented in the most recent 5 years of data.
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent 5 years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
Trawl Fisheries:		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
Marine Aquaculture Fisheries:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
Purse Seine Fisheries:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	None documented.
U.S. Atlantic tuna purse seine*	5	None documented in most recent 5 years of data.
Longline/Hook and Line Fisheries:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/ hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	Bottlenose dolphin, Galveston Bay, East Bay, Trinity Bay.
Trap/Pot Fisheries:		
Caribbean mixed species trap/pot	154	Bottlenose dolphin, Puerto Rico and United States Virgin Islands.
Caribbean spiny lobster trap/pot	40	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay estuarine. Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay. Bottlenose dolphin, Caloosahatchee River. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Waccasassa Bay, Withlacoochee Bay, Crystal Bay. Bottlenose dolphin, Western GMX coastal. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/ weir.	>1	Harbor porpoise, GME/BF. Harbor seal, WNA. Minke whale, Canadian east coast. Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
Dredge Fisheries:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
Haul/Beach Seine Fisheries:		
Caribbean haul/beach seine	38	West Indian manatee, Puerto Rico.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system. Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Choctawhatchee Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, Northern GA/Southern SC estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Northern migratory coastal.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
		Bottlenose dolphin, Northern NC estuarine. Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Southern NC estuarine system. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Western GMX coastal. Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2:
DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic;
[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;
[2] Fishery classified by analogy; and
* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
Longline Fisheries:		
Atlantic Highly Migratory Species *	30	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) *^	150	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Kogia *spp.* (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
CATEGORY II		
Drift Gillnet Fisheries:		
Pacific Highly Migratory Species *^	3	Long-beaked common dolphin, CA. Humpback whale, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
Trawl Fisheries:		
Atlantic Highly Migratory Species **	0	No information.
CCAMLR	0	Antarctic fur seal.
Purse Seine Fisheries:		
Western and Central Pacific Ocean Tuna Purse Seine	34	Bottlenose dolphin, unknown. Blue whale, unknown. Bryde's whale, unknown. False killer whale, unknown. Fin whale, unknown. Indo-Pacific dolphin. Long-beaked common dolphin, unknown. Melon-headed whale, unknown. Minke whale, unknown.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
		Pantropical spotted dolphin, unknown. Pygmy killer whale, unknown. Risso's dolphin, unknown. Rough-toothed dolphin, unknown. Sei whale, unknown. Short-finned pilot whale, unknown. Sperm whale, unknown. Spinner dolphin, unknown.
Western Pacific Pelagic	0	No information.
Longline Fisheries:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	8	No information.
Western Pacific Pelagic (HI Shallow-set component) *^	14	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Fin whale, HI. Guadalupe fur seal. Humpback whale, Central North Pacific. Risso's dolphin, HI. Striped dolphin, HI.
Handline/Pole and Line Fisheries:		
Atlantic Highly Migratory Species	0	No information.
Pacific Highly Migratory Species	45	No information.
South Pacific Albacore Troll	7	No information.
Western Pacific Pelagic	1	No information.
Troll Fisheries:		
Atlantic Highly Migratory Species	0	No information.
South Pacific Albacore Troll	24	No information.
South Pacific Tuna Fisheries **	0	No information.
Western Pacific Pelagic	7	No information.
CATEGORY III		
Longline Fisheries:		
Northwest Atlantic Bottom Longline	2	None documented.
Pacific Highly Migratory Species	127	None documented in the most recent 5 years of data.
Purse Seine Fisheries:		
Pacific Highly Migratory Species *^	2	None documented.
Trawl Fisheries:		
Northwest Atlantic	3	None documented.
Troll Fisheries:		
Pacific Highly Migratory Species *	93	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3:
CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic;
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery;
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for 5 years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type; and
^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I:* Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster trap/pot. Northeast sink gillnet. *Category II:* Atlantic blue crab trap/pot. Atlantic mixed species trap/pot. MA mixed species trap/pot. Northeast anchored float gillnet. Northeast drift gillnet. Southeast Atlantic gillnet.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
	Southeastern U.S. Atlantic shark gillnet.*
	Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	*Category I:*
	Mid-Atlantic gillnet.
	Category II:
	Atlantic blue crab trap/pot.
	Chesapeake Bay inshore gillnet fishery.
	Mid-Atlantic haul/beach seine.
	Mid-Atlantic menhaden purse seine.
	NC inshore gillnet.
	NC long haul seine.
	NC roe mullet stop net.
	Southeast Atlantic gillnet.
	Southeastern U.S. Atlantic shark gillnet.
	Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.^
	Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
	VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	*Category I:*
	HI deep-set longline.
	Category II:
	HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:*
	Mid-Atlantic gillnet.
	Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	*Category I:*
	Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category II:*
	CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II:*
	Mid-Atlantic bottom trawl.
	Mid-Atlantic mid-water trawl (including pair trawl).
	Northeast bottom trawl.
	Northeast mid-water trawl (including pair trawl).

List of Symbols Used in Table 4:
* Only applicable to the portion of the fishery operating in U.S. waters; and
^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than $11 million is considered a small entity for purposes of the Regulatory Flexibility Act. Under the size standard, all entities subject to this action were considered small entities; thus, they all would continue to be considered small under the new standards.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an authorization certificate. The authorization certificate authorizes the taking of marine mammals incidental to commercial fishing operations under the MMPA. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 56,603 fishing vessels, most with annual revenues below the SBA's small entity thresholds, may operate in Category I or II fisheries. As fishing vessels operating in Category I or II fisheries, they are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, individuals who have a state or Federal fishing permit or landing license, or who are authorized through another related state or Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Through this integrated process, registration under the MMPA, including the $25 registration fee, is only required for vessels participating in a Category I or II non-permitted fishery. All Category I and II fisheries listed on the 2023 proposed LOF are permitted through state or Federal processes, and registration under the MMPA is covered through the integrated process. Therefore, this proposed rule would not impose any direct costs on small entities.

The MMPA requires any vessel owner or operator participating in a fishery listed on the LOF to report to NMFS, within 48 hours of the end of the fishing trip, all marine mammal incidental mortalities and injuries that occur during commercial fishing operations. These marine mammal mortalities and injuries are reported using a postage-paid, Office of Management and Budget (OMB) approved form (OMB Control Number 0648–0292). This postage-paid form requires less than 15 minutes to complete and can be dropped in any mailbox, faxed, emailed, or completed online within 48 hours of the vessels return to port. Therefore, recordkeeping and reporting costs associated with this LOF are minimal and would not have a significant impact on a substantial number of small entities.

If a vessel is requested to carry an observer, vessels will not incur any direct economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared. In the event that reclassification of a fishery to Category I or II results in a TRP,

economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

This proposed rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the OMB under OMB Control Number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB Control Number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS (see **ADDRESSES**). You may also submit comments on these or any other aspects of the collection of information at *https://www.reginfo.gov/public/do/PRAMain*.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing this proposed LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

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Dated: August 30, 2022.

Samuel D. Rauch, III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BL46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 50

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) submitted Amendment 50 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 50 to the FMP would establish a new rebuilding plan, revise the acceptable biological catch (ABC), annual optimum yield (OY), annual catch limits (ACLs), sector allocations, recreational accountability measures (AMs), and additional management measures for red porgy. The additional management measures would address commercial seasonal quotas, commercial trip limits, recreational bag and possession limits, and a recreational fishing season for red porgy. The purpose of Amendment 50 is to end overfishing of red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

DATES: Written comments must be received on or before November 8, 2022.

ADDRESSES: You may submit comments on Amendment 10, identified by ''NOAA–NMFS–2022–0054,'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

www.regulations.gov and enter ''NOAA–NMFS–2022–0054'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Amendment 50, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-50-catch-level-adjustments-rebuilding-schedule-and-allocations-red-porgy/.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP that is being revised by Amendment 50. If approved, Amendment 50 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council manages the snapper-grouper fishery, including red porgy, in Federal waters from North Carolina south to the Florida Keys in the South Atlantic under the FMP. The Magnuson-Stevens Act requires NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this notice are in gutted weight, unless otherwise specified.

In 1990, a stock assessment for red porgy was completed and it was determined that the stock was subject to overfishing and overfished. As a result of that stock status, Amendment 4 to the FMP established an initial rebuilding plan and implemented a minimum size limit for red porgy (56 FR 56016, October 31, 1991). The rebuilding plan was put into effect in 1991 with a target time to rebuild of 10 years. The stock was again assessed in 1999 and was determined to be subject to overfishing and overfished. Through an emergency rule published in 1999, NMFS prohibited the harvest and possession of red porgy in or from the exclusive economic zone off the southern Atlantic states (64 FR 48324, September 3, 1999). NMFS subsequently extended the emergency rule to prohibit the harvest and possession of red porgy through August 28, 2000 (65 FR 10039, February 25, 2000).

The final rule to implement Amendment 12 to the FMP replaced the emergency rule and closed commercial harvest during the red porgy peak spawning season, reduced the commercial trip limit, and reduced the recreational bag limit (65 FR 51248, August 23, 2000). Amendment 12 also specified a new 18-year rebuilding plan, that began with the implementation of the emergency rule that prohibited harvest on September 3, 1999. The red porgy stock was assessed again in 2002, as the first stock in the South Atlantic to be assessed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 1). The SEDAR 1 assessment indicated the stock was overfished but not undergoing overfishing. Subsequent update assessments in 2006 and 2012 also resulted in the same stock status determinations as the 2002 SEDAR 1 assessment. The red porgy stock has not rebuilt despite management efforts throughout its management history.

The most recent SEDAR stock assessment for South Atlantic red porgy (SEDAR 60) was completed in April 2020. The assessment included data through 2017 and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program Fishing Effort Survey (MRIP FES). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 60 at their April 2020 meeting and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic red porgy stock is overfished and undergoing overfishing. NMFS also determined that the red porgy stock has not made adequate progress towards rebuilding because it did not rebuild by the end of 2017 under the previous 18-year rebuilding plan.

The findings of SEDAR 60 showed a declining trend in average recruitment throughout the time series reviewed in the assessment, and red porgy has made little progress towards rebuilding, given the low recruitment in recent years. The projections within SEDAR 60 indicate the revised ABCs would have only a very minor impact on stock rebuilding. If recruitment continues to be low, the productivity of the stock and the benchmark management reference points would need to be reevaluated. The red porgy stock is currently scheduled to be assessed again in 2025.

Following a notification from NMFS to a Council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council developed Amendment 50 in response to the results of SEDAR 60.

The Council intends that Amendment 50 would end overfishing of South Atlantic red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects. The Council would also revise the overfishing limit for red porgy equal to the ABC, and update other biological reference points in this amendment.

Actions Contained in Amendment 50

Amendment 50 would establish a new rebuilding plan, and revise the catch levels (ABCs and ACLs), sector allocations, recreational AMs, and management measures for red porgy. Management measures would address commercial seasonal quotas, commercial trip limits, recreational bag and possession limits, and a recreational fishing season for red porgy.

Rebuilding Plan for the South Atlantic Red Porgy Stock

As discussed above, the Council implemented an 18-year rebuilding plan for the South Atlantic red porgy stock through Amendment 12 to the FMP that was expected to rebuild the stock by the end of 2017 (65 FR 51248, September 22, 2000). Because the South Atlantic red porgy stock did not rebuild within that time, and is still overfished, Amendment 50 would establish a new rebuilding plan schedule equal to the time estimated to rebuild the stock while maintaining fishing mortality at 75 percent of the maximum fishing mortality threshold during the rebuilding period. This rebuilding period would be 26 years, beginning in 2022 and ending in 2047.

ABC and Annual OY

The current ABC for red porgy was implemented in Regulatory Amendment 18 to the FMP, based upon a stock assessment update (2012 SEDAR 1 Update) and the Council's SSC's recommendations (78 FR 47574, August 6, 2013).

In April 2020, the Council's SSC reviewed the latest stock assessment (SEDAR 60) and recommended new ABC levels as determined by SEDAR 60. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 50, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS method. The new ABC recommendations within Amendment 50 also represent the best scientific information available as determined by the SSC.

The Council chose to specify OY for red porgy on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv), and using the formula implemented through the Comprehensive ACL Amendment to the FMP (77 FR 15915, March 16, 2012).

Total ACL

As implemented through Regulatory Amendment 18 to the FMP, the current total ACL and annual OY for red porgy are equal to the current ABC of 328,000 lb (148,778 kg), whole weight. In Amendment 50, the Council would revise the ABC based on SEDAR 60 and the recommendation of the SSC, and keep the ABC, ACL, and OY equal to each other.

Amendment 50 would revise the total ACL equal to the recommended ABC of 75,000 lb (34,019 kg), whole weight, 72,115 lb (32,711 kg), gutted weight, for 2022; 81,000 lb (36,741 kg), round weight, 77,885 lb (35,328 kg), gutted weight, for 2023; 87,000 lb (39,463 kg), round weight, 83,654 lb (37,945 kg), gutted weight, for 2024; 91,000 lb (41,277 kg), round weight, 87,500 lb (39,689 kg), gutted weight, for 2025; and 95,000 lb (43,091 kg), round weight, 91,346 lb (41,434 kg), gutted weight, for 2026 and subsequent fishing years.

Sector Allocations and ACLs

Amendment 50 would revise the commercial and recreational allocations for red porgy. The current sector ACLs for red porgy are based on the commercial and recreational allocations of the total ACL at 50.00 percent and 50.00 percent, respectively, that were established through Amendment 15B to the FMP (74 FR 58902 November 16, 2009).

The new red porgy sector allocations in Amendment 50 would result in commercial and recreational allocations of 51.43 percent and 48.57 percent, respectively. The proposed sector allocations result from applying the allocation formula adopted through the Comprehensive ACL Amendment to the FMP, which is ACL = ((mean landings 2006–2008)*0.5)) + ((mean landings 1986–2008)*0.5), to the revised total ACL that includes updated recreational landings from the MRIP FES method.

Utilizing the proposed allocation formula would incorporate revised recreational landings from the MRIP FES, which would result in a slight shift of allocation to the commercial sector. Although commercial fishing tends to occur in deeper water than recreational fishing, where mortality of discarded fish is greater, the Council reasoned that a slightly increased allocation to the commercial sector would potentially reduce the number of fish that are discarded if the commercial ACL is reached in-season and a sector closure becomes necessary, thus promoting conservation.

The commercial ACLs would be 37,089 lb (16,823 kg), for 2022; 40,056 lb (18,169 kg), for 2023; 43,023 lb (19,515 kg), for 2024; 45,001 lb (20,412 kg), for 2025; and 46,979 lb (21,309 kg), for 2026 and subsequent years.

The recreational ACLs would be 35,026 lb (15,888 kg), for 2022; 37,829 lb (17,159 kg), for 2023; 40,631 lb (18,430 kg), for 2024; 42,499 lb (19,277 kg), for 2025; and 44,367 lb (20,125 kg), for 2026 and subsequent years.

Regulatory Amendment 27 to the FMP established two commercial fishing seasons for red porgy with 30 percent of the commercial ACL allocated to Season 1 (January through April) and 70 percent allocated to Season 2 (May through December) (85 FR 4588, January 27, 2020). Any remaining commercial quota from Season 1 would be added to the commercial quota in Season 2. Any remaining quota from Season 2 would not be carried forward into the next fishing year. Amendment 50 would not alter the current fishing seasons or commercial season ACL allocations.

Under Amendment 50, the commercial quotas in 2022 for Season 1 would be 11,127 lb (5,047 kg) and Season 2 would be 25,962 lb (11,776 kg); in 2023, Season 1 would be 12,017 lb (5,451 kg) and Season 2 would be 28,039 lb (12,718 kg); in 2024, Season 1 would be 12,907 lb (5,855 kg) and Season 2 would be 30,116 lb (13,660 kg); in 2025, Season 1 would be 13,500 lb (6,123 kg) and Season 2 would be 31,501 lb (14,289 kg); and for 2026 and subsequent years, Season 1 would be 14,094 lb (6,393 kg) and Season 2 would be 32,886 lb (14,917 kg).

Commercial Trip Limits

Amendment 13C to the FMP established the current commercial trip limit for red porgy of 120 fish from May 1 through December 31, with no harvest allowed from January through April (71 FR 55096, September 21, 2006). Regulatory Amendment 27 to the FMP removed the January to April commercial spawning season closure and established the current 60 fish trip limit from January 1 through April 30, to reduce discarding of red porgy by the commercial sector during the early part of the fishing year. Amendment 50 would modify the commercial trip limits for red porgy to be 15 fish for both Seasons 1 and 2.

Under the proposed 15-fish trip limit, the lowest trip limit that was considered by the Council, commercial fishermen

could retain an amount of red porgy over the longest amount of time during the fishing seasons and would increase the likelihood of red porgy remaining open to commercial harvest and available to consumers for as long as possible. Additionally, the proposed trip limit is expected to minimize discards of incidentally harvested red porgy when targeting other snapper-grouper species such as gray triggerfish and vermilion snapper.

Recreational Bag and Possession Limits

The current recreational bag and possession limits for red porgy in the South Atlantic, established by Amendment 13C to the FMP, are 3 per person per day, or 3 per person per trip, whichever is more restrictive. Amendment 50 would reduce the recreational bag and possession limits to 1 fish per person per day, or 1 fish per person per trip, whichever is more restrictive.

Given the substantial reduction in harvest needed to end the overfishing of red porgy and increase the likelihood of rebuilding the stock, the Council selected the lowest bag limit that was considered in Amendment 50 to continue to allow recreational retention and to help constrain harvest to the reduced recreational ACL.

Recreational Fishing Season

The recreational harvest of red porgy is currently allowed year-round until the recreational ACL is met or is projected to be met. Amendment 50 would establish a recreational fishing season for red porgy where harvest would be allowed May 1 through June 30. The recreational sector would be closed annually from January 1 through April 30, and July 1 through December 31. During the proposed seasonal closures, the recreational bag and possession limits for red porgy would be zero.

Given the substantial reductions in harvest that are needed to address the stock's overfishing and overfished determinations, shortening the time recreational fishing is allowed contributes to reducing the risk that recreational catches exceed the proposed reduced ACL. The Council selected the most conservative recreational fishing season alternative in Amendment 50 to reduce the chance the recreational ACL would be exceeded, while still allowing some recreational harvest opportunities to occur.

Recreational AMs

The current recreational AMs were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AM includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The AM also includes post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If the total ACL is exceeded and red porgy are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

Amendment 50 would revise the recreational AMs for red porgy. The current in-season closure and the post-season AM would be removed. The proposed recreational AM would be a post-season AM that would be triggered in the following fishing year if the recreational ACL is exceeded. If recreational landings exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the Regional Administrator determines, using the best scientific information available, that a reduction is not necessary.

The Council's intent in revising the recreational AMs is to avoid in-season closures of the recreational sector and extend maximum fishing opportunities to the sector during the proposed 2-month recreational season. The proposed AM would remove the current potential duplicate AM application of a reduction in the recreational season length and a payback of the recreational ACL overage if the total ACL was exceeded. Under this proposed measure, the AM trigger would not be tied to the total ACL, but only to the recreational ACL. The proposed modification would ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the AM being implemented would apply to the recreational fishing season following a recreational ACL overage.

Proposed Rule for Amendment 50

A proposed rule to implement Amendment 50 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 50 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 50 for Secretarial review, approval, and implementation. Comments on Amendment 50 must be received by November 8, 2022. Comments received during the respective comment periods, whether specifically directed to Amendment 50 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 50. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 6, 2022.

Kelly Denit,

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

[FR Doc. 2022–19508 Filed 9–8–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220902–0184; RTID 0648–XC082]

Atlantic Highly Migratory Species; 2023 Atlantic Shark Commercial Fishing Year

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any underharvests from the 2022 fishing year. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

DATES: Written comments must be received by October 11, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0064, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0064 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 a 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).

Copies of this proposed rule and supporting documents are available from the Atlantic Highly Migratory Species (HMS) Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Ann Williamson (*ann.williamson@noaa.gov*) by phone at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Ann Williamson (*ann.williamson@noaa.gov*), Guy DuBeck (*guy.dubeck@noaa.gov*), or Karyl Brewster-Geisz (*karyl.brewster-geisz@noaa.gov*) at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

Atlantic shark fisheries are managed primarily under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635.

For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accountability measures for underharvests and overharvests. The retention limits, commercial quotas, and accountability measures can be found at 50 CFR 635.24(a), 635.27(b), and 635.28(b). Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(2), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the **Federal Register**.

2023 Proposed Commercial Shark Quotas

NMFS proposes to adjust the quota levels for the various shark stocks and management groups for the 2023 Atlantic commercial shark fishing year (*i.e.,* January 1 through December 31, 2023) based on underharvests that occurred during the 2022 fishing year, consistent with existing regulations at § 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only for shark management groups that have shark stocks that are declared not overfished and not experiencing overfishing. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2022 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2023 quotas for certain management groups as shown in Table 1. All of the 2023 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after NMFS considers landings submitted in the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2024 quotas, as appropriate, noting that, in some circumstances, NMFS re-adjusts quotas during the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2022 fishing year for these management groups may be added to their respective 2023 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage (§ 635.27(b)(1)(ii)(C)).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2022 underharvests cannot be carried over to the 2023 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2023 quotas by species and management group are summarized in Table 1 and the description of the calculations for each stock and management group can be found below. All quotas and landings are in dressed weight (dw) metric tons (mt). Table 1 includes landings data as of July 15, 2022. Final quotas are subject to change based on landings as of mid-October 2022.

TABLE 1—2023 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK MANAGEMENT GROUPS

Region or sub-region	Management group	2022 Annual quota (A)	Preliminary 2022 landings [1] (B)	Adjustments [2] (C)	2023 Base annual quota (D)	2023 Proposed annual quota (D + C)	Season opening date
Western Gulf of Mexico.	Blacktip Sharks	347.2 mt (765,392 lb)	210.9 mt (464,908 lb)	115.7 mt (225,131 lb)	231.5 mt (510,261 lb)	347.2 mt (765,392 lb).	January 1, 2023.
	Aggregate Large Coastal Sharks [3].	72.0 mt (158,724 lb)	67.3 mt (148,371 lb)		72.0 mt (158,724 lb)	72.0 mt. (158,724 lb).	
	Hammerhead Sharks [4].	11.9 mt (26,301 lb)	<2.0 mt (<4,400 lb)		11.9 mt. (26,301 lb)	11.9 mt. (26,301 lb).	
Eastern Gulf of Mexico.	Blacktip Sharks	37.7 mt (83,158 lb)	1.5 mt (3,339 lb)	12.6 mt (27,719 lb)	25.1 mt (55,439 lb)	37.7 mt. (83,158 lb).	
	Aggregate Large Coastal Sharks [3].	85.5 mt (188,593 lb)	36.1 mt (79,506 lb)		85.5 mt (188,593 lb)	85.5 mt. (188,593 lb).	
	Hammerhead Sharks [4].	13.4 mt (29,421 lb)	3.4 mt (7,487 lb)		13.4 mt (29,421 lb)	13.4 mt. (29,421 lb).	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	112.6 mt (428,215 lb)	17.1 mt (37,639 lb)		112.6 mt (428,215 lb)	112.6 mt. (428,215 lb).	
	Smoothhound Sharks.	504.6 mt (1,112,441 lb)	0.0 mt (0 lb)	168.2 mt (370,814 lb)	336.4 mt (741,627 lb)	504.6 mt. (1,112,441 lb).	
Atlantic	Aggregate Large Coastal Sharks.	168.9 mt (372,552 lb)	48.0 mt (105,893 lb)		168.9 mt (372,552 lb)	168.9 mt (372,552 lb).	January 1, 2023.
	Hammerhead Sharks [4].	27.1 mt (59,736 lb)	21.5 mt (47,294 lb)		27.1 mt (59,736 lb)	27.1 mt. (59,736 lb).	
	Non-Blacknose Small Coastal Sharks.	264.1 mt (582,333 lb)	29.8 mt (65,727 lb)		264.1 mt (582,333 lb)	264.1 mt. (582,333 lb).	
	Blacknose Sharks (South of 34° N lat. Only).	17.2 mt (3,973,902 lb)	2.8 mt (6,231 lb)		17.2 mt (3,973,902 lb)	17.2 mt. (3,973,902 lb).	
	Smoothhound Sharks.	1,802.6 mt (3,973,902 lb)	176.8 mt (389,804 lb)	600.9 mt (1,324,634 lb)	1,201.7 mt (2,649,268 lb)	1,802.6 mt. (3,973,902 lb).	
No Regional Quotas.	Non-Sandbar LCS Research.	50.0 mt (110,230 lb)	2.1 mt (4,650 lb)		50.0 mt (110,230 lb)	50.0 mt (110,230 lb).	January 1, 2023.
	Sandbar Shark Research.	90.7 mt (199,943 lb)	38.2 mt (84,161 lb)		90.7 mt (199,943 lb)	90.7 mt. (199,943 lb).	
	Blue Sharks	273.0 mt (601,856 lb)	<1.0 mt (<2,200 lb)		273.0 mt (601,856 lb)	273.0 mt. (601,856 lb).	
	Porbeagle Sharks.	1.7 mt (3,748 lb)	0.0 mt (0 lb)		1.7 mt (3,748 lb)	1.7 mt. (3,748 lb).	
	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt (1,075,856 lb)	20.6 mt (45,383 lb)		488.0 mt (1,075,856 lb)	488.0 mt. (1,075,856 lb).	

[1] Landings are from January 1, 2022 through July 15, 2022 and are subject to change.

[2] Underharvest adjustments can only be applied to stocks or management groups that are declared not overfished and have no overfishing occurring. The underharvest adjustments cannot exceed 50 percent of the base quota.

[3] NMFS transferred 11.3 mt dw of the aggregate LCS quota from the Gulf of Mexico eastern sub-region to the western sub-region on June 28, 2022 (87 FR 38676; June 29, 2022).

[4] NMFS transferred 6.8 mt dw of the hammerhead quota from the western Gulf of Mexico sub-region to the Atlantic region on June 28, 2022 (87 FR 38676; June 29, 2022).

Shark Management Groups Where Underharvests Can Be Carried Over

The Gulf of Mexico blacktip shark management group (which is divided between eastern and western sub-regions) and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring. Pursuant to § 635.27(b)(2)(ii), available underharvest (up to 50 percent of the base annual quota) from the 2022 fishing year for these management groups may be added to their respective 2023 base quotas. Reported landings for blacktip sharks and smoothhound sharks have not exceeded their 2022 quotas to date.

Blacktip Sharks: The 2023 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw). As of July 15, 2022, preliminary reported landings for blacktip sharks in the Gulf of Mexico western sub-region were at 61 percent (210.9 mt dw) of their 2022 quota (347.2 mt dw), and in the eastern sub-region were at 4 percent (1.5 mt dw) of their 2022 quota (37.7 mt dw). Consistent with § 635.27(b)(1)(ii)(C), any underharvest would be divided between the two Gulf of Mexico sub-regions based on the percentages that are allocated to each sub-region (*i.e.,* 90.2 percent to the western sub-region and 9.8 percent to the eastern sub-region). As of July 15, 2022, the overall Gulf of Mexico blacktip shark management group is underharvested by 172.5 mt dw (380,303 lb dw). The proposed 2023 adjusted base annual quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (231.5 mt dw annual base quota + 115.7 mt dw 2022 underharvest = 347.2 mt dw 2023 adjusted annual quota) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (25.1 mt dw annual base quota + 12.6 mt dw 2022 underharvest = 37.7 adjusted annual quota).

Smoothhound Sharks: The 2023 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw) and in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of July 15, 2022, there have been no smoothhound shark landings in the Gulf

of Mexico region, and 10 percent (176.8 mt dw) of their 2022 quota (1,802.6 mt dw) has been landed in the Atlantic region. NMFS proposes to adjust the 2023 Gulf of Mexico and Atlantic smoothhound shark quotas for anticipated underharvests in 2022 to the full extent allowed. The proposed 2023 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2022 underharvest = 504.6 mt dw 2023 adjusted annual quota) and for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2022 underharvest = 1,802.6 mt dw 2023 adjusted annual quota).

Shark Management Groups Where Underharvests Cannot Be Carried Over

Consistent with the current regulations at § 635.27(b)(2)(ii), 2022 underharvests cannot be carried over to the 2023 fishing year for the following stocks or management groups because they are overfished, are experiencing overfishing, or have an unknown status: sandbar shark, aggregated LCS, hammerhead shark, non-blacknose SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups. For these stocks, the 2023 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward.

Aggregate LCS: The 2023 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw) and in the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw). The 2023 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). In a recent action, NMFS transferred 11.3 mt dw of aggregate LCS quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region (87 FR 38676; June 29, 2022). That inseason quota transfer would not impact the proposed actions in this rulemaking. As of July 15, 2022, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were 81 percent (67.3 mt dw) of their 2022 quota (72.0 mt dw), in the eastern Gulf of Mexico sub-region were 49 percent (36.1 mt dw) of their 2022 quota (85.5 mt dw), and in the Atlantic region were 28 percent (48.0 mt dw) of their 2022 quota (168.9 mt dw). Reported landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall aggregated LCS quota to date. Given the unknown status of some species in the aggregated LCS complex, the aggregated LCS quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for aggregated LCS in the western and eastern Gulf of Mexico sub-regions and the Atlantic region be equal to their annual base quotas without adjustment.

Hammerhead Sharks: The 2023 proposed commercial quotas for hammerhead sharks in the western Gulf of Mexico sub-region is 11.9 mt dw (26,301 lb dw) and eastern Gulf of Mexico sub-region is 13.4 mt dw (29,421 lb dw). The 2023 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). In a recent action, NMFS transferred 6.8 mt dw of hammerhead shark quota from western Gulf of Mexico sub-region to the Atlantic region (87 FR 38676; June 29, 2022). That inseason quota transfer would not impact the proposed actions in this rulemaking. As of July 15, 2022, preliminary reported landings of hammerhead sharks in the western Gulf of Mexico sub-region were less than 40 percent (<2.0 mt dw) of their 2022 quota (11.9 mt dw), in the eastern Gulf of Mexico sub-region were at 25 percent (3.4 mt dw) of their 2022 quota (13.4 mt dw), and in the Atlantic region were at 63 percent (21.5 mt dw) of their 2022 quota (27.1 mt dw). Reported landings from the Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for hammerhead sharks in the western and eastern Gulf of Mexico sub-regions and Atlantic region be equal to their annual base quotas without adjustment.

Blacknose Sharks: The 2023 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N latitude. North of 34° N latitude, retention, landing, or sale of blacknose sharks is prohibited. As of July 15, 2022, preliminary reported landings of blacknose sharks in the Atlantic region were at 16 percent (2.8 mt dw) of their 2022 quota (17.2 mt dw). Given the overfished status of the blacknose shark, the blacknose shark quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quota for blacknose sharks in the Atlantic region be equal to their annual base quota without adjustment.

Non-Blacknose SCS: The 2023 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (428,215 lb dw) and in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 15, 2022, preliminary reported landings of non-blacknose SCS in the Gulf of Mexico were at 15 percent (17.1 mt dw) of their 2022 quota (112.6 mt dw) and in the Atlantic region were at 11 percent (29.8 mt dw) of their 2022 quota (264.1 mt). Given the unknown status of bonnethead sharks within Atlantic and Gulf of Mexico non-blacknose SCS management groups, underharvests cannot be carried forward. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2023 quotas for non-blacknose SCS in the Gulf of Mexico and Atlantic regions be equal to their annual base quotas without adjustment.

Blue Sharks, Porbeagle Sharks, and Pelagic Sharks (Other Than Porbeagle and Blue Sharks): The 2023 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. On July 1, 2022, NMFS published a final rule that establishes a shortfin mako shark retention limit of zero in commercial and recreational Atlantic HMS fisheries, consistent with a 2021 ICCAT recommendation (87 FR 39373). Retention of shortfin mako sharks was previously permitted, consistent with existing regulations, as part of the pelagic sharks complex. As of July 15, 2022, there have been no porbeagle shark landings, landings of blue sharks were less than 1 percent (<1.0 mt) of their 2022 quota (273.0 mt), and landings of pelagic sharks (other than porbeagle and blue sharks) were at 4 percent (20.6 mt dw) of their 2022 quota (488.0 mt dw). Given that all of these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward. Based on preliminary estimates of catch rates from previous years, NMFS proposes that the 2023 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment.

Shark Research Fishery: The 2023 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and

90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 15, 2022, preliminary reported landings of research LCS were at 4 percent (2.1 mt dw) of their 2022 quota (50.0 mt dw) and sandbar shark reported landings were at 42 percent (38.2 mt dw) of their 2022 quota (90.7 mt dw). Because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Based on preliminary estimates, NMFS proposes that the 2023 quotas in the shark research fishery be equal to their annual base quotas without adjustment.

Proposed Opening Dates and Retention Limits

In proposing the commercial shark fishing season opening dates for all regions and sub-regions, NMFS considered the ''Opening Commercial Fishing Season Criteria,'' listed at § 635.27(b)(3):

- The available annual quotas for the current fishing season;
- Estimated season length and average weekly catch rates from previous years;
- Length of the season and fishery participation in past years;
- Temporal variation in behavior or biology of target species (*e.g.,* seasonal distribution or abundance);
- Impact of catch rates in one region on another region;
- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and
- Effects of delayed openings.

When analyzing the criteria to open a commercial fishing season, NMFS considers the underharvests of the different management groups in the 2022 fishing year to determine the likely effects of the proposed commercial quotas for 2023 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examines the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities will be provided to fishermen in all areas. Lastly, NMFS assesses the seasonal variation of the different species and management groups, as well as seasonal variation in fishing opportunities. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip in the eastern and western Gulf of Mexico sub-regions and in the Atlantic region, unless NMFS determines otherwise and publishes a notice of inseason adjustment in the **Federal Register** (§ 635.24(a)(2)). NMFS may adjust the retention limit from 0 to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under §§ 635.27 and 635.28.

NMFS also considered the seven ''Inseason Trip Limit Adjustment Criteria'' listed at § 635.24(a)(8):

- The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports;
- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports;
- The estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season;
- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;
- Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or
- Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

When analyzing the inseason adjustment criteria, NMFS examines landings submitted in dealer reports on a weekly basis and catch rates based upon those dealer reports. NMFS has found that, to date, landings and subsequent quotas have not been exceeded. Given the pattern of landings over previous years, seasonal distribution of the species and management groups have not had an effect on the landings within a region or sub-region.

After considering both sets of criteria in §§ 635.24 and 635.28, NMFS is proposing to open the 2023 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, on January 1, 2023, after the publication of the final rule for this action (Table 2). NMFS proposes to open the season on January 1, 2023, but recognizes that the actual opening date is contingent upon publication of the final rule in the **Federal Register**, and may vary accordingly. NMFS is also proposing to start the 2023 commercial shark fishing season with the commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). The final retention limits could change as a result of public comments and/or updated catch rates and landings information submitted in dealer reports.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages [1]	Season opening date	Commercial retention limits for directed shark limited access permit holders [2]
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip.
	Aggregate Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip.
	Aggregate Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2023	N/A.
	Smoothhound Sharks	Not Linked	January 1, 2023	N/A.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP—Continued

Region or sub-region	Management group	Quota linkages [1]	Season opening date	Commercial retention limits for directed shark limited access permit holders [2]
Atlantic	Aggregate Large Coastal Sharks.	Linked	January 1, 2023	55 LCS other than sandbar sharks per vessel per trip.
	Hammerhead Sharks.			
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34° N lat. Only).	January 1, 2023	N/A.
	Blacknose Sharks (South of 34° N lat. Only).			8 blacknose sharks per vessel per trip.[3]
	Smoothhound Sharks	Not Linked	January 1, 2023	N/A.
No Regional Quotas	Non-Sandbar LCS Research	Linked [4]	January 1, 2023	N/A.
	Sandbar Shark Research.			
	Blue Sharks	Not Linked	January 1, 2023	N/A.
	Porbeagle Sharks.			
	Pelagic Sharks Other Than Porbeagle or Blue.			

[1] Section 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)).
[2] Inseason adjustments are possible.
[3] Applies to Shark Directed and Shark Incidental permit holders.
[4] Shark research permits ''terms and conditions'' state that when the individual sandbar or research LCS quotas authorized by the permit are landed, all fishing trips under the permit must stop.

In the eastern and western Gulf of Mexico sub-regions, NMFS proposes opening the fishing season on January 1, 2023, for the aggregated LCS, blacktip shark, and hammerhead shark management groups, with a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip for directed shark permits. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. The season opening criteria listed in § 635.27(b)(3) requires NMFS to consider the length of the season for the different species and/or management groups in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(iii)). In addition, the criteria listed in § 635.24(a)(8) require NMFS to consider the catch rates of the relevant shark species/complexes based on landings submitted in dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at §§ 635.27(b)(3)(v) and 635.24(a)(2) and (a)(8)(ii), (v), and (vi)). Given these requirements, NMFS reviewed landings on a weekly basis for all species and/or management groups and determined that fishermen have been able to participate in the fishery, and landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2022 overall aggregated LCS quota to date. For both the eastern and western Gulf of Mexico sub-regions combined, landings submitted in dealer reports received through July 15, 2022, indicate that 66 percent (103.4 mt dw), 55 percent (212.4 mt dw), and 29 percent (5.0 mt dw) of the available aggregated LCS, blacktip shark, and hammerhead shark quotas, respectively, have been harvested. Therefore, for 2023, NMFS is proposing opening both the eastern and western Gulf of Mexico sub-regions with a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on January 1, 2023. The criteria listed in § 635.27(b)(3) consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2022 data indicate that an opening date of January 1 would provide a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)), while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). Because the proposed 2023 quotas and season lengths are the same as they were in 2022, NMFS anticipates that the participation of various fishermen throughout the region, would be similar in 2023 (§ 635.27(b)(3)(ii) and (iii)). Additionally, the January 1 opening date appears to meet the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.27(b)(3)(vi)), because it provides equal fishing opportunities for fishermen to fully utilize the available quotas. Considering the reduced landings in the past 5 years, NMFS proposes to open the aggregated LCS and hammerhead shark management groups for the 2023 fishing year on January 1, 2023, with a retention limit of 55 LCS other than sandbar sharks per vessel per trip. Starting with the highest retention limit available could allow fishermen in the Atlantic region to more fully utilize the available science-based quota. As needed, NMFS may adjust the retention limit throughout the year to ensure equitable fishing opportunities throughout the region and ensure the quota is not exceeded (see the criteria at § 635.24(a)(8)). For example, if the quota is harvested too quickly, NMFS could consider reducing the retention limit as appropriate to ensure enough quota remains until later in the year. NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit.

All of the regional or sub-regional commercial fisheries for shark management groups would remain open until December 31, 2023, or until NMFS determines that the landings for any shark management group are projected to reach 80 percent of the quota given the realized catch rates and are projected to reach 100 percent of the quota before the end of the fishing season, or until a quota-linked species or management group is closed. If NMFS determines that a non-quota-linked shark species or management group fishery must be closed, then, consistent with § 635.28(b)(2) for non-

linked quotas (*e.g.,* eastern Gulf of Mexico blacktip sharks, western Gulf of Mexico blacktip sharks, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register.

For the regional or sub-regional Gulf of Mexico blacktip shark management group(s), regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group(s) before landings have reached, or are projected to reach, 80 percent of the quota after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS; effects on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed (even across fishing years) from the effective date and time of the closure until NMFS publishes in the **Federal Register** a notice that additional quota is available and the season is reopened.

If NMFS determines that a quota-linked species and/or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register. In that event, from the effective date and time of the closure until the season is reopened and additional quota is available (via publication of another notice in the **Federal Register**), the fisheries for all quota-linked species and/or management groups will be closed, even across fishing years. The quota-linked species and/or management groups are: Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose sharks and Atlantic non-blacknose SCS south of 34° N latitude.

Request for Comments

Comments on this proposed rule and on NMFS' determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities (as discussed below in the Classification section), may be submitted via *www.regulations.gov.* NMFS solicits comments on this proposed rule by October 11, 2022 (see **DATES** and **ADDRESSES**).

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rulemaking would implement previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments, and the Environmental Assessment (EA) that accompanied the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010). Impacts have been evaluated and analyzed in Amendment 2 (73 FR 35778; June 24, 2008; corrected 73 FR 40658; July 15, 2008), Amendment 3 (75 FR 30484; June 1, 2010; corrected 75 FR 50715; August 17, 2010), Amendment 5a (78 FR 40318; July 3, 2013), Amendment 6 (80 FR 50073; August 18, 2015), and Amendment 9 (80 FR 73128; November 24, 2015) to the 2006 Consolidated HMS FMP, and in the Final Environmental Impact Statements (FEISs) for Amendments 2, 3, and 5a, and the EAs for Amendments 6 and 9. The final rule for Amendment 2 implemented base quotas and quota adjustment procedures for sandbar shark and non-sandbar LCS species/management groups, and Amendments 3 and 5a implemented base quotas for Gulf of Mexico blacktip shark, aggregated LCS, hammerhead shark, blacknose shark, and non-blacknose SCS management groups and quota transfers for Atlantic sharks. The final rule for Amendment 6 implemented a revised commercial shark retention limit, revised base quotas for sandbar shark and non-blacknose SCS species/management groups, new sub-regional quotas in the Gulf of Mexico region for blacktip sharks, aggregated LCS, and hammerhead sharks, and new management measures for blacknose sharks. The final rule for Amendment 9 implemented management measures, including commercial quotas, for smoothhound sharks in the Atlantic and Gulf of Mexico regions. In 2010, NMFS prepared an EA with the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010) that describes the impact on the human environment that would result from implementation of measures to delay the start date and allow for inseason adjustments. NMFS has determined that the quota adjustments and season opening dates of this proposed rule and the resulting impacts to the human environment are within the scope of the analyses considered in the FEISs and EAs for these amendments, and additional National Environmental Policy Act analysis is not warranted for this proposed rule.

This action 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 (SBA) 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.

This proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries. NMFS would adjust quotas as required or allowable based on any overharvests and/or underharvests from the 2022 fishing year. NMFS has limited flexibility to otherwise modify the quotas in this proposed rule. We note that the impacts of the quotas (and any potential modifications based on overharvests or underharvests from the previous fishing year) were analyzed in previous regulatory flexibility analyses, including the initial regulatory flexibility analysis and the final regulatory flexibility analysis that accompanied the 2011 Atlantic shark commercial fishing year rule (75 FR 76302; December 8, 2010). That final rule established the opening dates and quotas for the 2011 fishing season and implemented new adaptive management measures, including flexible opening dates and inseason adjustments to shark trip limits. Consistent with the adaptive management measures implemented in 2011 and based on the most recent data, in this action NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas.

This proposed rule's measures could affect fishing opportunities for commercial shark fishermen in the

northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Section 603(b)(3) of the Regulatory Flexibility Act (RFA) requires agencies to provide an estimate of the number of small entities to which the rule would apply. SBA has established size criteria for all major industry sectors in the United States, including fish harvesters. SBA's regulations include provisions for an agency to develop its own industry-specific size standards after consultation with SBA and to provide an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). In that final rule, effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The 2011 initial regulatory flexibility analysis/final regulatory flexibility analysis analyzed the overall number of limited access permits, which covers all of our active participants today. NMFS still considers all HMS permit holders to be small entities because they have average annual receipts of less than $11 million for commercial fishing.

As of June 2022, this proposed rule would apply to the approximately 209 directed commercial shark permit holders, 251 incidental commercial shark permit holders, 198 smoothhound shark permit holders, and 70 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 460 directed and incidental commercial shark permit holders, to date this year, 15 permit holders landed sharks in the Gulf of Mexico region, and 53 landed sharks in the Atlantic region. Of the 198 smoothhound shark permit holders, to date this year, 60 permit holders landed smoothhound sharks in the Atlantic region, and only 1 landed smoothhound sharks in the Gulf of Mexico region. As described below, NMFS has determined that all of these entities are small entities for purposes of the RFA.

Based on the 2022 ex-vessel prices (Table 3), fully harvesting the unadjusted 2023 Atlantic shark commercial base quotas could result in estimated total fleet revenues of $9,779,528. For adjusted management groups, the following are changes in potential revenues resulting from the adjustments proposed in this rule. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2022. The increase for the western Gulf of Mexico blacktip shark management group could result in a potential $196,451 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a potential $34,094 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to underharvest in 2022. This would cause a potential gain in revenue of $463,518 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of $1,377,619 for the fleet in the Atlantic region. Since a small business is defined as having annual receipts not in excess of $11 million, and each individual shark fishing vessel would be its own entity, the total Atlantic shark fishery is within the small entity definition since the total revenue is less than $12 million (*i.e.,* the estimated total fleet revenues plus the potential gain in revenues due to underharvest). NMFS has also determined that the proposed rule would not likely affect any small governmental jurisdictions.

TABLE 3—AVERAGE EX-VESSEL PRICES PER lb dw FOR EACH SHARK MANAGEMENT GROUP, 2022

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Western Gulf of Mexico	Blacktip Shark	$0.77	
	Aggregated LCS	0.70	
	Hammerhead Shark	0.70	
Eastern Gulf of Mexico	Blacktip Shark	1.23	
	Aggregated LCS	1.03	
	Hammerhead Shark	0.91	
Gulf of Mexico	Non-Blacknose SCS	0.69	
	Smoothhound Shark	1.25	
Atlantic	Aggregated LCS	1.21	
	Hammerhead Shark	0.69	
	Non-Blacknose SCS	1.16	
	Blacknose Shark	1.47	
	Smoothhound Shark	1.04	
No Region	Shark Research Fishery (Aggregated LCS)	0.97	
	Shark Research Fishery (Sandbar only)	1.15	
	Blue shark		
	Porbeagle shark		
	Other Pelagic sharks	1.44	
All	Shark Fins		$6.04
Atlantic	Shark Fins		1.80
GOM	Shark Fins		8.58

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated HMS FMP and its Amendments 2, 3, 5a, 6, and 9. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities from adjustments such as those contemplated in this

action are expected to be minimal. In accordance with the 2006 Consolidated HMS FMP, as amended, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests. For the adjustments included in this proposed rule, NMFS concludes that the effects this proposed rule would have on small entities would be minimal.

In conclusion, although this proposed rule would adjust quotas and retention limits and establish the opening date for the 2023 fishing year for the Atlantic commercial shark fisheries, this proposed rule does not change the regulations and management measures currently in place that govern commercial shark fishing in Federal waters of the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Furthermore, as described above, this action is not expected to affect the amount of sharks caught and sold or result in any change in the ex-vessel revenues those fishermen could expect, because, for the most part, the proposed quotas, retention limits (except for shortfin mako shark), and opening dates are the same as those for last year. In addition, as described above, for the areas in which this action proposes adjustments, the increases in revenues for the participating small entities are minimal. Therefore, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS invites comments from the public on the information in this determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

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

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–19473 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 174
Friday, September 9, 2022

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Fiscal Year 2022 Raw Cane Sugar Tariff-Rate Quota Extension of the Entry Period

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Office of the Secretary is providing notice of an extension of the fiscal year (FY) 2022 raw cane sugar tariff-rate quota (TRQ) entry period.

DATES: This notice is applicable on September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070; by telephone (202) 720–2916; or by email *Souleymane.Diaby@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of the Secretary announces that all sugar entering the United States under the FY 2022 World Trade Organization raw sugar TRQ will be permitted to enter U.S. Customs territory through December 31, 2022, two months later than the previously announced entry date. Additional U.S. Note 5(a)(iv) of chapter 17 of the U.S. Harmonized Tariff Schedule provides: ''Sugar entering the United States during a quota period established under this note may be charged to the previous or subsequent quota period with the written approval of the Secretary.'' The Secretary's authority under Additional U.S. Note 5 has been delegated to the Under Secretary for Trade and Foreign Agricultural Affairs (7 CFR 2.15). That authority, in turn, has been delegated to the Deputy Under Secretary for TFAA under certain circumstances (7 CFR 2.600). This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis.

Jason Hafemeister,

Acting Deputy Under Secretary, Trade and Foreign Agricultural Affairs.

[FR Doc. 2022–19499 Filed 9–8–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Coconino National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://tinyurl.com/mth7duwz.*

DATES: The meeting will be held on Thursday, September 29, 2022, 9 a.m.–4:00 p.m., mountain daylight time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Coconino National Forest Supervisor's Office at 1824 South Thompson Street, Flagstaff, Arizona 86001. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Michelle Paduani, Designated Federal Officer (DFO), by phone at 928–527–3456 or email at *michelle.paduani@usda.gov* or Brady Smith, RAC Coordinator, by phone at 928–310–6817 or email at *brady.smith@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss title II project proposals; and
2. Make funding recommendations on title II projects.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Brady Smith, 1824 S. Thompson Street, Flagstaff, Arizona 86001 or by email to *brady.smith@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19518 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wenatchee-Okanogan Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Wenatchee-Okanogan Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act on the Okanogan-Wenatchee National Forest within Okanogan County, consistent with the Federal Lands Recreation Enhancement Act. General information and virtual meeting details can be found at the following website: *https://www.fs.usda.gov/detail/okawen/workingtogether/advisorycommittees/?cid=fsbdev3_053646.*

DATES: The virtual meeting will be held on October 17, 2022, 9 a.m.–2 p.m., Pacific daylight time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held at the Confluence Technology Center, 285 Technology Center Way #102, in Wenatchee, Washington. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Robin DeMario, RAC Coordinator by phone at 509–664–9292 or via email at *robin.demario@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals; and

2. Make funding recommendations on title II projects.

Meetings are open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement at the meeting should request in writing by October 7, 2022, to be scheduled on the agenda for the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Robin DeMario, RAC Coordinator at 215 Melody Lane, Wenatchee, Washington, 98801; or by email to *robin.demario@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19517 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine-Angelina Resource Advisory Committee; Meeting

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Sabine-Angelina Resource Advisory Committee (RAC) will hold a series of virtual public meetings according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the

Sabine National Forest, consistent with the Federal Lands Recreation Enhancement Act.

DATES: The virtual meetings will be held on the following dates:

- October 4, 2022, 4:00 p.m.–5:30 p.m., Central Daylight Time;
- October 6, 2022, 4:00 p.m.–5:30 p.m., Central Daylight Time; and
- October 11, 2022, 4:00 p.m.–5:30 p.m., Central Daylight Time.

All RAC meetings are subject to cancellation. For status of any meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meetings are open to the public and will be held virtually via Microsoft Teams.

Meeting ID: 221 294 717 33 Passcode: SuVYYB. Contact the person listed under **FOR FURTHER INFORMATION CONTACT** for any questons or concerns regarding joining a meeting virtually.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Joey Silva, Designated Federal Officer (DFO), by phone at 936–639–8612 or email at *joey.silva@usda.gov* or Becky Nix, RAC Coordinator at 409–625–1940 or email at *becky.nix@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to cover the following:

1. Project Status Update;
2. Hear from Title II project proponents and discuss Title II project proposals;
3. Make funding recommendations on Title II projects;
4. Approve meeting minutes; and
5. Schedule the next meeting.

The meetings are open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda for a particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Becky Nix, 5050 State Hwy 21E, Hemphill, TX 75948; or by email to *becky.nix@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19521 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will hold two virtual meetings by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Trinity County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.*

DATES: The virtual meetings will be held on:

- October 3, 2022, 4:30 p.m.–6:30 p.m., Pacific daylight time, and
- October 17, 2022, 4:30 p.m.–6:30 p.m., Pacific daylight time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings are open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Weaverville Ranger Station. Please call ahead at 530–623–2121 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Monique Rea, RAC Coordinator, by phone at 916–580–5651 or via email at *monique.rea@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to cover the following:

1. Roll call;
2. Comments from the DFO;
3. Approve minutes from last meeting;
4. Discuss, recommend, approve projects;
5. Public comment period; and
6. Closing comments from the DFO.

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Thursday before each meeting, to be scheduled on the agenda for a particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Monique Rea, RAC Coordinator, 360 Main Street, Weaverville, California 96093; or by email to *monique.rea@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19520 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Greater Rocky Mountain Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Greater Rocky Mountain Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Arapaho Roosevelt, Bighorn, Grand Mesa-Uncompahgre-Gunnison, Medicine Bow-Routt, Pike-San Isabel, Rio Grande, San Juan, Shoshone, White River National Forests consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/r2//home/?cid=fseprd972168.*

DATES: The meeting will be held on September 29, 2022, 1 p.m.–04:30 p.m., mountain daylight time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Chad Stewart, Designated Federal Officer (DFO), by phone at 970–874–6674 or email at *chad.stewart@usda.gov* or Nicole Hutt, RAC Coordinator at 970–596–9070 or email at *nicole.hutt@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a Chairperson and Vice Chairperson;
2. Review a slideshow of completed projects that have benefited from title II funds and discuss the proposal process and timelines going forward;
3. Review member status/reappointment logistics;
4. Review the status of funds across counties;
5. Approve meeting minutes; and
6. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Nicole Hutt, 2250 South Main Street, Delta, CO 81416; or by email to *nicole.hutt@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee

have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19519 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Mark Twain National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/mtnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on September 15, 2022, 1:00 p.m.–4:00 p.m., Central Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Mark Twain National Forest Supervisor's Office, located at 401 Fairgrounds Road, Rolla, MO. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Michael Crump, Designated Federal Officer (DFO), by phone at 573–341–7413 or email at *michael.crump@usda.gov* or Michelle Capp, RAC Coordinator, by phone at 573–364–4621 or email at *michelle.capp@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals;
2. Make funding reccomendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Michelle Capp, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; or by email to *michelle.capp@usda.gov.*

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 1–800–877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: August 31, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–19513 Filed 9–8–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Hangzhou Ailong Metal Products Co., Ltd. (Ailong) made sales of subject merchandise at prices below normal value (NV). The period of review (POR) is August 1, 2020, through July 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On August 2, 2021, Commerce notified interested parties of the opportunity to request an

administrative review of orders, findings, or suspended investigations with anniversaries in August 2020, including the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China).[1] On October 7, 2021, Commerce published a notice initiating an AD administrative review of LWRPT from China covering one company, Ailong, for the POR.[2] On April 19, 2022, Commerce extended the deadline for the preliminary results of this review by a total of 120 days, to August 31, 2022.[3]

During the course of this review, Ailong responded to Commerce's initial and supplemental questionnaires. Nucor Tubular Products, Inc. (Nucor), a domestic producer and an interested party in this review, commented on certain responses. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.[4] For a full description of the scope, *see* the Preliminary Decision Memorandum.

Separate Rate Status

Based on the criteria established by *Sparklers*[5] and *Silicon Carbide,*[6] Commerce preliminarily determines that the information placed on the record by Ailong demonstrates an absence of *de jure* and *de facto* government control over its export activities. Therefore, we have preliminarily granted Ailong separate rate status. For details regarding our analysis, *see* the Preliminary Decision Memorandum.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[7] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the weighted-average dumping margin determined for the China-wide entity (*i.e.,* 255.07 percent) is not subject to change as a result of this review.[8] For additional information, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices in accordance with section 772 of the Act. Because China is a non-market economy country within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of review, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.

Preliminary Results of Review

We are preliminarily assigning the following weighted-average dumping margin to the firm listed below for the period August 1, 2020, through July 31, 2021:

Producers/exporters	Weighted-average dumping margin (percent)
Hangzhou Ailong Metal Products Co., Ltd	45.02

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[9] Rebuttal briefs may be filed with Commerce no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[12] Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals associated with the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021) (*Initiation Notice*).

[3] *See* Memorandum, ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated April 19, 2022.

[4] For a complete description of the scope of the *Order, see* Memorandum, ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Decision Memorandum for the Preliminary Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[5] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*).

[6] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[8] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *Id.*

[13] *See* 19 CFR 351.303 (for general filing requirements).

limited to issues raised in the briefs. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[14] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date.[15] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[16] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by the final results of review.[17] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

We will calculate importer/customer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined sales to a particular importer/customer to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[18] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total entered value of the merchandise sold to the importer/customer.[19] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[20] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,*[21] Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by a respondent individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin assigned to the China-wide entity.[22]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of light-walled rectangular pipe and tube from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) for Ailong, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the company (except, if the rate *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 255.07 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213(h)(1).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–19524 Filed 9–8–22; 8:45 am]

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[14] *Id.; see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[15] *Id.*

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[17] *See* 19 CFR 351.212(b)(1).

[18] We applied the assessment rate calculation method adopted in Antidumping Proceedings: *Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[19] *See* 19 CFR 351.212(b)(1).

[20] *Id.*

[21] *See* 19 CFR 351.106(c)(2).

[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 29, 2022, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China). Commerce preliminarily determined that MLWF that is produced and exported by Zhejiang Yuhua Timber Co. Ltd. (Yuhua) and sold through A-Timber Flooring Company Limited (A-Timber) is excluded from the AD order. For these final results, Commerce continues to find that MLWF sold through A-Timber that is produced and exported by Yuhua is excluded from the AD order.

DATES: Applicable September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Max Goldman, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0607 or (202) 482–3896, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2022, Commerce published the *Preliminary Results*[1] of this CCR, finding that MLWF that is produced and exported by Yuhua and sold through A-Timber is excluded from the *Order*.[2] We provided interested parties with the opportunity to comment and request a public hearing regarding the *Preliminary Results*.[3] On August 12, 2022, Yuhua, A-Timber, and Mullican Flooring Co. (Mullican) submitted a letter in lieu of a case brief noting that all parties to the review support Commerce's findings and request that Commerce affirm the *Preliminary Results*.[4] We received no other comments.

Scope of the Order

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[5] in combination with a core.[6] The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS):[7] 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175;

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Changed Circumstances Review, 87 FR 45748 (July 29, 2022) (Preliminary Results).*

[2] *Id.; see also Multilayered Wood Flooring from the People's Republic of China: Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the Peoples Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (collectively, the *Order*).

[3] *See Preliminary Results,* 87 FR at 45750.

[4] *See* Yuhua, A-Timber, and Mullican's Letter, ''Letter in Lieu of Case Brief,'' dated August 12, 2022 (Yuhua *et al.*'s Letter).

[5] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[6] Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

[7] On October 31, 2018, and March 10, 2022, we added the following HTSUS subheadings to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4412.51.1030, 4412.51.1050, 4412.51.3105, 4412.51.4100, 4412.51.5100, 4412.52.1030, 4412.52.1050, 4412.52.3105, 4412.52.4100, 4412.52.5100, 4412.59.6000, 4412.59.7000, 4412.59.8000, 4412.59.9000, 4412.59.9500, 4412.91.0600, 4412.91.1030, 4412.91.1040, 4412.91.3110, 4412.91.3120, 4412.91.3130, 4412.91.3140, 4412.91.3160, 4412.91.3170, 4412.91.5105, 4412.92.0700, 4412.92.1130, 4412.92.1140, 4412.92.3120, 4412.92.3160, 4412.92.3170, 4412.92.4200, 4412.92.5205, 4412.99.5800, 4412.99.6100, 4412.99.7100, 4412.99.8100, 4412.99.9100, 4412.99.9700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. *See* Memoranda ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,'' dated October 31, 2018; and ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,'' dated March 10, 2022.

4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Final Results of Review

Based on the comments received [8] and finding no information or evidence on the record that calls into question the *Preliminary Results,* we continue to find that MLWF that is produced and exported by Yuhua and sold through A-Timber is excluded from the *Order*.[9] Consequently, Commerce will instruct U.S. Customs and Border Protection (CBP) that when Yuhua is the producer and exporter of MLWF sold through (*i.e.,* invoiced by) A-Timber, Yuhua's exclusion from the *Order* applies to entries of such merchandise. That is, the exclusion would not apply to MLWF produced and/or exported by a Chinese entity other than Yuhua and sold through A-Timber. We will also instruct CBP to terminate any suspension of liquidation on MLWF produced and exported by Yuhua and sold through A-Timber, and retroactively apply this determination to all unliquidated entries of such merchandise. We note that draft instructions to CBP were released to interested parties on July 28, 2022, and we received no comments.[10] Accordingly, we intend to issue assessment instructions to CBP no sooner than 35 days after the date of publication of these final results. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Administrative Protective Order (APO)

This notice serves as a final reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3)(i).

Dated: August 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19528 Filed 9–8–22; 8:45 am]

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[8] *See* Yuhua *et al.*'s Letter.

[9] *See Preliminary Results,* 87 FR at 45750.

[10] *See* Memorandum, ''Draft Customs Instructions,'' dated July 28, 2022.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 29, 2022, the U.S. Court of International Trade (the Court or CIT) issued its final judgment in *SeAH Steel Corporation* v. *United States,* Consol. Court No. 20–00150, Slip Op. 22–101, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period September 1, 2017, through August 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Final Results* of the administrative review, and that Commerce is amending the *Final Results* with respect to the dumping margin assigned to SeAH Steel Corporation (SeAH).

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt or Mark Flessner, 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) 482–4880 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of OCTG from Korea.[1] In this administrative review, Commerce selected two mandatory respondents for individual examination: Hyundai Steel Company (Hyundai Steel) and SeAH. Commerce calculated weighted-average dumping margins of 0.00 percent for Hyundai Steel, 3.96 percent for SeAH, and 3.96 percent for the non-examined companies in the *Final Results*.[2] SeAH

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 41949 (July 13, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *Id.*

challenged the *Final Results* on multiple grounds.[3]

In its *Remand Order,* the Court sustained Commerce's determination with respect to two issues: (1) the calculation of profit as included in SeAH's constructed export price; [4] and (2) the exclusion of freight revenue in calculating SeAH's constructed export price.[5] However, the Court remanded two of Commerce's determinations:

1. Particular market situation (PMS), finding that substantial record evidence does not support Commerce's cumulative determination that a PMS existed in Korea for the 2017–2018 period of review (POR), thus, the issue required further consideration or explanation.[6]

2. The application of Cohen's *d* test, as part of the differential pricing analysis, for further explanation of whether potential limits on the applicability of the Cohen's *d* test as enumerated in *Stupp* [7] were satisfied or whether those limits need not be observed when Commerce uses the Cohen's *d* test.[8]

In its final results of redetermination pursuant to the *Remand Order* issued on July 16, 2021, Commerce reconsidered the two determinations listed above.[9] In the *Redetermination,* Commerce:

1. Reversed the PMS finding and removed the adjustment from the margin calculations for SeAH.

2. Determined that it was not necessary to address the issue of applicability of the Cohen's *d* test because, having reversed the PMS finding, the weighted-average dumping margin is either zero or *de minimis* regardless of which comparison method is used, thus rendering the differential pricing analysis moot.

As a result, Commerce recalculated the weighted-average dumping margin for SeAH, which changed from 3.96 percent to 0.00 percent.[10]

On August 29, 2022, the CIT issued its final judgment in *SeAH Steel Corporation* v. *United States,* Consol. Court No. 20–00150, Slip Op. 22–101, fully sustaining Commerce's *Redetermination:* [11]

(1) The CIT sustained Commerce's *Redetermination* with respect to the PMS determination and adjustment.[12]

(2) The CIT sustained Commerce's *Redetermination* with respect to not applying the differential pricing analysis to calculate SeAH's dumping margin because SeAH's dumping margin is either zero or *de minimis,* regardless of which comparison method is used.[13]

Timken Notice

In its decision in *Timken,*[14] as clarified by *Diamond Sawblades,*[15] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's August 29, 2022, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to SeAH for the period September 1, 2017, through August 31, 2018. The revised dumping margin is as follows:

Exporter/producer	Weighted-average dumping margin (percent)
SeAH Steel Corporation	0.00

Cash Deposit Requirements

Because SeAH has had a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and exported by SeAH, and were entered, or withdrawn from warehouse, for consumption during the period September 1, 2017, through August 31, 2018. Liquidation of these entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess ADs on unliquidated entries of subject merchandise produced and exported by SeAH, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess ADs on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[16] we will instruct CBP to liquidate the appropriate entries without regard to ADs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Act.

Dated: September 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19631 Filed 9–8–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–818]

Lemon Juice From Argentina: Continuation of Suspension of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the respective determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that termination of the 2016 Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina (2016 Agreement) and the underlying antidumping duty investigation on lemon juice from Argentina would likely lead to continuation or recurrence of dumping

[3] *See generally SeAH Steel Corp.* v. *United States,* 539 F. Supp. 3d 1341 (CIT 2022) (*Remand Order*).

[4] *Id.,* 539 F. Supp. 3d at 1366.

[5] *Id.*

[6] *Id.*

[7] *See Stupp* v. *United States,* 5 F.4th 1341 (Fed. Cir. 2021) (*Stupp*).

[8] *See Remand Order,* 539 F. Supp. 3d at 1351 and 1366.

[9] *See Final Results of Redetermination Pursuant to Court Remand, SeAH Steel Corp.* v. *United States,* Consolidated Court No. 20–00150, Slip. Op. 21–146 (CIT October 19, 2021), dated January 24, 2022 (*Redetermination*).

[10] *Id.*

[11] *See SeAH Steel Corporation* v. *United States,* Consol. Court No. 20–00150, Slip Op. 22–101 (CIT August 29, 2022) (*SeAH Steel Judgement*).

[12] *Id.* at 10–11.

[13] *Id.* at 12.

[14] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[15] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[16] *See* 19 CFR 351.106(c)(2).

and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the 2016 Agreement.

DATES: Applicable September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jill Buckles, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–6230, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2016, Commerce and substantially all producers/exporters of lemon juice from Argentina signed the 2016 Agreement.[1] On September 1, 2021, Commerce initiated,[2] and the ITC instituted,[3] the second sunset review of the suspended antidumping duty investigation on lemon juice from Argentina, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, pursuant to sections 751(c) and 752 of the Act, Commerce determined that termination of the 2016 Agreement and suspended antidumping duty investigation on lemon juice from Argentina would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail, should the 2016 Agreement be terminated.[4] On September 2, 2022, pursuant to section 751(c) of the Act, the ITC published its determination that termination of the suspended antidumping duty investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the 2016 Agreement

The product covered by the 2016 Agreement is lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the 2016 Agreement is dispositive.

Continuation of Suspension of Investigation

As a result of the respective determinations by Commerce and the ITC that termination of the 2016 Agreement and suspended antidumping duty investigation on lemon juice from Argentina would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, consistent with section 751(d)(2) of the Act, Commerce hereby gives notice of the continuation of the 2016 Agreement. The effective date of continuation will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the 2016 Agreement not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19523 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Lemon Juice from Argentina: Continuation of Suspension of Antidumping Investigation,* 81 FR 74395 (October 26, 2016).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 48983 (September 1, 2021).

[3] *See Lemon Juice from Argentina; Institution of a Five-Year Review,* 86 FR 49054 (September 1, 2021).

[4] *See 2016 Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina; Final Results of the Expedited Second Sunset Review of the Suspension Agreement,* 87 FR 215 (January 4, 2022).

[5] *See Lemon Juice from Argentina,* 87 FR 54263 (September 2, 2022) (Investigation No. 731–TA–1105 (Second Review)).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 26, 2022, the U.S. Court of International Trade (the Court or CIT) issued its final judgment in *SeAH Steel Corp.* v. *United States,* Consol. Court No. 19–00086, Slip Op. 22–100, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period September 1, 2016, through August 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to NEXTEEL Co., Ltd. (NEXTEEL), SeAH Steel Corporation (SeAH), and the non-individually examined companies who are party to the litigation.

DATES: Applicable September 6, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt or Mark Flessner, 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) 482–4880 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2019, Commerce published its *Final Results* in the 2016–2017 AD administrative review of OCTG

from Korea.[1] In this administrative review, Commerce selected two mandatory respondents for individual examination: NEXTEEL and SeAH. Commerce calculated final weighted-average dumping margins of 32.24 percent for NEXTEEL and 16.73 percent for SeAH; Commerce assigned to the non-examined companies a weighted-average dumping margin of 24.49 percent, in the *Final Results.*[2]

SeAH, NEXTEEL, AJU Besteel Co., Ltd. (AJU Besteel), ILJIN Steel Corporation (ILJIN), Hyundai Steel Company (Hyundai), and Husteel Co., Ltd. (Husteel), challenged the *Final Results* on multiple grounds.[3] In its *Remand Order,* the court sustained Commerce's determinations with respect to calculation of constructed value profit based on SeAH's third-country sales from a previous segment of the proceeding; inclusion of a penalty in SeAH's general and administrative (G&A) expense ratio as supported by substantial evidence; the differential pricing analysis; the exclusion of freight revenue profit; and application of an affiliated reseller's G&A expense ratio to SeAH's non-further manufactured products. However, the Court remanded five of Commerce's determinations:

1. The particular market situation determination and adjustment, for further explanation or reconsideration.
2. The reallocation of costs for NEXTEEL's non-prime merchandise based on the actual costs of prime and nonprime products.
3. The treatment of SeAH's production line suspension costs, for further explanation or reconsideration.
4. The recalculation of SeAH's further manufacturing cost.
5. The inclusion of SeAH's inventory valuation losses as G&A expenses, for further explanation or reconsideration.[4]

In its final results of redetermination pursuant to the *Remand Order,* issued on July 16, 2021, Commerce reconsidered the five determinations listed above.[5] In the *Redetermination,* Commerce:

1. Reversed the particular market situation finding and removed the adjustment from the margin calculations for NEXTEEL and SeAH.
2. Reversed its finding with respect to reallocation of NEXTEEL's non-prime products, relying instead on the actual costs of prime and non-prime products as reported by NEXTEEL.
3. Provided further explanation of the treatment of SeAH's production line suspension costs.
4. Provided further explanation of the recalculation of SeAH's further manufacturing cost.
5. Provided further explanation of the inclusion of SeAH's inventory valuation losses as G&A expenses.

As a result, Commerce recalculated the weighted-average dumping margins. The weighted-average dumping margin for NEXTEEL changed from 32.24 percent to 9.77 percent; the weighted-average dumping margin for SeAH changed from 16.73 percent to 5.28 percent; and the weighted-average dumping margin for the non-examined companies changed from 24.49 percent to 7.53 percent.[6]

On August 26, 2022, the CIT fully sustained E&C's *Redetermination:*

(1) The CIT sustained Commerce's *Redetermination* with respect to the particular market situation determination and adjustment.[7]

(2) The CIT sustained Commerce's *Redetermination* with respect to the reallocation of costs for NEXTEEL's non-prime merchandise based on the actual costs of prime and nonprime products.[8]

(3) The CIT sustained Commerce's *Redetermination* with respect to the treatment of SeAH's production line suspension costs.[9]

(4) The CIT sustained Commerce's *Redetermination* with respect to the recalculation of SeAH's further manufacturing cost.[10]

(5) The CIT sustained Commerce's *Redetermination* with respect to the inclusion of SeAH's inventory valuation losses as G&A expenses.[11]

Timken Notice

In its decision in *Timken,*[12] as clarified by *Diamond Sawblades,*[13] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's August 26, 2022, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending the *Final Results* with respect to NEXTEEL, SeAH, and the non-examined companies who are party to this litigation for the period September 1, 2016, through August 31, 2017. The revised dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	9.77
SeAH Steel Corporation	5.28
Non-examined Companies[14]	7.53

Cash Deposit Requirements

Because NEXTEEL, SeAH, AJU Besteel, Husteel, ILJIN, and Hyundai Steel have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 24085 (May 24, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *Id.*

[3] *See SeAH Steel Co.* v. *United States,* Consolidated Court No. 19–00086, Slip. Op. 21–43 (CIT April 14, 2021) (*Remand Order*).

[4] *Id.*

[5] *See Final Results of Redetermination Pursuant to Court Remand, SeAH Steel Co.* v. *United States,* Consolidated Court No. 19–00086, Slip. Op. 21–43 (CIT April 14, 2021), dated July 16, 2021 (*Redetermination*). Note that this was the second correction, or third filing, of these remand results. On June 30, 2021, Commerce had issued and filed with the Court the Final Results of Remand Redetermination, which contained an inadvertent clerical error in the dumping margins listed on page 3. On July 8, 2021,the Court had issued an order that authorized Commerce to correct this error. On July 9, 2021, Commerce had filed with the Court its correction to the Final Results of Remand Redetermination, which contained yet another inadvertent clerical error in the dumping margin for non-individually-examined respondents on pages 3 and 66. Commerce therefore corrected the clerical error, but did not otherwise modify the original June 30, 2021, Remand Results.

[6] *Id.*

[7] *See SeAH Steel Corp.* v. *United States,* Consol. Court No. 19–00086, Slip Op. 22–100 (CIT August 26, 2022) (*SeAH Judgement*) at 20.

[8] *Id.* at 23.

[9] *Id.* at 30.

[10] *Id.* at 36–38.

[11] *Id.* at 42–45.

[12] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[13] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[14] The non-examined companies which are parties to this litigation and whose rates are subject to change are: (1) AJU Besteel Co., Ltd. (AJU Besteel); (2) Husteel Co., Ltd. (Husteel); (3) Hyundai Steel Company (note that, on September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining AD cash deposits and liabilities, *see Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea,* 81 FR 64873 (September 21, 2016); Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.) (Hyundai Steel); and (4) ILJIN Steel Corporation (ILJIN).

revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by NEXTEEL, SeAH, AJU Besteel, Husteel, ILJIN, and Hyundai Steel, and were entered, or withdrawn from warehouse, for consumption during the period September 1, 2016, through August 31, 2017. Liquidation of these entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess ADs on unliquidated entries of subject merchandise produced and/or exported by NEXTEEL, SeAH, AJU Besteel, Husteel, ILJIN, and Hyundai Steel, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess ADs on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[15] we will instruct CBP to liquidate the appropriate entries without regard to ADs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Act.

Dated: September 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19627 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–887]

Carbon and Alloy Steel Threaded Rod From India: Final Results of Antidumping Duty Administrative Review, 2019–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that carbon and alloy steel threaded rod (steel threaded rod) from India is not being sold in the United States at below normal value. The period of review (POR) is September 25, 2019, through March 31, 2021.

DATES: Applicable September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3053.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2022, Commerce published the *Preliminary Results* of this administrative review and invited parties to comment on the *Preliminary Results.*[1] This administrative review covers 328 companies.[2] Commerce selected Maharaja International (Maharaja) and Mangal Steel Enterprises Limited (Mangal) as the two respondents for individual examination.[3] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The merchandise covered by the scope of this *Order* is carbon and alloy steel threaded rod from India. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues is attached to this notice at Appendix I. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculations. However, those adjustments did not result in any changes to the estimated weighted-average dumping margins calculated for these final results. For a discussion of these changes, *see* the ''Discussion of the Issues'' section of the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

Where the dumping margin for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' Further, Congress, in the SAA, stated that when ''the dumping margins for all of the

[15] *See* 19 CFR 351.106(c)(2).

[1] *See Carbon and Alloy Steel Threaded Rod from India: Preliminary Results of Antidumping Duty Administrative Review, 2019–2021,* 87 FR 27107 (May 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 31282 (June 11, 2021) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022).

[3] *See* Memorandum, ''Respondent Selection,'' dated July 16, 2021.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Carbon and Alloy Steel Threaded Rod from India; 2019–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Carbon and Alloy Steel Threaded Rod from India: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 85 FR 19925 (April 9, 2020) (*Order*).

[6] *See* Issues and Decision Memorandum at ''Scope of the *Order.*''

exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis* . . . {t}he expected method in such cases will be to weight-average the zero and the *de minimis* margins and margins determined pursuant to the facts available.'' [7]

In this review, Commerce determines that the estimated weighted-average dumping margins for both Maharaja and Mangal are zero percent. Therefore, in accordance with section 735(c)(5)(B) of the Act, we are applying to the 326 companies not selected for individual examination a rate of zero percent, because we calculated rates of zero percent for both mandatory respondents (*see* Appendix II for a full list of these companies).

Final Results of the Review

Commerce determines that the following estimated weighted-average dumping margins exists during the period September 25, 2019, through March 31, 2021:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Maharaja International	0.00
Mangal Steel Enterprises Limited	0.00
Non-Examined Companies [8]	0.00

Disclosure

Commerce intends to disclose to interested parties the calculations performed for these final results of review within five days of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results this review.

Where the respondent's weighted-average dumping margin is either zero or *de minimis,* we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). Because the weighted-average dumping margins for Maharaja, Mangal and the 326 companies not selected for individual examination have been determined to be zero percent, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's practice, for entries of subject merchandise during the POR for which Maharaja or Mangal did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

We intend to issue instructions to CBP no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 0.00 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.222(b)(5).

Dated: September 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

[7] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1 (1994) (SAA) at 873.

[8] *See* Appendix II for a full list of these companies.

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Order,* 85 FR 19926.

Appendix II

List of Companies Not Individually Examined

A H Enterprises
A S International
Aadi Shree Fastener Industries
Aanjaney Micro Engy Pvt., Ltd.
Aaran 1 Engineering Pvt., Ltd.
Aask Precision Engineers
Abhi Metals
Accumax Lab Devices Pvt., Ltd.
Acmi Industries
Adhi Automation (India) Pvt., Ltd.
Adma Auto Components Pvt., Ltd.
Adma Fabrications (P) Ltd.
Aesthetic Living Merchants Pvt., Ltd.
Agarwal Fastners Pvt., Ltd.
Ajay Electric And Metal Industries
Akg India Private Ltd.
Ambana Exp.
Amtek Auto Ltd.
Ap Trading
Apa Engineering Pvt., Ltd.
Arcotherm Pvt., Ltd.
Arohi International
Aruna Alloy Steels Pvt., Ltd.
Ashish International
Asma International
Asp Pvt., Ltd.
August Industries
Aura Industries Equipement & Project Pvt. Ltd.
Avtar Exp.
Babu Exp.
Bajaj Auto Ltd.
Balmer Lawrie & Co., Ltd.
Bansal Wire Industries Ltd.
Bee Dee Cycle Industries
Belgaum Ferrocast India Pvt., Ltd.
Beri Udyog Pvt., Ltd.
Best Quality Fastners
Bhansali Inc.
Bhuj Polymers Pvt., Ltd.
C Tech Engineers Pvt. Ltd.
Caliber Enterprises
Canco Fasteners
Caparo Engineering India Pvt., Ltd.
Capital Bolts And Hardwares
Case New Holland Construction Equipment(I) Pvt. Ltd.
Century Distribution System Inc.
Challenger Sweepers Private Ltd.
Chandra Mats Pvt., Ltd.
Charu Enterprises
Chhabra Forgings
Chirag International
Clasquin India Pvt., Ltd.
Cnh Industries (India) Pvt., Ltd.
Collection Exp.
Concept Fasteners
Conex Metals
Continental Hardware Mart
Cosmo International
Cummins India Ltd.
Cummins India Ltd. Pdc Mfg Unit
Damco India Pvt., Ltd.
Danesh Industries
Danta Exim
Dauji Engineering Ltd.
Dcw Ltd.
Deepak Brass Industries
Deepak Fasteners Ltd.
Deneb
Dhara Foods Pvt., Ltd.
Dmw Cnc Solutions India Pvt., Ltd.
Dst Industries
Durable Metalcraft
Eagle Line Fixings&Fixtures (P) Ltd.
Eastman Industries Ltd.
Echjay Forgings Pvt. L
Edicon Pneumatic Tool Co. Pvt. Ltd.
Efficient Automotives Pvt., Ltd.
Eicher Motors Ltd.
Elite Green Pvt., Ltd.
Ellias International
Emmforce Inc.
Emu Lines Pvt., Ltd.
Ess Enn Auto Cnc .P. Ltd.
Everest Engineering Equipment Pvt., Ltd.
Everest Industries Ltd.
Fence Fixings
Fine Products (India)
Fine Thread Form Industries
Fit Right Nuts And Bolts Pvt., Ltd.
Flowserve India Controls Pvt., Ltd.
Ford India Pvt., Ltd.
Ganesh Brass Industries
Ganga Technocast
Ganges Internationale
Ganpati Fastners Pvt., Ltd.
Gayatri Metal Products
Ghanshyamlal Co.
Global Engineering Exports
Gloster Jute Mills Limited
Goel & Goel International
Good Ways Corporation
Goodgood Manufacturers
GPDA Fasteners
Gripwel Fasteners
Gvn Fuels Ltd.
Hamidi Exp.
Haria Trading Co.
Him Overseas
Hind Metal & Industries Pvt., Ltd.
Hindostan Expo
Hiten Fastners Pvt., Ltd.
Hobb International Pvt., Ltd.
Humboldt Wedag India P Ltd.
Husco Hydraulics Pvt., Ltd.
Idea Fastners Pvt., Ltd.
Imco Alloys Pvt., Ltd.
Inder Industries
India Yamaha Motor Pvt., Ltd.
Indo Schottle Auto Parts Pvt., Ltd.
Indra Engineering
Induspro Auto Engineers Pvt., Ltd.
Industrias Gol S.A.U.
Ingersoll Rand India Ltd.
Intex Home Solutions
Intl Tractors Ltd.
Irm Offshore & Marine Engineer Pvt., Ltd.
Ispt India Pvt., Ltd.
J.K. Fenner (India) Ltd.
Jain Grani Marmo Pvt., Ltd.
Jayson International
Jhv Engicon Pvt., Ltd.
Jindal Fasteners
K V Tech India LLP
Kalpana Brass Industries
Kanika Exp.
Kanika Overseas Inc.
Kapil Enterprises
Kapson India
Kapurthala Industrial Corporation
Karamtara Engineering Pvt., Ltd.
Karna International
KBV Industries India Pvt., Ltd.
KEC International Ltd.
Keith Ceramic India Private Ltd.
Kewaunee Labway India Pvt., Ltd.
King Exports
Kmp Freight
Knk Enterprises
Knl Drive Line Parts Pvt., Ltd.
Kohler India Corp.Pvt Ltd.
Kova Fasteners Pvt., Ltd.
Krisam Automation Pvt., Ltd.
KSP Engineering Co.
Kumar Auto Parts Pvt., Ltd.
Kundan Industries Ltd.
Lasercut Metal Technology Private Ltd.
LCL Logistix (I) Pvt., Ltd.
Lg Balakrishnan & Bros Ltd.
Live Rock Bangalore Pvt., Ltd.
M K Fastners
M.D. Industries
M.K.Fasteners
M.M. Intl
Mack Machine Products Pvt., Ltd.
Maini Precision Products Ltd.
Mangalam Alloys Ltd.
Mansons International Pvt., Ltd.
Mark Industries
Marudhar Enterprises
Maxop Engineering Co.
Maya Enterprises
MB Metallic Bellows Pvt., Ltd.
Mechasoft
Meeras International
Mega Engineers
Metaloft Industries Private Ltd.
Metrix Autocomp Pvt., Ltd.
Mohindra Fasteners Ltd.
Movex Cargo Pvt., Ltd.
MSS India Pvt., Ltd. (100%Eou)
Mukund Overseas
Multimech Engineers
Multitech Products Pvt., Ltd.
N. A. Roto Machines & Moulds India
Navketan Engineering Works
Neon Alloys
Nexo Industries Ltd.
Nipha Enterprises LLP
Niranjan Engineering Works
Nishant Steel Industries
Nivic Technocast
Norquest Brands Private Ltd.
Northpole Industries
Ommi Forge Pvt., Ltd.
Omnitech Engineering
Onkar International
Oriental Exp. Corporation
Oriental Rubber Industries
P N International
P R Rolling Mills Pvt., Ltd.
Paani Precision Products Llp
Paloma Turning Co. Pvt., Ltd.
Panesar Engineers
Pankaj Exp.
Paramount Agriparts
Parshva India
Parul Exp.
Perfect Forgings
Perfect Industries (India)
Pheon Auto Tech Pvt., Ltd.
Piping & Energy Products (P) Ltd.
Pooja Forge Ltd.
Pooja Precision Screws Pvt., Ltd.
Pr Professional Services
Precision Engineering Industries
Precision Products Marketing Pvt., Ltd.
Prime Steel Products
Protech International
Psl Pipe & Fittings Co.
R F India
R K Fasteners (India)
R. Kay Exp.

Raajratna Metal Industries Ltd.
Raajratna Ventures Ltd.
Rachna Fastners
Randack Fasteners India Pvt., Ltd.
Rar Exim Pvt., Ltd.
Ravi Engineers
Rbm International
Resilent Autocomp Pvt., Ltd.
Ridvan Fasteners India Pvt., Ltd.
Right Tight Fastners Pvt., Ltd.
Rishi International
Rohlig India Pvt., Ltd.
Roots Multiclean Ltd.
Rotzler Services Private Ltd.
S K Brass Works
Sakthi Forgings
Sameer Exports International
Sandip Brass Industries
Sanghvi Metal Coporation
Sarveshwari Engineers
Satyam Engineering Works
Schenker India Pvt., Ltd.
Scorpio Precisions
Shalaka Shafts Private Ltd.
Shiv Om Brass Industries
Shree Exp.
Shree Luxmi Fasteners
Shree Raj Industries
Shreeraj Industries
Shri L.G. Hindustan Handicrafts
Shri Ram Castings
Shri Shirdi Sai Baba Moorti Art
Shrijee Process Engineering
Shrutee Exp. Pvt., Ltd.
Shyam Enterprises
Sigmaflow Production Solutions Priv
Simplex Engineering Co.
Singhania International
Sivaramakrishna Forgings P. Ltd.
Skf India Ltd.
Sks Fasteners Ltd.
Sonesta Corporation
Sri Ranganathar Industries Private Limited
Stelco Ltd.
Sterling Tools Ltd.
Strut Support Systems
Sundram Fasteners Ltd.
Sunil Chirag & Co.
Sunil Industries, Ltd.
Supreme Overseas Exports India Pvt. Ltd.
Surelock Plastics Pvt., Ltd.
Suzlon Energy Ltd.
Suzy Indusries Ltd.
Sv Engineerings
Swadesh Enginering Industries
Swamiji Transmission Pvt., Ltd.
Swati Enterprise
Techbolt Industries Private Ltd.
Technical Products
Technocraft Industries (India) Ltd.
Tega Industries Ltd.
Teryair Equipment Pvt., Ltd.
Texas Technology
Teyamaha Motor Asia Pte., Ltd.
Tijiya Engineering Pvt., Ltd.
Tijiya Exp. Pvt., Ltd.
Torqbolt Inc.
Total Transport Systems Pvt., Ltd.
Trans Tool Pvt., Ltd.
Tristar International
Triton Foodworks Pvt., Ltd.
Trueform Exp. Pvt.L
Turbo Tools Pvt., Ltd.
Umaa Engineers
Unexo Life Sciences Private Ltd.
Universal Precision Screws
Unlimited Inc.
UT Worldwide (India) Pvt., Ltd.
V.K Fasteners Pvt., Ltd.
V.R.Logistics Pvt., Ltd.
V.S.Industries
Vatsalya Metal Industries
Vega Industries
Velvin Paper Products
Venu Engineering Services (P) Ltd.
Versatile Instruments & Controls
Vestas Wind Technology India Private Ltd.
Vibracoustic Noida Pvt., Ltd.
Victaulic Piping Products India Pvt., Ltd.
Vidhi Industries
Vidushi Wires Pvt., Ltd.
Vijay Engineering Works
Viraj Profiles Ltd.
Vollan Shipping Pvt., Ltd.
Vph International
Waveerk Enterprises
White Mountain Fixings India
Wintage Engineers & Consultants
Wire Rings
Xcel Exports
Yerik International
Yogendra International
Youyun Logistics & Technology Pvt. Ltd.
Zenith Precision Pvt., Ltd.

[FR Doc. 2022–19522 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC301]

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on October 27–28, 2022. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 27, 2022 from 8 a.m. to 4:30 p.m. Hawaii Standard Time (HST) (or until business is concluded) and October 28, 2022 from 8 a.m. to 4:30 p.m. HST (or until business is concluded). Members of the public may submit written comments on meeting topics or materials; comments must be received by October 22, 2022.

ADDRESSES: The public meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814—in the Garden Lanai Meeting Room, and will also be broadcast via web conference. Documents to be considered by the PAC will be made available at the meeting. For details on how to join via web conference, call in, or to submit comments, please contact Emily Reynolds, NMFS Pacific Islands Regional Office; telephone: 808–725–5039; email: *emily.reynolds@noaa.gov.* Documents to be considered by the PAC will be sent out via email in advance of the meeting. Please submit contact information to Emily Reynolds (telephone: 808–725–5039; email: *emily.reynolds@noaa.gov*) at least 3 days in advance of the meeting to receive documents via email. This meeting may be audio recorded for the purposes of generating notes of the meeting. As public comments will be made publically available, participants and public commenters are urged not to provide personally identifiable information (PII) at this meeting. Participation in the meeting, in person, by web conference, or by telephone constitutes consent to the audio recording.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can

be found on the WCPFC website: *http://www.wcpfc.int.*

Meeting Topics

The PAC meeting topics may include the following: (1) outcomes of the 2021 annual session of the WCPFC and 2022 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) issues to be considered in the WCPFC 2022 annual session; (3) potential U.S. proposals to the WCPFC 2022 annual session; (4) input and advice from the PAC on issues that may arise at the WCPFC 2022 annual session; (5) potential proposals from other WCPFC members; and (6) other issues.

Special Accommodations

The meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808–725–5039 by October 14, 2022.

Authority: 16 U.S.C. 6902 *et seq.*

Dated: September 6, 2022.

Kelly Denit,

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

[FR Doc. 2022–19488 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC348]

Management Track Assessment for Groundfish and Monkfish Stocks

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel (AOP) will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing Gulf of Maine and Georges Bank winter flounder, Atlantic halibut, white hake, Gulf of Maine and Georges Bank haddock, northern and southern monkfish, southern New England/mid-Atlantic yellowtail flounder, pollock, and American plaice stocks. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the lead stock assessment analyst and reviewed by an independent panel of stock assessment experts called the AOP. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held from September 19, 2022–September 22, 2022. The meeting will conclude on September 22, 2022 at 5 p.m. eastern standard time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet (*https://meet.google.com/hhv-ubdx-pef*).

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–257–1642; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

Daily Meeting Agenda—Management Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Monday, September 19, 2022

Time	Activity	Lead
9 a.m.–9:15 a.m	Welcome/Logistics, Introductions/Process	Michele Traver, Russ Brown, and Richard Merrick (Chair).
9:15 a.m.–10 a.m	Input Data Changes, Discussion/Questions	Russ Brown, Review Panel.
10 a.m.–11 a.m	Gulf of Maine winter flounder, Discussion/Questions	Paul Nitschke, Review Panel.
11 a.m.–11:15 a.m	Break.	
11:15 a.m.–12:15 p.m	Georges Bank winter flounder, Discussion/Questions	Tony Wood, Review Panel.
12:15 p.m.–12:30 p.m	Discussion/Summary	Review Panel.
12:30 p.m.–12:45 p.m	Public Comment	Public.
12:45 p.m.–1:45 p.m	Lunch.	
1:45 p.m.–2:45 p.m	Atlantic halibut, Discussion/Questions	Dan Hennen, Review Panel.
2:45 p.m.–3:45 p.m	Georges Bank haddock, Discussion/Questions	Liz Brooks, Review Panel.
3:45 p.m.–4 p.m	Break.	
4 p.m.–4:15 p.m	Discussion/Summary	Review Panel.
4:15 p.m.–4:30 p.m	Public Comment	Public.
4:30 p.m	Adjourn.	

Tuesday, September 20, 2022

Time	Activity	Lead
9 a.m.–9:05 a.m	Brief Overview and Logistics	Michele Traver/Richard Merrick (Chair).
9:05 a.m.–10:30 a.m	White hake, Discussion/Questions	Kathy Sosebee, Review Panel.
10:30 a.m.–10:45 a.m	Break.	
10:45 a.m.–12 p.m	White hake cont., Discussion/Questions	Kathy Sosebee, Review Panel.
12 p.m.–12:15 p.m	Discussion/Review/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.

Time	Activity	Lead
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3:30 p.m	Monkfish (north and south), Discussion/Questions	Jon Deroba, Review Panel.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–4:45 p.m	Southern New England/mid-Atlantic yellowtail flounder, Discussion/Questions.	Chris Legault, Review Panel.
4:45 p.m.–5 p.m	Discussion/Summary	Review Panel.
5 p.m.–5:15 p.m	Public Comment	Public.
5:15 p.m	Adjourn.	

Wednesday, September 21, 2022

Time	Activity	Lead
9 a.m.–9:05 a.m	Brief Overview and Logistics	Michele Traver/Richard Merrick (Chair).
9:05 a.m.–10:30 a.m	Gulf of Maine haddock, Discussion/Questions	Charles Perretti, Review Panel.
10:30 a.m.–10:45 a.m	Break.	
10:45 a.m.–12 p.m	Gulf of Maine haddock cont., Discussion/Questions	Charles Perretti, Review Panel.
12 p.m.–12:15 p.m	Discussion/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3:30 p.m	Pollock, Discussion/Questions	Brian Linton, Review Panel.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–4:45 p.m	Pollock cont., Discussion/Questions	Brian Linton, Review Panel.
4:45 p.m.–5 p.m	Discussion/Summary	Review Panel.
5 p.m.–5:15 p.m	Public Comment	Public.
5:15 p.m	Adjourn.	

Thursday, September 22, 2022

Time	Activity	Lead
9:30 a.m.–9:35 a.m	Brief Overview and Logistics	Michele Traver/Richard Merrick (Chair).
9:35 a.m.–11 a.m	American plaice, Discussion/Questions	Larry Alade, Review Panel.
11 a.m.–11:15 a.m	Discussion/Summary	Review Panel.
11:15 a.m.–11:30 a.m	Public Comment	Public.
11:30 a.m.–12 p.m	Key Points/Follow ups	Review Panel.
12 p.m.–1 p.m	Break.	
1 p.m.–5 p.m	Report Writing	Review Panel.
5:15 p.m	Adjourn.	

The meeting is open to the public; however, during the 'Report Writing' session on Thursday, September 22nd, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: September 6, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–19480 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648–XB307

Notice of Intent To Prepare an Environmental Impact Statement on Modifications to the Atlantic Large Whale Take Reduction Plan To Reduce Mortality and Serious Injury of Large Whales in Commercial Trap/Pot and Gillnet Fisheries Along the U.S. East Coast

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

ACTION: Notice of Intent to prepare an Environmental Impact Statement, request for comments.

SUMMARY: This notice announces an Environmental Impact Statement (EIS) will be prepared in accordance with the National Environmental Policy Act (NEPA) to analyze the impacts to the environment of alternatives to amend the Atlantic Large Whale Take Reduction Plan (Plan). The National Marine Fisheries Service (NMFS) intends to begin a rulemaking process to amend the Plan to further reduce the risk of mortalities and serious injuries of North Atlantic right whales (*Eubalaena glacialis*) and other large whales caused by incidental entanglement in commercial trap/pot and gillnet fisheries along the U.S. East Coast. This notice is necessary to inform the public of NMFS's intent to prepare this EIS and to provide the public with an opportunity to provide input for NMFS's consideration.

DATES: Comments must be received by October 11, 2022.

Public Hearing: In addition to presentations at New England and Mid Atlantic Fishery Management Council Meetings in September and October

2022, a virtual public scoping meeting will be held during the public comment period. See **ADDRESSES** to obtain public meeting details.

ADDRESSES: You many submit comments on this Notice of Intent, identified by NOAA–NMFS–2022–0091, by either of the following methods:

Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0091 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: All comments received that are timely and properly submitted are a part of the public record and may 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. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). 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 us.

Oral Comments: One remote public scoping meeting will be held during the comment period. More information, including the date of the public scoping meeting and remote access information, will be posted on the Plan website, *https://www.fisheries.noaa.gov/ALWTRP,* or you may contact Marisa Trego. (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Marisa Trego, Atlantic Large Whale Take Reduction Team Coordinator, Greater Atlantic Region. Telephone: 978–282–8484. Address: 55 Great Republic Drive, Gloucester, MA 01930. Email: *marisa.trego@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Proposed Action

NMFS has determined that additional risk reduction is needed in all East Coast gillnet and trap/pot fisheries regulated under the Plan to meet the requirements of the Marine Mammal Protection Act (MMPA). This notice informs the public of an opportunity to provide public input on the next Plan modifications to reduce the risk of entanglement to right, humpback, and fin whales from all U.S. East Coast commercial trap/pot and gillnet fisheries.

A final rule implementing new modifications to reduce mortalities and serious injuries caused by incidental entanglement in the Northeast American lobster and Jonah crab trap/pot fishery was published on September 17, 2021 (86 FR 51970) and analyzed in a Final Environmental Impact Statement (FEIS) released on July 2, 2021 (86 FR 35288). These Phase 1 Plan modifications were intended to achieve the minimum 60 percent target reduction in risk within the Northeast American lobster and Jonah crab trap/pot fisheries at the time. Given new information since the 2021 modifications were initiated, the risk reduction estimated to be necessary to reduce mortality and serious injuries of right whales in U.S. commercial fisheries to below the Population Biological Removal level (PBR), as required by the MMPA, has increased from 60 to 80 percent in 2019 to at least a 90 percent risk reduction target. NMFS has been working with the Atlantic Large Whale Take Reduction Team (Team) to develop recommendations addressing risk from the U.S. East Coast gillnet, Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries, including some that apply to Northeast lobster and Jonah crab trap/pot fishery. In a recent summary judgment in the *Center for Biological Diversity, et al.,* v. *Raimondo, et al.,* (Civ. No. 18–112 (D.D.C.)), the presiding judge ruled that the 2021 Final Rule failed to satisfy the requirements of the MMPA. Given that ruling and the updated 90 percent risk reduction target, additional risk reduction will be necessary from all fixed gear fisheries coastwide that are regulated under the Plan, as described below.

NMFS plans to analyze alternatives through the development of a Draft Environmental Impact Statement (DEIS) alongside a rulemaking to modify the Plan to reduce mortalities and serious injuries from incidental commercial fishing gear entanglements in all U.S. East Coast commercial gillnet and trap/pot fisheries. NMFS' purpose for the proposed action is to fulfill the mandates of the MMPA to reduce incidental mortalities and serious injuries of large whales to below each stock's PBR. This action is needed because the right whale population is in steep decline, incidental entanglement in U.S. commercial fisheries is one of the causes of serious injuries and mortalities to right whales, and the estimated level of serious injuries and mortalities in U.S. fisheries exceeds the level allowed under the MMPA.

North Atlantic right whales are listed as endangered under the Endangered Species Act (ESA) and considered depleted under the MMPA. After more than two decades of an increasing trend, the population has been declining since 2010 (Pace *et al.,* 2017). The most recent population estimate is fewer than 350 animals, which is well below the optimum sustainable population (Pettis *et al.,* 2022). The decline has been exacerbated by an Unusual Mortality Event (UME) that began in 2017, when a total of 17 confirmed dead right whales were documented. It is important to note that scientists estimate only about one-third of mortalities are observed (Pace *et al.,* 2021). As of August 2022, the UME includes 53 documented individuals, comprising 34 right whale mortalities and an additional 19 seriously injured right whales rangewide (in Canadian and U.S. waters). Of these 53 incidents, nearly half (26) involved entanglement, 13 were due to vessel strikes, 13 were either too decomposed or were not able to be examined to determine a cause of death, and one was a perinatal mortality. During this period (2017–2022), only 55 calves contributed to population growth. Two additional calves were observed but are not included in this count: one was sighted without a mother in the Canary Islands, and another calf likely died before birth (*i.e.,* did not take a breath after parturition).

One of the primary causes of mortality and serious injury of North Atlantic right whales is entanglement in fishing gear. Climate change and associated alterations in prey abundance and distribution are exacerbating the population decline by shifting the overlap between right whales and fisheries and by reducing the population's resilience to other stressors. With mortalities and serious injuries continuing to outpace births, the population decline continues and further mitigation of entanglements that cause mortality or serious injury is necessary for population recovery.

The MMPA mandates that NMFS develop and implement Take Reduction Plans for preventing the depletion and assisting in the recovery of certain marine mammal stocks that are killed or seriously injured incidental to commercial fisheries. Pursuant to the MMPA, NMFS convenes Take Reduction Teams composed of stakeholders to develop recommendations that achieve a short-term goal of reducing mortalities and serious injuries of marine mammals covered by the Plan to a rate below each stock's PBR. NMFS considers those recommendations when implementing Take Reduction Plans through the

rulemaking process. The Atlantic Large Whale Take Reduction Team (Team) was first convened in 1996 to recommend measures to reduce mortalities and serious injuries of right, humpback, and fin whales incidental to certain commercial fisheries. Since 1997, the Plan has been amended several times to reduce the impacts of fishing gear on large whales in U.S. waters through measures that include area closures, gear configuration requirements, and gear marking. The most recent final rule, published on September 17, 2021 (86 FR 51970), implemented modifications intended to reduce mortalities and serious injuries caused by entanglement in the Northeast American lobster and Jonah crab trap/pot fishery by up to 60 percent. The alternatives considered were analyzed in a FEIS released on July 2, 2021 (86 FR 35288). The rulemaking effort is sometimes referred to as the ''Phase 1'' risk reduction modifications.

In 2021, the Team convened to address large whale mortalities and serious injuries caused by entanglements in the U.S. East Coast gillnet, Atlantic mixed species trap/pot, and mid-Atlantic lobster and Jonah crab trap/pot fisheries (''Phase 2'' fisheries). Scoping on measures to reduce the impacts of these fisheries was conducted from August 10, 2021 through October 21, 2021. Written and verbal comments were collected during seven virtual scoping meetings, presentations to the fishery Councils and Commission, three call-in days, and via email.

After attending information webinars in November 2021 and January, February, March, and April 2022, the Team reconvened in May 2022 to begin development of recommendations for modifications to the Plan regulations related to these Phase 2 fisheries. The Team reviewed new population information showing that the population decline is continuing at a high rate, confirming that most right whale mortalities are unseen, and compelling greater risk reduction than previously anticipated. The most recent North Atlantic Right Whale Stock Assessment Report reduced PBR to 0.7 (NMFS, 2021). In October 2021, the Atlantic Scientific Review Group (ASRG), recommended that NMFS calculate the risk reduction target with the total mortality estimates derived from the population estimate outputs suggesting that many more mortalities occur unobserved than can be accounted for by relying on observed mortality (Pace *et al.,* 2021). The ASRG recommended that NMFS assume those estimated but unseen mortalities be attributed to vessel strike or entanglements as those are the cause of nearly all observed mortalities. Finally the ASRG recommended that NMFS apply the most recent ratio of observed vessel strike to entanglement serious injuries and mortalities to the unseen mortalities to estimate how many were caused by entanglements each year. The ASRG did not make a recommendation about what portion of those mortalities occurred in U.S. or Canadian waters. For the 2021 rule and FEIS, we assumed half of all incidents occurred in each country but also provided additional estimates based on country apportionments with as many as 70 percent of incidents occurring in Canada to show how robust the estimated risk reduction needed to achieve PBR are to this assumption. Given how high total mortality is relative to PBR and a few years with higher confirmed Canadian incidents, we recalculated risk reduction according to the same range of country apportionments (50:50, 60:40, and 70:30) and found a change in 20 percent of the country apportionment resulted in only a 5-percent difference in risk reduction (89 to 94 percent). Applying these assumptions, NMFS estimates that to reduce right whale mortality and serious injury caused by incidental entanglement in U.S. commercial fisheries to below PBR, a greater level of risk reduction than originally anticipated across all regulated fisheries is necessary.

NMFS presented the new risk reduction target to the team in a webinar on November 2, 2021. The risk reduction estimated to be necessary to reduce mortality and serious injuries of right whales in U.S. commercial fisheries to below the PBR, as required by the MMPA, has increased from a minimum of 60 percent to at least a 90 percent risk reduction from the baseline year of 2017. It is likely that additional modifications to all of the fixed gear trap/pot and gillnet fisheries regulated under the Plan will be necessary to meet the goals of the MMPA.

NMFS will open a scoping period to gather additional public input on further modifications to the Plan including: (1) Northeast lobster and Jonah crab trap/pot fishery; (2) Mid-Atlantic gillnet fisheries for monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate species, yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish; (3) Northeast sink gillnet fisheries for Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, skate spp., mackerel, redfish, and shad; (4) Northeast drift gillnet fisheries for shad, herring, mackerel, and menhaden and any residual large pelagic driftnet effort in New England; (5) Southeast Atlantic gillnet fisheries for finfish, including, but not limited to: king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, cobia, and striped mullet; (6) Southeast Atlantic shark gillnet fisheries for large and small coastal sharks, including but not limited to blacktip, blacknose, finetooth, bonnethead, and sharpnose sharks; (7) Northeast anchored float gillnet fishery for mackerel, herring (particularly for bait), shad, and menhaden; (8) Atlantic mixed species trap/pot fisheries for hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, Pollock, redfish (ocean perch), white hake, spot, skate, catfish, stone crab, and cunner; (9) mid-Atlantic trap/pot fisheries for lobster and Jonah crab, and (10) Atlantic trap/pot fishery for Atlantic blue crab.

Further information about the Plan and the 2021–2022 Team meetings where potential management measures were discussed, including recordings of all the informational webinars, can be found on the Plan's web page: *https://www.fisheries.noaa.gov/alwtrp.*

Preliminary Description of Proposed Action and Alternatives

NMFS will develop and analyze suites of regulatory measures that would modify existing Plan requirements to reduce the risk of mortalities and serious injuries of large whales in U.S. fisheries caused by ongoing large whale incidental entanglements. Plan modifications are necessary to reduce the mortality and serious injury of right whales in U.S. East Coast gillnet and trap/pot fisheries. In addition to the status quo or no action alternative, potential alternatives that the draft EIS may analyze include measures that would:

- Weaken ropes such as buoy lines in these fisheries
- Reduce co-occurrence of this gear and right whales by reducing the amount of fishing gear in the water column where right whales occur (closures to buoy lines, reduction in the number of buoy lines through trap or panel limits, requiring fishing trawls or sets with only one endline)
- Improve identification of the source of entangling gear through increased

gear marking such as applying larger or more colored marks on buoy lines, and/or inserting a ribbon with details about the source fishery
- Restrain increased effort by controlling latent effort, and
- Establish or modify seasonal hot-spot management areas in which more strict measures would be implemented.

Ideas discussed by the Team for gillnet fisheries include changing configurations such as increasing the minimum number of net panels per set to reduce endline numbers, reducing the number of buoy lines on a set of gillnet, gear tending or daytime-only sets for gillnets, installation of weak links at panels and weak rope that breaks at forces of less than 1,700 lb (771 kg), establishing seasonal restricted areas, dynamic management for some gillnet fisheries, and expanding gear marking requirements. Ideas discussed for trap/pot fisheries include changing configurations such as traps per trawl to reduce buoy line numbers, requiring only one endline in certain offshore areas where weak rope is not feasible, installation of weak inserts or ropes in buoy lines to break at forces of less than 1,700 lb (771 kg), establishment or modification of seasonal restricted areas, and expansion of gear marking requirements. NMFS requests input on allowing specific groups, such as Northeast Multispecies Sectors or state fishery managers the latitude to develop their own measures to meet conservation targets.

NMFS is looking for information specific to additional risk reduction in all U.S. East Coast commercial gillnet and trap/pot fisheries, including, but not limited to, ways to reduce buoy lines through line caps, trawling up, trawls and sets limited to one buoy line, net and trap reductions, or other methods of achieving line reduction, modifications to existing restricted areas, new or expanded areas or seasons to consider restricting fishing with persistent buoy lines, opportunities for dynamic management, and any modifications to the weak line requirements published on September 17, 2021 (86 FR 51970). Additional feedback on ideas that were discussed in previous scoping and comments on earlier modifications is also invited. Examples include, but are not limited to, increasing the number of weak inserts required to increase the chance large whales will interact with a weak section of rope and can break free without injury, modifying start or end dates of seasonal restricted areas, new or expanded seasonal restricted areas, restricting fishing rope diameter to no greater than 0.5 inch (1.27 cm) to distinguish it from offshore Canadian gear, submission of information on latent effort, and the use of gear identification tape.

We are also seeking feedback on the inclusion of some measures that might modify the regulations implemented under the September 2021 Final Rule apply to Northeast lobster and Jonah crab in the Phase 2 rulemaking, such as conservation equivalencies for weak rope in the offshore Lobster Management Area 3 fleet. As of July 2022, no operationally feasible large diameter weak rope has been identified. Input on an extension of the Massachusetts Seasonal Restricted Area into Federal waters (which was implemented through an Emergency Rule in 2022 (87 FR 11590, March 2, 2022) is also specifically requested.

Input is also welcome on information about operational challenges, time, and costs regarding restricted areas, gear marking requirements, installation of weak inserts or rope that breaks at forces of less than 1,700 lb (771 kg), and the use of one endline in offshore areas, the use of grappling, acoustic releases of buoys, timed release of buoys is also requested. Given U.S. rulemaking requirements, even dynamic management procedures are likely to take weeks to implement, however information on whether dynamic management should be considered is also requested. Dynamic management could include dynamically opening an area if active monitoring does not demonstrate that whales are present or the implementation of a dynamic closure if whales are documented. Comments could include input on whether acoustic detection can trigger or maintain a closure, the number of days fishermen would require to remove all of their gear, how many whales would trigger a closure and for how long, whether in some areas closures shift rather than remove risk. In addition to input on the direct costs of replacing new gear, input is requested on indirect cost of gear modification measure alternatives, such as potential gear losses and catch reduction related to weak rope, use of one endline, and seasonal restricted areas. Information on the value and the ecological and economic benefits of whale conservation is also requested.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies prepare detailed statements assessing the environmental impact of and alternatives to major Federal actions significantly affecting the environment. NMFS has determined that an EIS should be prepared under NEPA for the purpose of informing the next phase of rulemaking to modify the Plan. We will prepare an EIS in accordance with NEPA requirements, as amended (42 U.S.C. 4321 *et seq.*); NEPA implementing regulations (40 CFR 1500–1508); and other Federal laws, regulations, and policies. Reasonable alternatives that are identified during the scoping period will be evaluated in the DEIS.

Summary of Expected Impacts

The DEIS will identify and describe the potential effects of Plan modifications on the human environment, including the natural and physical environment and the relationship of people with that environment, that are reasonably foreseeable and have a reasonably close causal relationship to the modifications. This includes such effects that occur at the same time and place as the alternatives and such effects that are later in time or occur in a different place. The alternatives that will be analyzed may include, but are not limited to, modifications to configurations of fishing gear, modification to fishing seasons and/or areas, and modifications to gear marking requirements. Expected potential impacts to commercial fishermen in the above-mentioned fisheries may include, but are not limited to, additional costs and labor to modify gear configurations and gear markings, labor costs associated with increased time required to retrieve gear under some gear modifications, reduced profit due to reduced catches associated gear modifications or with seasonally restricted access to fishing grounds. Expected potential impacts to Atlantic large whales include, but are not limited to, reduced mortality and serious injury due to a reduction in entanglement in fishing gear or reduced severity of any entanglements that do occur. Other potential impacts may include, but are not limited to, impacts (both beneficial and adverse) to other marine life, cultural resources, demographics, employment, and economics. These expected potential impacts will be analyzed in the DEIS and FEIS.

Schedule for the Decision-Making Process

After the DEIS is completed, NMFS will publish a notice of availability (NOA) and request public comments on the DEIS. After the public comment period ends, NMFS will review, consider, and respond to comments received and will develop the FEIS. NMFS expects to make the FEIS available to the public. A Record of

Decision (ROD) will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

Scoping Process: This Notice of Intent (NOI) commences the public scoping process for identifying additional issues and potential alternatives to modify the Plan to reduce mortalities and serious injuries of large whales in U.S. commercial fisheries to below PBR. Throughout the scoping process, Federal agencies, state, tribal, local governments, and the general public have the opportunity to help NMFS determine reasonable alternatives and potential measures to be analyzed in the EIS, as well as to provide additional information.

Everyone potentially impacted by or interested in changes to the Plan, and particularly in changes to management of commercial trap/pot and gillnet fisheries along the East Coast, is invited to participate in the public scoping process by submitting written input via email or by giving oral input at the scoping meeting. This scoping process aims to gather input on the gillnet and trap/pot fisheries regarding the scope of actions to be proposed for rulemaking, the development of alternatives to analyze in the EIS, and the potential impacts of management actions.

Information received through this scoping process will inform the development of alternative risk reduction measures for an environmental impact analysis on modifications to the Plan. Only inputs and suggestions that are within the scope of the proposed actions will be considered when developing the alternatives for analysis in the EIS. This includes items related to reducing risk of mortality and serious injury of large whales due to entanglements in commercial U.S. fishing gear and improving gear marking to reduce uncertainty about where entanglements occur. The purpose is to develop measures to fulfill the requirements of Section 118 of the MMPA, which regulates the taking of marine mammals incidental to U.S. commercial fishing operations. NMFS implements additional endangered species conservation and recovery programs under the ESA and also affords marine mammals protections under multiple programs pursuant to the MMPA. Therefore, for the purposes of the scoping period for the proposed action discussed in this notice, we are not requesting input related to other stressors, such as vessel strikes, anthropogenic noise, natural mortality, international entanglement risk, offshore wind development, or climate change.

To promote informed decision-making, input should be as specific as possible and should provide as much detail as necessary to allow a commenter's meaningful participation and fully inform NMFS of the commenter's position. Input should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and other impacts affecting the quality of the human environment.

It is important that reviewers provide their input at such times and in such a manner that they are useful to the agency's preparation of the EIS. Comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions. Input received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action discussed in this notice. Input submitted anonymously will be accepted and considered.

References

Linden, D.W. and Pace III, R.M. 2021. A multi-state mark-recapture-recovery model to estimate rates of severe injury and cause-specific mortality in North Atlantic right whales. North Atlantic Right Whale Consortium Annual Meeting. October 26–27, 2021.

Hayes, S.A., Josephson, E., Maze-Foley, K., Rosel, P.E., & Turek, J. (2021). U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2020 (p. 403). Northeast Fisheries Science Center.

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Pace, R.M., R. Williams, S.D. Kraus, A.R. Knowlton, H.M. Pettis. 2021. Cryptic mortality in North Atlantic right whales. Conserv. Sci. Pract. 3:e346

Pace, R.M., III, P.J. Corkeron and S.D. Kraus. 2017. State-space mark-recapture estimates reveal a recent decline in abundance of North Atlantic right whales. Ecol. and Evol. 7:8730–8741.

Pettis, H.M., Pace, R.M. III, Hamilton, P.K. 2022. North Atlantic Right Whale Consortium 2021 Annual Report Card. Report to the North Atlantic Right Whale Consortium.

Authority: 42 U.S.C. 4321 et seq.; 31 U.S.C 1361 et seq.

Dated: September 1, 2022.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19335 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC342]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Empire Wind Project Offshore of New York

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

ACTION: Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a petition from Empire Offshore Wind LLC (Empire), a 50–50 partnership between Equinor and BP, requesting authorization to take small numbers of marine mammals incidental to activities associated with the Empire Wind Project in a designated lease area on the Outer Continental Shelf (OSC–A 0512) offshore of New York state over the course of 5 years beginning in 2024. Equinor will be the operator through the development, construction, and operations phase of the project. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Empire's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Empire's application and request.

DATES: Comments and information must be received no later than October 11, 2022.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Pauline@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 received electronically, 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-other-energy-activities-renewable* 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: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of Empire's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please email 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. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request for the implementation of regulations governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

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 December 7, 2021, NMFS received an application from Empire requesting authorization to take, by Level A harassment and Level B harassment, 16 species of marine mammals incidental to activities associated with the development of the Empire Wind Project offshore of New York in Commercial Lease (OCS–A–0512). In response to our comments, and following extensive information exchange with NMFS, Empire submitted a final, revised application on July 28, 2022, that we determined was adequate and complete on August 11, 2022. Empire requests the regulations and subsequent LOA be valid for 5 years beginning in 2024.

Empire is proposing to develop the Empire Wind Project in two adjacent locations, Empire Wind 1 (EW 1) and Empire Wind 2 (EW 2), that are electrically isolated and independent from each other and will each be connected to their own points of interconnection via individual submarine export cable routes. There will be a maximum of 147 wind turbine generators (WTGs) supported by monopile foundations and two offshore substation (OSS) piled jacket foundations supported with 12 pin piles each within the Lease Area. EW 1 would consist of up to 57 WTG, and one OSS while EW 2 would consist of up to 90 WTGs and one OSS. EW 1 would require up to 116 nautical miles (nm) (214 kilometers (km)) of interarray cable and 40 nm (74 km) of submarine export cable with a cable landfall at South Brooklyn Marine Terminal (SBMT). EW 2 would consist of up to 144 nm (267 km) of interarray cable and up to 26 nm (48 km) of submarine export cable with two out of four proposed cable landfalls in Long Beach or Lido Beach, New York. Empire's Lease Area OCS–A–0512 is located approximately 12 nm (22 km) south of Long Island, New York, and 16.9 nm (31.4 km) east of Long Branch, New Jersey.

Empire considered the following activities associated with development of the wind farm in its application: installation of WTGs and OSSs using impact driving; vibratory pile driving to install and remove temporary cofferdams to support horizontal directional drilling (HDD) at the export cable landfalls of the submarine export cables; goal post installation by impact hammer to assist with the installation of casing pipes for cable landfalls; and high-resolution geophysical (HRG) equipment during survey activities in support of the Project. Empire has determined that these activities may result in the taking, by Level A harassment and/or Level B harassment, of marine mammals. Therefore, Empire requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Empire Wind was awarded Commercial Lease OCS–A 0512 offshore of New York and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Empire submitted a COP to the Bureau of Ocean Energy Management (BOEM) proposing the construction, operation, maintenance, and conceptual decommissioning of the Empire Wind project within Lease Area OCS–A 04512.

Empire has provided a complete description of the specified activities and their proposed mitigation, monitoring and reporting measures in their application. They have also included a description of estimated take methods and results. Empire anticipates the following activities may potentially result in harassment of marine mammals:

• up to 147 WTG monopile foundations which would not exceed 11-meters (m) in diameter would be installed using impact hammers with energy level not to exceed 5,225 kiloJoules (kJ). Impact driving would not occur from January 1 through April 30 over the course of 2 years. In addition, impact pile driving would not occur from December 1 through December 31, unless unanticipated delays due to weather or technical problems arise that necessitate extending pile driving into December;

• two OSS jacket foundations with up to 12 2.5 m (8.2 ft)-diameter pin piles would be installed over 2 years using impact hammers with energy levels not to exceed 3,200 kJ. Impact driving of pin piles would be subject to the same work window restrictions as the WTG monopile foundations;

• installation and removal of up to 5 temporary cofferdams or 6–10 goal posts would occur over 2 years via vibratory driving at the exit points of the long-distance horizontal directional drilling (HDD) at each export cable landfall. Up to 60 sheet piles would be required per cofferdam and installation and removal of each cofferdam would require 6 days;

• using HRG equipment to survey approximately 103,475 (km) over 5 years (177.792 km/day × 582 vessel days between 2024–2028).

Empire has indicated that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the course of the Project due to weather, mechanical, or other related delays.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Empire'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 Empire, if appropriate.

Dated: September 6, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19514 Filed 9–8–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 9, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 5330–00–599–4230—Gasket
NSN(s)—Product Name(s): 2590–00–299–0739—Valve, Poppet, Hull Drain
Designated Source of Supply: Goodwill Industries—Knoxville, Inc., Knoxville, TN
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

Service(s)

Service Type: Custodial service
Mandatory for: FAA, Multiple Locations, 3491 S Roosevelt Blvd. Key West, FL
Designated Source of Supply: Mavagi Enterprises, Inc., San Antonio, TX
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS
Service Type: Grounds Maintenance
Mandatory for: US Army Corps of Engineers, Bonneville Lock and Dam, Interstate 84, Exit 40 Cascade Locks, OR
Designated Source of Supply: Relay Resources, Portland, OR
Contracting Activity: DEPT OF THE ARMY, W071 ENDIST PORTLAND
Service Type: Janitorial/Custodial
Mandatory for: Veterans Outreach Center: 2001 Lincoln Way, Oak Park Mall, Null, White Oak, PA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Catering Service
Mandatory for: Seattle Military Entrance Processing Station (MEPS), 4735 E Marginal Way South, Seattle, WA
Designated Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT KNOX

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–19525 Filed 9–8–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* October 9, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 617/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Facility Support Services
Mandatory for: DHS, Transportation Security Administration Headquarters, Springfield, VA (for TSA Headquarters Customer Service Team Requirements)
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: TRANSPORTATION SECURITY ADMINISTRATION, WEO

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Facility Support Services, DHS, TSA HQ, Springfield, VA (for TSA Headquarters Customer Service Team Requirements) contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Transportation Security Administration will refer its business elsewhere, this addition must be effective on September 30, 2022, ensuring timely execution for an October 1, 2022 start date while still allowing 22 days for comment. Pursuant to its own regulation 41 CFR 51–2.4, the Committee has been in contact with one of the affected parties, the incumbent of the expiring contract, since March 2022 and determined that no severe adverse impact exists. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on June 17, 2022 and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–19526 Filed 9–8–22; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0060]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (Regulation I).''

DATES: Written comments are encouraged and must be received on or before November 8, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0060 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (Regulation I).

OMB Control Number: 3170–0062.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector: businesses or other for-profits; not-for-profits institutions.

Estimated Number of Respondents: 167.

Estimated Total Annual Burden Hours: 4,609.

Abstract: Regulation I, 12 CFR part 1009, applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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 respondents, including through the use of automated collection techniques

or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–19460 Filed 9–8–22; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0066]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Infant Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Infant Walkers, incorporates by reference ASTM F977–12, Standard Consumer Safety Specification for Infant Walkers. The Commission has received notice of a revision to this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of the consumer products covered by the standard.

DATES: Comments must be received by September 23, 2022.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Benjamin J. Mordecai, Directorate for Laboratory Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2506; email: *bmordecai@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or may be ''more stringent'' than voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Pursuant to section 104(b)(4)(B) of the CPSIA, if a voluntary standards organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under CPSIA section 104, it must notify the Commission. The revised voluntary standard then shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or a later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission responds to the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard, and therefore the Commission is retaining its existing mandatory consumer product safety standard. 15 U.S.C. 2056a(b)(4)(B).

Under this authority, the Commission issued a mandatory safety rule for infant walkers in 2010. The rulemaking created 16 CFR part 1216, which incorporated by reference ASTM F977–07, Standard Consumer Safety Specification for Infant Walkers, with modifications. 75 FR 35266 (Jun. 21, 2010). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children associated with infant walkers. Since promulgation of the final rule, ASTM revised the voluntary standard in May 2012. On June 24, 2013, the Commission revised the mandatory standard to incorporate by reference ASTM F977–12, the current mandatory standard, without modification. 78 FR 37706 (Jun. 24, 2013). In 2018, ASTM revised ASTM F977 but did not notify the Commission of that ASTM F977–18 revision.

In July 2022, ASTM published a revised version of the incorporated voluntary standard, ASTM F977–22. ASTM subsequently published ASTM F977–22e1to make editorial corrections to the standard. On, August 29, 2022, ASTM notified the Commission that it had approved the revised version of the voluntary standard. This revised version, ASTM F977–22e1, builds on the revisions made to the standard in 2018 and 2022.

CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of the consumer product covered by the standard. The Commission invites public comment on that question to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F977–18, ASTM F977–22, and ASTM F977–22e1.[1]

The incorporated voluntary standard and the revisions to the voluntary standard are available for review in several ways. ASTM has provided on its website (at *www.astm.org/CPSC.htm*), at no cost for read-only access, red-lined versions of ASTM F977–18, ASTM F977–22, and ASTM F977–22e1 that show the changes made by these revisions. Likewise, a read-only copy of the existing, incorporated standard (ASTM F977–12) is available for viewing, at no cost, on the ASTM website at: *www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the

[1] The Commission voted 5–0 to approve this notice.

standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

Comments must be received by September 23, 2022. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–19468 Filed 9–8–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare Legislative Environmental Impact Statement Regarding Proposed Public Land Withdrawal in Vicinity of Arizona State Route 95, Yuma Proving Ground, Arizona

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army (Army) intends to prepare a legislative environmental impact statement (LEIS) regarding the withdrawal and reservation for military purposes of approximately 22,000 acres of public land now managed by the Bureau of Land Management (BLM). This withdrawal and reservation would add to the existing withdrawal and reservation for the Army's Yuma Proving Ground (YPG), Arizona. It would improve public safety and meet testing and training requirements for advances in Global Positioning System (GPS)-guided parachute technologies. The additional land would allow for higher-altitude parachute releases and would provide an additional buffer in case of release-point errors and system failures. The proposed withdrawal area, which would extend to Arizona State Route (SR) 95, would establish SR 95 as a distinct physical landmark for the YPG boundary. This notice announces the beginning of the public comment process, including public scoping meetings. When the Army submits its land withdrawal application, BLM will file a separate Notice of Application for Withdrawal in the **Federal Register**. The LEIS will analyze potential impacts of the Army's use of the land. The LEIS will be transmitted to Congress to support legislative decision-making regarding the Army's request.

DATES: To be considered during the LEIS process, comments must be received by December 8, 2022.

ADDRESSES: Please mail written comments to: Mr. Daniel Steward, Environmental Sciences Division, U.S. Army Garrison—Yuma Proving Ground, 301 C St., Bldg. 307, Yuma, AZ 85365. Please email written comments to: *usarmy.ypg.imcom.mbx.nepa@army.mil.*

FOR FURTHER INFORMATION, CONTACT: Mr. Daniel Steward, YPG Environmental Sciences Division, by telephone at (928) 328–2125 or by email at *daniel.m.steward.civ@army.mil.*

SUPPLEMENTARY INFORMATION: The Army intends to prepare an LEIS to analyze potential impacts from a possible legislative withdrawal for military purposes of approximately 22,000 acres of public land managed by BLM. The proposed action involves a withdrawal and reservation of 21,200 acres of public land from all forms of appropriation (such as mining claims) and 800 acres of federal surface estate (meaning the subsurface is not included). The land is needed to improve public safety and meet testing and training requirements for advances in parachute technologies. If enacted into law, the withdrawal would add to—and be adjacent to—the 829,565 acres withdrawn on July 1, 1952, under Public Land Order 848, as amended, for use by the Army in connection with Yuma Test Station (currently known as YPG). The land withdrawal the Army is currently seeking would be for an indefinite period—*i.e.,* until there is no longer a military need for the land.

YPG is located in the southwestern corner of Arizona, near the California-Arizona border. It is bounded by the Colorado River to the west and the Gila River to the south. The installation lies approximately 23 miles northeast of the city of Yuma, Arizona. A portion is situated in La Paz County and a portion is situated in Yuma County. Both counties are in Arizona. The proposed withdrawal involves land in each county. YPG occupies about 1,300 square miles and extends approximately 60 miles north to south and 50 miles east to west. YPG's mission is to plan, conduct, assess, analyze, report, and support developmental, production, and operational tests on: medium- and long-range artillery; aircraft target acquisition equipment and armament; armored tracked and wheeled vehicles; a variety of munitions; and parachute systems for personnel and supplies. YPG also provides training support to the Army, DoD, other federal agencies, and international and commercial customers.

The purpose of the proposed land withdrawal is to provide approximately 22,000 acres of additional area for testing and training at YPG. The Army requires the additional land as a safety buffer for testing advanced air delivery technologies and aviation systems. The additional land will also allow the Army to execute more complex air delivery and tactical scenarios. Higher altitudes and greater offset distances are required to test parachute systems' full capabilities. Parachute systems need larger buffer areas (*i.e.,* surface safety zones) than are currently available. The surface safety zone is an area in space and on the ground that provides an additional buffer in case of error or failure. Surface safety zones protect people from being injured by material dropping from the sky during air delivery testing and training.

Currently, because of land and airspace limitations, systems are not tested to their full capability for altitude and precision. Higher-elevation and GPS-guided air delivery methods are being developed to provide better support to soldiers and other personnel in the field. GPS-guided delivery is designed to ensure payloads arrive at the intended location while keeping aircrews and other personnel out of harm's way. A payload is a palletized package of various weights and items, such as a vehicle, equipment, and/or supplies. Guided delivery systems undergoing development require safety buffers to contain potential testing errors and failures. The requested withdrawal area would provide an additional safety buffer to protect the public. Without the proposed withdrawal, drops could land outside the current YPG boundary. This could result in injury or death to members of the public. The land withdrawal would restrict the public from accessing hazardous areas, thus reducing the potential for injuries and death. The withdrawn land may also be used for other training and testing activities that are not known at this time. Such activities would be subject to additional National Environmental Policy Act (NEPA) analysis.

Currently, the boundary between YPG and BLM land lacks a contiguous physical landmark demarcating the two

areas, which has led to unintentional public intrusions onto YPG. The requested withdrawal area extends to SR 95. This would establish the highway as a distinct physical landmark for the YPG boundary, thereby improving public safety.

In addition to the proposed action, the LEIS will analyze a range of alternatives, including a no-action alternative under which there would be no additional land withdrawal and YPG would not expand its capability. While the proposed action entails a withdrawal of land for an indefinite period, action alternatives could include the withdrawal and reservation of land for a shorter duration (*e.g.,* 25 years).

The Army will analyze potential environmental impacts resulting from the withdrawal of land from BLM oversight and from expanding military capability within the withdrawn area. The Army will cover possible impacts to biological and cultural resources in a separate NEPA analysis before training and testing begin.

The withdrawal could impact recreational activities that occasionally take place on the BLM-managed land proposed for withdrawal. Recreational use of the area is currently allowed, but if Congress withdraws and reserves this land for YPG, public use would be subject to the terms of the relevant legislation and applicable Army regulations, procedures, and management plans. Thus, public use would likely be restricted in some manner.

The LEIS will also identify mitigation measures that would reduce or eliminate any adverse impacts resulting from the transfer of this land to the Army's administrative control. The environmental analysis will include coordination with area Native American Tribes, the U.S. Fish and Wildlife Service, and other federal, state, and local agencies. The Army is not aware of any federal or state permits or other approvals that would be required in conjunction with a legislative withdrawal or reservation. The Army is requesting the withdrawal of approximately 22,000 acres from all types of appropriation (such as mining claims) under federal public land laws. This administrative activity does not have the potential to cause effects to historic properties within the meaning of 36 CFR part 800.3(a)(1), and is not subject to further review under Section 106 of the National Historic Preservation Act.

The Army is the lead agency for the LEIS and BLM is a cooperating agency. As a cooperating agency, BLM will join the Army in the public comment process. Both agencies will thereby fulfill their requirements to inform the public about the proposed action. Federal, state, and local agencies, Native American Tribes, private organizations, and the public are invited to participate in the public comment process for the LEIS by participating in a public scoping meeting(s) and/or by submitting written comments. The Army invites potential alternatives, information, and analyses relevant to the proposed action. To be considered, written comments must be sent no later than December 8, 2022. Comments may be mailed to Mr. Daniel Steward, Environmental Sciences Division, U.S. Army Garrison—Yuma Proving Ground, 301 C St., Bldg. 307, Yuma, AZ 85365, or emailed to *usarmy.ypg.imcom.mbx.nepa@army.mil.*

In response to the COVID–19 pandemic and to Centers for Disease Control and Prevention recommendations for social distancing and avoiding large public gatherings, the Army will not hold in-person public scoping meetings. YPG will instead host two online/telephonic public scoping meetings 30 days after publication of this notice. Specific details regarding the public scoping meetings will be announced through local media and on the YPG LEIS website: *https://ypg-environmental.com/highway-95-land-withdrawal-leis/.* Public scoping materials will also be posted to the YPG LEIS website.

For those who do not have ready access to a computer or to the internet, hard copies of public scoping materials are available upon request. Any mailed requests for public scoping materials must be postmarked no later than September 29, 2022.

The public will also be invited to review and comment on the Draft LEIS when it is released. Public comments will be considered before proposed legislation is presented to Congress and before any decision is made to implement the proposed action. Actual and estimated milestone dates are as follows: BLM published a Notice of Application for Withdrawal in the **Federal Register** on April 4, 2022; public meetings were held on June 7 and 8, 2022; BLM filed a Notice of Proposed Withdrawal in the **Federal Register** on June 30, 2022. LEIS public scoping meetings are to be held 30 days after publication of this Notice of Intent in the **Federal Register**; a 90-day public comment period regarding the Draft LEIS is expected to start in July 2023; and the Final LEIS is expected to be available in February 2024.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022–19461 Filed 9–8–22; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–17–000]

Rio Grande LNG, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Carbon Capture and Sequestration System Amendment, and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Carbon Capture and Sequestration System Amendment (CCS System Amendment) involving construction and operation of facilities by Rio Grande LNG, LLC (Rio Grande) in Cameron County, Texas. Rio Grande's CCS System Amendment was filed under section 3 of the Natural Gas Act as an amendment to its November 22, 2019 Authorization order for the Rio Grande LNG Terminal.[1] The Commission will use this environmental document in its decision-making process to determine whether the CCS System Amendment is consistent with the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project amendment. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization under Section 3 of the Natural Gas Act. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

[1] Rio Grande LNG, LLC, 169 FERC ¶ 61,131 (2019), order on reh'g, 170 FERC ¶ 61,046 (2020).

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on Monday, October 3, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project amendment to the Commission before the opening of this docket on November 17, 2021, you will need to file those comments in Docket No. CP22–17–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project amendment. State and local government representatives are encouraged to notify their constituents of this proposed project amendment and encourage them to comment on their areas of concern.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing'';

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–17–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

(4) In lieu of sending written comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Tuesday, September 27, 2022. Session 1: 9:00 a.m.–11:30 a.m. Session 2: 5:30 p.m.–8:00 p.m. (local time)	Port Isabel Event and Cultural Center, 309 E Railroad Avenue, Port Isabel, TX 78578, 956–943–0720.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments in a convenient way during the timeframe allotted. Spanish-English translation services will be provided.

Scoping sessions are scheduled from 9:00 a.m. to 11:30 a.m. and from 5:30 p.m. to 8:00 p.m. Central time. Entrance into the facility will begin at the start time of each meeting. There will not be a formal or opening presentation by Commission staff for either session. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Please see appendix 1 for additional information on the session format and conduct.[2]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 3 minutes may be implemented for each commentor. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project Amendment

Rio Grande proposes to construct and operate a carbon capture and sequestration system (CCS System) for incorporation into the design of its Rio Grande LNG Terminal Project that was previously approved by the Commission in Docket No. CP16–454–000. According to Rio Grande, the proposed CCS System Amendment would enable Rio Grande to capture a minimum of 90 percent of the carbon dioxide produced at the Rio Grande LNG Terminal, which

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

would then be transported via a proposed pipeline (which would not be under FERC jurisdiction) to a nearby underground geologic formation for sequestration. This pipeline and sequestration of carbon dioxide in the geologic formation would require permits from the U.S. Environmental Protection Agency (EPA) and relevant Texas agencies via EPA's underground injection control Class VI permitting regime for geologic sequestration.

The CCS System Amendment would consist of the following facility modifications, components, and equipment at the approved but as yet unbuilt Rio Grande LNG Terminal:

- a post-combustion capture system for the exhaust flue gas of the Rio Grande LNG Terminal's main refrigerant gas turbine compressors;
- the re-routing of the Rio Grande LNG Terminal's acid gas removal unit vent stream from a thermal oxidizer to a sequestration compressor;
- the addition of a sequestration compressor to the combined gas streams from the post-combustion capture system and acid gas removal unit to meet an interface with a carbon dioxide sequestration pipeline;
- modifications to the Rio Grande LNG Terminal utility design to accommodate CCS System equipment, such as various heat exchangers, pumps, compressors, blowers, tanks, filters, and similar equipment; and
- a hot oil system, including a waste heat recovery unit and distribution components.

In addition, the CCS System Amendment would consist of a carbon sequestration pipeline, which would extend from the Rio Grande LNG Terminal site to a geologic sequestration formation. The location of the Rio Grande LNG Terminal site, where the FERC-jurisdictional CCS System Amendment facilities are proposed, is shown in appendix 2. Although Rio Grande has not yet determined the location of the specific geological formation it would use, or the exact length and location of the sequestration pipeline, Rio Grande has indicated that it may co-locate the proposed CCS System pipeline along a portion of Rio Bravo Pipeline route (shown on the map in appendix 2), which was authorized in Docket No. CP16–455–000.

Land Requirements for Construction

Construction of the proposed CCS System Amendment facilities would disturb areas within the previously authorized Rio Grande LNG Terminal boundary, but would not result in new land requirements beyond that required for construction of the LNG Terminal (Docket No. CP16–454–000). Rio Grande states that it has not finalized the planned non-jurisdictional CCS System pipeline and the associated land requirements along the planned the pipeline's route. FERC staff's environmental document will include the most current information about the planned non-jurisdictional pipeline based on publicly available information. Following construction, Rio Grande would not require any additional acreage for permanent operation of the FERC-jurisdictional CCS System Amendment facilities.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project amendment under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- reliability and safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project amendment or portions of the project amendment and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project amendment. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project amendment to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project amendment's potential effects on historic properties.[5] The environmental document for this project amendment will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project amendment and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project amendment.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–17–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 3).

Additional Information

Additional information about the project amendment is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19474 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–015; ER17–2059–009; EL22–57–000.

Applicants: Puget Sound Energy, Inc., Puget Sound Energy, Inc., Puget Sound Energy, Inc.

Description: Response to Order to Show Cause of Puget Sound Energy, Inc.

Filed Date: 8/12/22.

Accession Number: 20220812–5050.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2314–001.

Applicants: Langdon Renewables, LLC.

Description: Tariff Amendment: Request to Defer Action on CFA (ER22–2314–) to be effective 9/7/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5062.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2536–000.

Applicants: Kossuth County Wind, LLC.

Description: Amendment to July 29, 2022 Kossuth County Wind, LLC Application for Market-Based Rate Authorization.

Filed Date: 9/1/22.

Accession Number: 20220901–5311.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: ER22–2781–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of Sixth Amended and Restated Interconnection Agreement to be effective 11/2/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5037.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2782–000.

Applicants: EcoGrove Wind LLC.

Description: § 205(d) Rate Filing: EcoGrove Wind LLC, Shared Facilities Agreement with High Point Solar to be effective 12/28/2021.

Filed Date: 9/2/22.

Accession Number: 20220902–5039.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2782–000.

Applicants: EcoGrove Wind LLC.

Description: § 205(d) Rate Filing: EcoGrove Wind LLC, Shared Facilities Agreement with High Point Solar to be effective 12/28/2021.

Filed Date: 9/2/22.

Accession Number: 20220902–5040.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2783–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO-Bentonville POD#7 (Sub I) Delivery Point Agreement to be effective 8/18/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5056.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2784–000.

Applicants: MN8 Energy Marketing LLC.

Description: Compliance filing: Notice of Succession and Revised Market-Based Rate Tariff to be effective 9/3/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5061.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2785–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA No. 921—Firm Point to Point Trans. Service with Clearwater Energy Resources to be effective 12/1/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5067.

Comment Date: 5 p.m. ET 9/23/22.

Docket Numbers: ER22–2786–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–09–02 EIM Entity Agreement—Western Area Power Admin to be effective 11/2/2022.

Filed Date: 9/2/22.

Accession Number: 20220902–5070.

Comment Date: 5 p.m. ET 9/23/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19478 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR22–61–000.
Applicants: Hope Gas, Inc.
Description: § 284.123(g) Rate Filing: HGI—Trade Name Removal to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5014.
Comment Date: 5 p.m. ET 9/22/22.
284.123(g) Protests Due: 5 p.m. ET 10/31/22.

Docket Numbers: RP22–1190–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Southern 49811 to Spotlight 55573) to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5018.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1191–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Spotlight 55579) to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5019.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1192–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate Agmt Filing (TVA 39143, CP21–19) to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5020.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1193–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (JayBee 34446, 34447 to Spotlight 53846, MacQuarie 53848) to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5023.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1194–000.
Applicants: White River Hub, LLC.
Description: § 4(d) Rate Filing: Section 5 Revision to be effective 10/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5028.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1195–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 9–1–22 to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5033.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1196–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: LAXP—Neg Rate NC Filing—SPL 214599 to be effective 10/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5100.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1197–000.
Applicants: Hardy Storage Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Housekeeping to be effective 10/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5102.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1198–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing (EcoEnergy_Radiate) to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5137.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1199–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Con Ed to Dir En Mt 8978155 to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5138.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1200–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing: CGT Cashout Report 2022 to be effective N/A.
Filed Date: 9/1/22.
Accession Number: 20220901–5154.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1201–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing 9–1–2022 to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5228.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1202–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—9/1/2022 to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5263.
Comment Date: 5 p.m. ET 9/13/22.

Docket Numbers: RP22–1203–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing to be effective 10/3/2022 to be effective 10/3/2022.
Filed Date: 9/2/22.
Accession Number: 20220902–5016.
Comment Date: 5 p.m. ET 9/14/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2473–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Refund Report: Gulf South Pipeline Company, LLC submits tariff filing per 154.501: 2022 Annual CICO Filing to be effective N/A.
Filed Date: 9/1/22.
Accession Number: 20220901–5017.
Comment Date: 5 p.m. ET 9/13/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19479 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6951–018]

Tallassee Shoals, LLC; Notice of Waiver Period for Water Quality Certification Application

On August 22, 2022, Tallassee Shoals, LLC. submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with Georgia Environmental Protection Division, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section [4.34(b)(5), 5.23(b), 153.4, or 157.22] of the Commission's regulations,[1] we hereby notify the Georgia Environmental Protection Division of the following:

Date of Receipt of the Certification Request: August 12, 2022.

Reasonable Period of Time to Act on the Certification Request: One year August 12, 2023.

If Georgia Environmental Protection Division fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19476 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–504–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 25, 2022, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed a prior notice request pursuant to Sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations, for authorization to abandon six natural gas storage wells, approximately 1.1 miles of associated three-inch diameter natural gas storage pipelines, and three aboveground measurement facilities located in WBI Energy's Baker Storage Field in Fallon County, Montana. WBI Energy proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, at (701) 530–1563 or *lori.myerchin@wbienergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 1, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is November 1, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is November 1,

[1] 18 CFR [4.34(b)(5)/5.23(b)/153.4/157.22].

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 1, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–504–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–504–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503 or *lori.myerchin@wbienergy.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: September 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19469 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–162–000; CP18–549–001]

Equitrans, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Swarts Complex Abandonment Project Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Swarts Complex Abandonment Project Amendment (Project), proposed by Equitrans, L.P. (Equitrans) in the above-referenced docket. Equitrans requests authorization for an amendment to an existing abandonment authorization issued by FERC on March 20, 2019 in Docket No. CP18–549–000 (2019 Order) to enable Equitrans to plug and abandon five existing active natural gas injection/withdrawal (I/W) wells in Equitrans' Swarts Storage Field in Greene County, Pennsylvania. The 2019 Order authorized the abandonment-by-sale of eighteen I/W wells and associated well lines and appurtenances to the CONSOL mining companies, which operate an underground coal mine adjacent to the Swarts Storage Field. Equitrans now requests authorization to abandon five of the eighteen I/W wells that were not abandoned by the CONSOL mining companies.

The EA assesses the potential environmental effects of the abandonment activities of the Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the following activities:

- plug and abandon I/W Wells 3791, 3792, 3793, 3795, and 3797;
- abandon by removal the aboveground appurtenances at each wellhead;
- abandon-in-place about 2,400 feet of associated 6- to 12-inch-diameter well line/pipeline; and

• remove all surface connections and cut and cap the pipeline ends.

The Commission mailed a copy of the Notice of Availability of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and libraries in the Project area. The EA 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-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–162 or CP18–549). 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 EA 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 EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will 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 October 3, 2022.

For your convenience, there are three methods you can use to file your comments with 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 Commission. Be sure to reference the Project docket number (CP22–42–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

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: September 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19470 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD22–2–000]

Commission Information Collection Activities (FERC–725A, FERC–725D, FERC–725G, FERC–725M and FERC–725Z)

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, (FERC–725A, FERC–725D, FERC–725G, FERC–725M and FERC–725Z) the proposed retirement of FAC–010–3, the proposed FAC–011–4, FAC–014–3, IRO–008–3, TOP–001–6 and proposed corresponding revisions to FAC–003–5, PRC–002–3, PRC–023–5 and PRC–026–2 Reliability Standards, which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received for the 60-day notice published on April 14, 2022.

DATES: Comments on the collection of information are due October 11, 2022.

ADDRESSES: Send written comments on (FERC–725A, FERC–725D, FERC–725G, FERC–725M and FERC–725Z) the proposed retirement of FAC–010–3, the proposed FAC–011–4, FAC–014–3, IRO–008–3, TOP–001–6 and proposed corresponding revisions to FAC–003–5, PRC–002–3, PRC–023–5 and PRC–026–2 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number(s) in the subject line of your comments: 1902–0244 (FERC–725A), 1902–0247 (FERC–725D), 1902–0252 (FERC–725G), 1902–0263 (FERC–725M) and 1902–0276 (FERC–725Z) in the subject line of your comments. Comments should be sent within 30

days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. RD22–2–000) by one of the following methods: Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725A, FERC–725D, FERC–725G, FERC–725M and FERC–725Z.

OMB Control No.: OMB Control No: 1902–0244 (FERC–725A), 1902–0247 (FERC–725D), 1902–0252 (FERC–725G), 1902–0263 (FERC–725M) and 1902–0276 (FERC–725Z).

Type of Request: Three-year approval of the FERC–725A, FERC–725D, FERC–725G, FERC–725M and FERC–725Z information collection requirements with changes to the current reporting requirements as follows.

Abstract: Section 215 of the Federal Power Act (FPA) [1] requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. The Commission has certified the North American Reliability Corporation (NERC) as the ERO. In addition, a Regional Entity may propose Reliability Standards to be effective in that region.[2] Once approved, Reliability Standards may be enforced by the ERO subject to Commission oversight or by the Commission independently.

The number of respondents below is based on an estimate of the NERC compliance registry for balancing authority, transmission operator, generator operator, generator owner and reliability coordinator. The Commission based its paperwork burden estimates on the NERC compliance registry as of January 7, 2022. According to the registry, there are 98 balancing authorities (BAs), 325 transmission owners (TOs), 168 transmission operators (TOPs), 204 transmission planners (TPs), 1,068 generator owners (GOs), 945 generator operators (GOPs), 302 distribution providers (DPs), 63 planning coordinators (PCs) and 12 reliability coordinators (RCs). The estimates are based on the change in burden from the current standards to the standards approved in this Order. The Commission based the burden estimates on staff experience, knowledge, and expertise. The estimates are based combination on one-time (years 1 and 2) and ongoing execution (year 3) obligations to follow the revised Reliability Standards.

The Project 2015–09 Establish and Communicate System Operating Limits Standard Drafting Team (SDT): (1) developed proposed revisions to Reliability Standards and their applicable functional entities: FAC–011–4 (RC), FAC–014–3 (PC, RC, TO, TP), IRO–008–3 (RC), and TOP–001–6 (BA, TO, GO, DP); (2) proposed the retirement of FAC–010–3 (PA/PC) and developed corresponding revisions to FAC–003–5 (TO, GO), PRC–002–3 (RC, TO, GO), PRC–023–5 (TO, GO, DP, PC), and PRC–026–2 (TO, GO, PC) Reliability Standards to remove or replace references to system operating limits (SOLs) and interconnection reliability operating limits (IROLs) established by planning entities.

The developed proposed revisions to Reliability Standards are:

- FAC–011–4 is applicable to the RC and its purpose is to ensure that SOLs used in the reliable operation of the bulk electric system are determined based on an established RC methodology or methodologies. NERC clarified acceptable system performance criteria for the operations horizon and developed an SOL risk-based notification framework through the RC's SOL methodology.
- FAC–014–3 is applicable to the PC, RC, TOP and TP and its purpose is to ensure that SOLs used in the reliable operation of the bulk electric system are determined based on an established RC methodology or methodologies and that Planning Assessment performance criteria is coordinated with these methodologies. NERC removed references to planning horizon SOLs and IROLs and clearly delineate specific functional entity responsibility for determining and communicating each type of SOL used in operations.
- IRO–008–3 is applicable to the RC and requires RCs to perform analyses and assessments to prevent instability, uncontrolled separation, or cascading. NERC added a new requirement requiring a RC to use its SOL methodology when determining SOL exceedances for its analyses and assessments and further revised a requirement requiring the RC to use its SOL risk-based notification framework when communicating SOL or IROL exceedances.
- TOP–001–6 is applicable to the BA, TOP, GOP, and DP but the proposed revisions only impact the TOP. NERC added a new requirement requiring a TOP to use its RC SOL methodology when determining SOL exceedances and further revised a requirement requiring TOP notifications regarding SOL exceedances to be done according to the risk-based approach in the RC's SOL methodology.

NERC further proposes the retirement of currently effective Reliability Standard FAC–010–3 that requires PCs and TPs to establish SOLs for the planning horizon. The proposed retirement of FAC–010–3 is mainly due to its redundancy with currently effective TPL–001–4 Standard and new requirements in proposed FAC–014–3. In addition, the proposed retirement of FAC–010–3 developed corresponding revisions to proposed Reliability Standards FAC–003–5, PRC–002–3, PRC–023–5, and PRC–026–2 as follows:

- FAC–003–5 is applicable to TOs and GOs and NERC proposes to modify Applicability Sections 4.2.2 and 4.3.1.2 of FAC–003–5 to replace references to

[1] 16 U.S.C. 824o.

[2] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4).

''elements of an IROL under NERC Standard FAC–014 by the Planning Coordinator'' with references to facilities:

''Identified by the Planning Coordinator or Transmission Planner, per its Planning Assessment of the Near-Term Transmission Planning Horizon as a Facility that if lost or degraded are expected to result in instances of instability, Cascading, or uncontrolled separation that adversely impacts the reliability of the Bulk Electric System for a planning event.''

• PRC–002–3 is applicable to the RC, TO and GO and NERC proposes to modify the applicability of the PRC–002–3 standard to remove PCs as a responsible entity subject to the standard and replace any references in the standard that would have included PCs with references to RCs. NERC concluded that the RC was the appropriate entity to carry out the duties that currently apply to PCs in certain interconnections, including the identification of BES elements that are part of an IROL or stability-related SOL.

• PRC–023–5 is applicable to the TO, GO, DP and PC and NERC proposes to modify Section B2 of Attachment B to PRC–023–5 as follows:

''B2. The circuit is selected by the Planning Coordinator or Transmission Planner based on Planning Assessments of the Near-Term Transmission Planning Horizon that identify instances of instability, Cascading, or uncontrolled separation, that adversely impact the reliability of the Bulk Electric System for planning events.''

Attachment B sets the criteria used to determine the circuits in a Planning Coordinator area for which Transmission Owners, Generator Owners, and Distribution Providers must comply with certain requirements in the standard applicable to protective relays.

• PRC–026–2 is applicable to the GO, PC and TO and NERC proposes modification to the PRC–026–2 standard, Requirement R1, Criteria 1, 2, and 4 to replace references to planning horizon SOLs with references to the TPL–001–4 Planning Assessment.

The Commission estimates that the NERC proposal, which would retire FAC–010–3, moves impacted and revised Reliability Standards without adding new obligations on registered entities resulting in a change in burden for industry of 128 hours. The proposed retirement of FAC–010–3 is mainly due to its redundancy with currently effective TPL–001–4 Standard and new requirements in proposed FAC–014–3. The Commission based the change in burden estimates on staff experience, knowledge, and expertise.

PROPOSED CHANGES DUE TO THE APPROVAL OF NERC'S PROPOSED RELIABILITY STANDARDS AND THE RETIREMENT OF FAC–010–3 IN DOCKET NO. RD22–2

Reliability standard	Type[3] and number of entity	Number of annual responses per entity	Total number of responses	Average number of burden hours per response	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC–725D					
FAC–010–3[4] Retire	PA/PC (63)	1	(63)	(220.6 hrs.); ($19,192)	(13,898 hrs.); ($1,209,109)
FAC–010–2.1, R5[5] (FERC–725D)	PA	1	(63)	(25.4 hrs.); ($2,209.8)	(1,600 hrs.); ($139,217)
Total Retirement for FAC–010–3[6]	PA	1	(63)	(246)	(15,498 hrs.); ($1,348,326)
One Time Estimate Years 1 and 2:					
FAC–011–4	RC (12)	1	12	176 hrs.; $15,312	2,112 hrs.; $183,744
FAC–014–3	RC (12)	1	12	64 hrs.; $5,568	768 hrs.; $66,816
FAC–014–3	PA/PC (63)	1	63	96 hrs.; $8,352	6,048 hrs.; $526,176
FAC–014–3	TP (204)	1	204	96 hrs.; $8,352	19,584 hrs.; $1,703,808
FAC–014–3	TOP (168)	1	168	32 hrs.; $2,784	5,376 hrs.; $467,712
Ongoing Estimate Year 3 ongoing:					
FAC–011–4	RC (12)	1	12	16 hrs.; $1,392	192 hrs.; $16,704
FAC–014–3	RC (12)	1	12	16 hrs.; $1,392	192 hrs.; $16,704
FAC–014–3	PA/PC (63)	1	63	16 hrs.; $1,392	1,008 hrs.; $87,696
FAC–014–3	TP (204)	1	204	16 hrs.; $1,392	3,264 hrs.; $334,080
FAC–014–3	TOP (168)	1	168	16 hrs.; $1,392	2,688 hrs.; $233,856
Sub-Total for FERC–725D			918		41,232 hrs.; $3,637,296
FERC–725M[7]					
One Time Estimate Years 1 and 2:					
FAC–003–5	TO (325)	4	1,300	8 hrs.; $696	10,400 hrs.; $904,800
FAC–003–5	GO (1068)	4	4,272	8 hrs.; $696	34,176 hrs.; $2,973,312
Sub-Total for FERC–725M			5,572		44,576 hrs.; $3,878,112
FERC–725G					
One Time Estimate Years 1 and 2:					
PRC–002–3[8]	RC (12)	1	12	32 hrs.; $2,784	384 hrs.; $33,408
PRC–002–3[9] Retired	PA/PC (35)	1	(35)	(32 hrs.); ($2,784)	(2,016 hrs.); ($175,392)
PRC–023–5[10]	PA/PC (63)	1	63	32 hrs.; $2,784	2,016 hrs.; $175,392
PRC–026–2[11]	PA/PC (63)	1	63	32 hrs.; $2,784	2,016 hrs.; $175,392
Ongoing Estimate Year 3 ongoing:					
PRC–002–3	RC (12)	1	12	16 hrs.; $1,392	192 hrs.; $16,704
Sub-Total for FERC–725G			150		4,608 hrs.; $400,896
FERC–725Z					
One Time Estimate Years 1 and 2:					
IRO–008–3	RC (12)	1	12	32 hrs.; $2784	384 hrs.; $33,408
Ongoing Estimate Year 3 ongoing:					

PROPOSED CHANGES DUE TO THE APPROVAL OF NERC'S PROPOSED RELIABILITY STANDARDS AND THE RETIREMENT OF FAC–010–3 IN DOCKET NO. RD22–2—Continued

Reliability standard	Type[3] and number of entity (1)	Number of annual responses per entity (2)	Total number of responses (1) * (2) = (3)	Average number of burden hours per response (4)	Total burden hours (3) * (4) = (5)
IRO–008–3	RC (12)	1	12	16 hrs.; $1,392	144 hrs.; $16,704
Sub-Total for FERC–725Z			24		528 hrs.; $50,112
FERC–725A					
One Time Estimate Years 1 and 2: TOP–001–6[12]	TOP (168)	1	168	32 hrs.; $2,784	5,376 hrs.; $467,712
Ongoing Estimate Year 3 ongoing: TOP–001–6	TOP (168)	1	168	16 hrs.; $1,392	2,688 hrs.; $233,856
Sub-Total for FERC–725A			336		8,064 hrs.; $701,568
Total Reductions Due to Docket No. RD22–2–000.					99,008 hrs.; $8,667,984

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19475 Filed 9–8–22; 8:45 am]

BILLING CODE 6717–01–P

[3] RC = Reliability Coordinator; BA = Balancing Authority; TP = Transmission Planner; TOP = Transmission Operator; TO = Transmission Owner; GO = Generator Owner; DP = Distribution Provider; PA/PC = Planning Coordinator; and RC = Reliability Coordinator.

[4] FAC–010–2, FAC–011–2 and FAC–014 –2 were all approved by the Commission in Docket No. IC14–5–000 COMMISSION INFORMATION COLLECTION ACTIVITIES (FERC–725D); COMMENT REQUEST; EXTENSION (February 21, 2014)) with a burden of 138,979 hours. Staff estimates that the PC burden under FAC–010–3 from that estimate is 10 percent of the total or 13,898 hours. FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour) posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*).

[5] In Docket No. RM13–8–000 FERC 725D OMB Control: From 1902–0247 for the FAC–010–2.1 Requirement R5 burden of 1,600hrs should be retired with full retirement of FAC–010–3.

[6] The total of manhours associated FAC–010–3 equals the sum of 13,898 hrs. + 1,600 hrs. = 15,498 hrs.

[7] Proposed revision is a one-time change to align updated terminology in the NERC Standards.

[8] Proposed revision adds burden to the RC only.

[9] The removal of the PC from PRC–002–3 is a one-time reduction in burden. Eastern and ERCOT interconnection impacted.

[10] Proposed revision adds burden to the PA/PC only and is a one-time change to align updated terminology in the NERC Standards.

[11] Proposed revision adds burden to the PA/PC only and is a one-time change to align updated terminology in the NERC Standards.

[12] Proposed revision adds burden to the TOP only.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0056; FRL–10201–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Fossil Fuel Fired Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Fossil Fuel Fired Steam Generating Units (EPA ICR Number 1052.13, OMB Control Number 2060–0026), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. Public comments were previously requested via the **Federal Register** on April 8, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0105, online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina,

27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, subpart D) apply to each fossil fuel fired steam generating unit with heat input rate of 73 megawatts (MW) (250 MMbtu/hr) or more, which commenced construction, reconstruction, or modification after August 17, 1971. Subpart D regulations apply to both electric utility and industrial boilers. This regulation was supplanted by NSPS Subpart Da for electric utility steam generating units in 1978, and by NSPS Subpart Db for industrial-institutional-commercial boilers in 1986. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners and operators of fossil fuel fired steam generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart D).

Estimated number of respondents: 660 (total).

Frequency of response: Semiannually.

Total estimated burden: 71,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $18,500,000 (per year), which includes $9,900,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19536 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0049; FRL–10199–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Pressure Sensitive Tape and Label Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Pressure Sensitive Tape and Label Surface Coating Operations to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. Public comments were previously requested, via the **Federal Register**, on April 8, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0049, online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating Operations (40 CFR part 60 subpart RR) were proposed on December 30, 1980, and promulgated on October 18, 1983, and amended on October 17, 2000. These regulations apply to existing facilities and new facilities with coating lines used in the manufacture of pressure sensitive tape and label materials. Existing facilities and new facilities are both subject to these regulations, except those facilities that input 45 mega grams (Mgs) of volatile organic compounds (VOC) or less per 12-month period. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart RR.

Form Numbers: None.

Respondents/affected entities: Pressure sensitive tape and label surface coating operations.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart RR).

Estimated number of respondents: 48 (total).

Frequency of response: Semiannual.

Total estimated burden: 4,530 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $636,000 (per year), which includes $93,400 in annualized capital/srartup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR. This increase is not due to any program changes. The change in burden and cost estimates is due to an increase in the number of sources, based on an assumption of continued industry growth.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19534 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–034]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS) Filed August 29, 2022 10 a.m. EST Through September 2, 2022 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220132, Draft, BIA, NV, Yahthumb Solar Project, Comment Period Ends: 10/24/2022, Contact: Chip Lewis 602–379–6750.

EIS No. 20220133, Final, WAPA, AZ, ADOPTION—Final Environmental Impact Statement and Proposed Resource Management Plan Amendments for the Ten West Link Transmission Line Project, Contact: Mark Wieringa 720–962–7448.

The Western Area Power Administration (WAPA) has adopted the Bureau of Land Management's Final EIS No. 20190223, filed 9/5/2019 with the Environmental Protection Agency. The WAPA was a cooperating agency on this project. Therefore, republication of the document is not necessary under section 1506.3(b)(2) of the CEQ regulations.

Dated: September 2, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–19482 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0059; FRL–10203–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Ammonium Sulfate Manufacturing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for Ammonium Sulfate Manufacturing Plants (EPA ICR Number 1066.10, OMB Control Number 2060–0032), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. Public comments were previously requested, via the **Federal Register** on April 8, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0059, online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Ammonium Sulfate Manufacturing Plants (40 CFR part 60, subpart PP) were proposed on February 4, 1980, promulgated on November 12, 1980, and amended on October 17, 2000. These regulations apply to ammonium sulfate dryers located at both existing and new ammonium sulfate manufacturing plants in the caprolactam by-product, synthetic, and coke oven by-products sectors of the ammonium sulfate manufacturing industry. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart PP. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or

malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Ammonium sulfate manufacturing facilities in the caprolactam by-product, synthetic, and coke oven by-products sectors of the ammonium sulfate manufacturing industry.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart PP).

Estimated number of respondents: 2 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 286 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $34,300 (per year), *which* includes $0 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19530 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0440; FRL–10202–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Gathering Data on Results of Annual and Triennial Testing To Evaluate the Impacts of EPA's 2015 Federal Underground Storage Tank Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Gathering Data on Results of Annual and Triennial Testing to Evaluate the Impacts of EPA's 2015 Federal Underground Storage Tank Regulation (EPA ICR Number 2650.02, OMB Control Number 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on June 2, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ–OLEM–2022–0440, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, Prevention Division, Office of Underground Storage Tanks, (Mail Code 5401R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0646; email address: *McDermott.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection request will allow EPA to employ a contractor to compile data from private companies providing compliance testing to owners of federally regulated underground storage tank systems (USTs). The completed dataset of test results will allow EPA to evaluate the effectiveness of several of the newly required measures to prevent fuel releases included in the 2015 federal UST regulation: spill containment liquid tightness testing, containment sump liquid tightness testing (for containment sumps used for interstitial monitoring of piping of single-wall construction), overfill equipment inspections, and two types of annual leak detection equipment testing. EPA is interested in quantitatively assessing if passing rates improve between initial and subsequent rounds of testing in the 15 states from which data will be collected. EPA will use the data to identify if, and by how much, testing required by the regulation impacts equipment performance over time. EPA will use this information to enhance national UST program performance. EPA will share the information gathered from this collection with all state implementing agencies, who could use the results to better inform their future regulations, policies, and guidance for preventing UST releases. Sharing this information will help states implement their programs better, which will help EPA execute national UST program goals and better protect human health and the environment.

Form Numbers: None.

Respondents/affected entities: UST testing and compliance companies, UST facility owners and operators.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 60.

Frequency of response: One-time collection.

Total estimated burden: 1,275 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $53,398.75 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: This is a request for a new collection.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19529 Filed 9–8–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of TR 21, Omnibus Technical Release Amendments 2022: Conforming Amendments

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Technical Release (TR) 21, *Omnibus Technical Release Amendments 2022: Conforming Amendments.*

ADDRESSES: The issuance is available on the FASAB website at *https://fasab.gov/accounting-standards/*. Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d), Federal Advisory Committee Act, as amended (5 U.S.C. app.).

Dated: September 6, 2022.

Monica R. Valentine,

Executive Director.

[FR Doc. 2022–19487 Filed 9–8–22; 8:45 am]

BILLING CODE 1610–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 103748]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Mississippi Department of Human Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before October 11, 2022. This computer matching program will commence on October 11, 2022, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP benefits administered by the Mississippi Department of Human Services.

Participating Agencies

Mississippi Department of Human Services.

Authority for Conducting the Matching Program

The authority for the FCC's ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s)

The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP in Mississippi. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or

ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first and last name. The National Verifier will transfer these data elements to the Mississippi Department of Human Services, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP administered by the Mississippi Department of Human Services.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–19497 Filed 9–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 103746]

Privacy Act of 1974; Matching Program.

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Utah Department of Workforce Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before October 11, 2022. This computer matching program will commence on October 11, 2022, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP or Medicaid benefits administered by the Utah Department of Workforce Services.

Participating Agencies

Utah Department of Workforce Services.

Authority for Conducting the Matching Program

The authority for the FCC's ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s)

The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP and Medicaid in Utah. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and last name. The National Verifier will transfer these data elements to the Utah Department of Workforce Services, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the Utah Department of Workforce Services.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–19495 Filed 9–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 22–905; FR ID 103636]

Federal Advisory Committee Act; Disability Advisory Committee; Charter Renewal

AGENCY: Federal Communications Commission.

ACTION: Notice of renewal of the Disability Advisory Committee's charter.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) hereby announces that the charter of the Disability Advisory Committee (hereinafter Committee) will be renewed for a two-year period pursuant to the Federal Advisory Committee Act (FACA) and following consultation with the Committee Management Secretariat, General Services Administration.

ADDRESSES: Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joshua Mendelsohn, Designated Federal Officer, Federal Communications Commission, Consumer and Governmental Affairs Bureau, (202) 559–7304, or email: *Joshua.Mendelsohn@fcc.gov.*

SUPPLEMENTARY INFORMATION: After consultation with the General Services Administration, the Commission intends to renew the charter on or before December 14, 2022, providing the Committee with authorization to operate for two years. The purpose of the Committee is to make recommendations to the Commission on the full range of disability access topics specified by the Commission and to facilitate the participation of consumers with disabilities in proceedings before the Commission. In addition, this Committee is intended to provide an effective means for stakeholders with interests in this area, including consumers with disabilities, to exchange ideas, which will in turn enhance the Commission's ability to effectively address disability access issues.

Advisory Committee

The Committee will be organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). The Committee will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Committee will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent, and accessible manner. The Committee shall terminate two (2) years from the filing date of its charter, or earlier upon the completion of its work as determined by the Chair of the FCC, unless its charter is renewed prior to the termination date.

During the Committee's next term, it is anticipated that the Committee will meet in Washington, DC and/or virtually, at the discretion of the Commission, approximately three (3) times a year. The first meeting date and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date.

In addition, as needed, subcommittees will be established to facilitate the Committee's work between meetings of the full Committee. Meetings of the Committee will be fully accessible to individuals with disabilities.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2022–19498 Filed 9–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 103747]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Colorado Governor's Office of Information Technology. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before October 11, 2022. This computer matching program will commence on October 11, 2022, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP and Medicaid benefits administered by the Colorado Governor's Office of Information Technology.

Participating Agencies

Colorado Governor's Office of Information Technology

Authority for Conducting the Matching Program

The authority for the FCC's ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s)

The purpose of this modified matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP and Medicaid in Colorado. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first and last name. The National Verifier will transfer these data elements to the Colorado Governor's Office of Information Technology, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the Colorado Governor's Office of Information Technology.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–19496 Filed 9–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 26, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Banco Davivienda S.A., Bogotá, Colombia;* to engage de novo in financial and investment advisory activities through its proposed new wholly owned subsidiary, Davivienda Investment Advisors USA, LLC, Miami,

Florida, pursuant to section 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19535 Filed 9–8–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 11, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *GDW Bankshares, Inc., Sandersville, Georgia,* to become a bank holding company by acquiring The Geo. D. Warthen Bank, Sandersville, Georgia.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *N.B.C. Bancshares in Pawhuska, Inc., Pawhuska, Oklahoma;* to merge with First National Bancshares of Weatherford, Inc., and indirectly acquire First National Bank and Trust Company of Weatherford, both of Weatherford, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19538 Filed 9–8–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 26, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *John C. Cunat, individually and as trustee of the John C. Cunat Revocable Trust; and Brian G. Cunat, all of McHenry, Illinois; and Rondi Cunat-Hauser and Bryan Hauser, both of Marco Island, Florida;* to form the Cunat Family Control Group, a group acting in concert, to retain voting shares of Marengo Bancshares, Inc., and thereby indirectly retain voting shares of Prairie Community Bank, both of Marengo, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19537 Filed 9–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. *Healthcare Effectiveness and Outcomes Research (HEOR)*
   Date: October 12–13, 2022
2. *Healthcare Safety and Quality Improvement Research (HSQR)*
   Date: October 12–13, 2022
3. *Health System and Value Research (HSVR)*
   Date: October 13–14, 2022
4. *Healthcare Research Training (HCRT)*
   Date: October 20–21, 2022
5. *Healthcare Information Technology Research (HITR)*
   Date: October 27–28, 2022

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1557

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group

Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 2, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–19458 Filed 9–8–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–3162 and FDA–2019–E–3165]

Determination of Regulatory Review Period for Purposes of Patent Extension; ORILISSA

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 ORILISSA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human drug 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 November 8, 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 March 8, 2023. 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. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 8, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–3162 and FDA–2019–E–3165 for Determination of Regulatory Review Period for Purposes of Patent Extension; ORILISSA. 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 drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug 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 drug 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 drug product, ORILISSA (elagolix sodium) indicated for the management of moderate to severe pain associated with endometriosis. Subsequent to this approval, the USPTO received patent term restoration applications for ORILISSA (U.S. Patent Nos. 7,056,927 and 7,419,983) from Neurocrine Biosciences, Inc. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ORILISSA 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 ORILISSA is 5,452 days. Of this time, 5,117 days occurred during the testing phase of the regulatory review period, while 335 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 (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 21, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 21, 2003.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act: August 23, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for ORILISSA (NDA 210450) was initially submitted on August 23, 2017.

3. The date the application was approved: July 23, 2018. FDA has verified the applicant's claim that NDA 210450 was approved on July 23, 2018.

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 applications for patent extension, this applicant seeks 5 years 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: August 30, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19506 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Becton, Dickinson and Company (BD) for the BD SARS-CoV–2/Flu for BD MAX System, and Talis Biomedical Corporation (Talis) for the Talis One COVID–19 Test System. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the BD SARS-CoV–2/Flu for BD MAX System is revoked as of August 1, 2022. The Authorization for the Talis One COVID–19 Test System is revoked as of August 23, 2022.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health

protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On February 10, 2021, FDA issued an EUA to BD for the BD SARS–CoV–2/Flu for BD MAX System, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. On November 5, 2021, FDA issued an EUA to Talis for the Talis One COVID–19 Test System, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on March 22, 2022 (87 FR 16196), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

In a request received by FDA on July 26, 2022, BD requested withdrawal of, and effective August 1, 2022, FDA revoked, the Authorization for the BD SARS–CoV–2/Flu for BD MAX System. Because BD notified FDA that BD has discontinued the sale of the BD SARS–CoV–2/Flu for BD MAX System and requested FDA to withdraw the authorization of the BD SARS–CoV–2/Flu for BD MAX System, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on August 12, 2022, Talis requested revocation of, and on August 23, 2022, FDA revoked, the Authorization for the Talis One COVID–19 Test System. Because Talis notified FDA that Talis has not commercially distributed the authorized product in the United States and requested FDA revoke the authorization of the Talis One COVID–19 Test System, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of BD for the BD SARS–CoV–2/Flu for BD MAX System and of Talis for the Talis One COVID–19 Test System. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

July 29, 2022

Melissa Barhoover
Senior Regulatory Affairs Manager
7 Loveton Circle
Sparks, Maryland 21152
Re: Revocation of EUA202975

Dear Melissa Barhoover:

This letter is in response to a request from Becton, Dickinson and Company (BD), received July 26, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the BD SARS-CoV-2/Flu for BD MAX System issued on February 10, 2021, and updated on April 09, 2021, and September 23, 2021. BD discontinued the sale of BD SARS-CoV-2/Flu for BD MAX System in the United States on July 01, 2022. The revocation is effective August 01, 2022.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety. Because BD notified FDA that BD has discontinued the sale of the BD SARS-CoV-2/Flu for BD MAX System, and requested FDA to withdraw the authorization of the BD SARS-CoV-2/Flu for BD MAX System, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, pursuant to section 564(g)(2)(C) of the Act, FDA revokes EUA202975.

Effective on August 01, 2022, the BD SARS-CoV-2/Flu for BD MAX System is no longer authorized for emergency use by FDA. FDA encourages BD to instruct laboratories to discontinue use of and discard any remaining inventory.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

August 23, 2022

Brooke McCutchan, MT(ASCP)
Talis Biomedical Corporation
3400 Bridge Pkwy
Redwood City, CA 94065

Re: Revocation of EUA210502

Dear Brooke McCutchan:

This letter is in response to a request from Talis Biomedical Corporation, received August 12, 2022, that the U.S. Food and Drug Administration (FDA) revoke the Talis One COVID-19 Test System – EUA210502 issued on November 5, 2021. The Talis One COVID-19 Test System has not been commercially distributed by Talis Biomedical Corporation in the U.S.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety. Because Talis Biomedical Corporation notified FDA that Talis Biomedical Corporation has not commercially distributed the authorized product in the U.S. and requested FDA revoke the authorization of the Talis One COVID-19 Test System, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, pursuant to section 564(g)(2)(C) of the Act, FDA revokes EUA210502. As of the date of this letter, the Talis One COVID-19 Test System is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19491 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–1837]

Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products.'' This draft guidance provides recommendations for the content and format of the required statement of identity on the labeling of human nonprescription drug products. This draft guidance also provides recommendations on the inclusion of the drug product's strength on the labeling. The recommendations in this draft guidance are intended to help manufacturers, packers, distributors, applicants, relabelers, and sponsors ensure consistent content and format of the statement of identity and strength for all human nonprescription drug products. Consistent content and format

of the statement of identity and strength may aid consumers in comparing nonprescription drug products and assist consumers in appropriate self-selection.

DATES: Submit either electronic or written comments on the draft guidance by November 8, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–1837 for ''Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Helen Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5493, Silver Spring, MD 20993, 301–796–6848.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products.'' This draft guidance provides recommendations for the content and format of the required statement of identity on the labeling of human nonprescription drug products. This draft guidance also provides recommendations on the inclusion of the drug product's strength on the labeling.

Labeling for nonprescription drug products is intended to enable consumers to self-select appropriately and use the nonprescription drug product safely and effectively without the supervision of a healthcare practitioner. Nonprescription drug products must comply with applicable labeling requirements for over-the-counter (OTC) products under 21 CFR part 201, including, but not limited to, the statement of identity under § 201.61 (21 CFR 201.61). The statement of identity is one of the principal features on nonprescription drug product labeling and consists of the established name for the nonprescription drug product, if one exists, followed by an accurate statement of the general pharmacological category(ies) or the principal intended action(s) of the drug. The labeling of all nonprescription drug products must display the statement of identity on the product's principal display panel (§ 201.61(a)).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's 60-day notice requesting public comment on the proposed collection of information entitled ''Agency

Information Collection Activities; Proposed Collection; Comment Request; General Drug Labeling Provisions and Over-the-Counter Monograph Drug User Fee Submissions.'' The proposed collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). As required by the PRA, FDA has published an analysis of these information collection provisions elsewhere in this edition of the **Federal Register** and will submit them for OMB approval following the period for public comment. This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19500 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1794]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Drug Labeling Provisions and Over-the-Counter Monograph Drug User Fee Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) 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 revision 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 collections related to general drug product labeling and to over-the-counter (OTC) Monograph Drug User Fee (OMUFA) submissions.

DATES: Either electronic or written comments on the collection of information must be submitted by November 8, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 8, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–1794 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; General Drug Labeling Provisions and OTC Monograph Drug User Fee Submissions.'' 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 revision 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.

General Drug Labeling Provisions and OTC Monograph Drug User Fee Submissions—21 CFR Part 201

OMB Control Number 0910–0340—Revision

I. OTC Drug Product Labeling

This information collection supports implementation of general drug labeling provisions, including certain OTC drug product labeling requirements found in FDA regulations in 21 CFR part 201 and in section 502(x) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352(x)), as well as OTC drug product labeling recommendations discussed in FDA guidance documents enumerated below. Although we are including the information collection associated with section 502(x) in OMB control number 0910–0340, we are evaluating whether the placement of that information collection is better located in another approval.

The requirements and recommendations contained in the authority above help ensure that OTC drug product labeling includes information to assist consumers with product selection and with the safe and effective use of products that protect the public health from potential harm that could result from the dissemination of false and misleading statements regarding FDA-regulated products. As described further below, the information collection provisions of one guidance also apply to prescription drug labeling.

A. Principal Display Panel Labeling

Certain information collection provisions address the labeling (third-party disclosures) that drug companies provide on the principal display panel of every OTC drug product in package form—the part of that drug product's label that is most likely to be displayed or examined in a retail sale setting (see 21 CFR 201.60). Information on this panel supports consumers' product selection, as well as identification after purchase. OTC drug product companies must include a declaration of the net quantity of the OTC product contents on the principal display panel (see § 201.62 (21 CFR 201.62)). They also must include a statement of identity (see § 201.61 (21 CFR 201.61)).

Elsewhere in this issue of the **Federal Register,** FDA has made available a draft guidance for industry entitled ''Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products'' [1] (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/quantitative-labeling-sodium-potassium-and-phosphorus-human-over-counter-and-prescription-drug*) that further addresses content and format of statement of identity information and drug product strength information to be included in the principal display panel labeling of human nonprescription drug products. The guidance provides recommendations to help manufacturers comply with statement of identity labeling requirements under § 201.61 and also provides a recommended alternative to the statement required by that regulation to provide consumers with consistent information about the active ingredients, strength, and dosage form of the product. Consistent information about the active ingredients, strength, and dosage form of the product on the principal display panel may aid consumers in comparing nonprescription drug products and assist consumers in appropriate self-selection of these products and in subsequent identification of the products after purchase.

In estimating burden for statement of identity labeling, we have excluded the burden for disclosing any statement of identity specified in a final OTC monograph order under section 505G of the FD&C Act (21 U.S.C. 355h), because FDA regulations state that for purposes of § 201.61, the statement of identity shall be the term or phrase used in an applicable OTC monograph (see 21 CFR 330.1(c)(1)). By operation of law, OTC monographs are now established by order under section 505G of the FD&C Act, and information collections made under section 505G are exempt from the PRA under section 505G(o).

B. OTC Drug and Prescription Drug Facts Labeling

In addition to labeling that drug companies provide on the principal display panel, companies must also comply with Agency regulations in § 201.66 (21 CFR 201.66), which requires standard content elements and formatting for the ''Drug Facts'' labeling (DFL) of all OTC drug products. This standardized labeling helps consumers understand the information that appears on OTC drug products to help ensure that consumers can use those products safely and effectively. The use of consistent language in labeling headings and subheadings helps consumers comprehend information, and consistent formatting helps consumers more efficiently locate information.

The DFL is where OTC drug product labeling presents certain specific, standardized content required or recommended under other regulations or guidance documents. For this reason, our burden estimates address these information collections together. One such provision authorizes the optional use of a symbol to convey warnings regarding use of an OTC drug product while pregnant or breast-feeding (see § 201.63(a) (21 CFR 201.63(a)). In addition, the DFL is where OTC drug product labeling presents information (if applicable) on the quantity per dosage unit of certain specific substances. Some consumers need to restrict their total daily intake of these substances because of their impact on the consumers' underlying health conditions. Specific quantitative information must be presented in OTC drug product labeling for phenylalanine/aspartame

[1] When final, this guidance will represent FDA's current thinking on this topic.

(§ 201.21(b) (21 CFR 201.21(b))), sodium (§ 201.64(b) (21 CFR 201.64(b))), calcium (§ 201.70(b) (21 CFR 201.70(b))), magnesium (§ 201.71(b) (21 CFR 201.71(b))), and potassium (§ 201.72(b) (21 CFR 201.72(b))).

The quantitative labeling requirements in those regulations cited above are complemented by the draft guidance for industry entitled ''Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drug Products'', which FDA has made available elsewhere in this edition of the **Federal Register** [2] (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/quantitative-labeling-sodium-potassium-and-phosphorus-human-over-counter-and-prescription-drug*) (Quantitative Sodium, Potassium, and Phosphorus Labeling Guidance). This guidance document provides content and formatting recommendations for presenting quantitative information about sodium, potassium, and phosphorus that can help firms comply with the requirements under §§ 201.64 and 201.72 for conveying information about these substances in OTC drug product labeling. The guidance also provides parallel recommendations for drug companies to provide quantitative information about phosphorus in OTC drug product labeling. This quantitative information about sodium, potassium, and phosphorus helps patients who need to limit their overall consumption of any of these substances because of its impact on underlying health conditions, such as heart failure, hypertension, or chronic kidney disease. Quantifying these substances in drug labeling can also help healthcare providers and patients select drug products with lower amounts of these substances when such alternatives are available. The guidance recommends approaches to improve consistency in the presentation of this information, including clarifying quantities per dosage unit and rounding consistency. The information collections addressed in the guidance with regard to OTC drug products are included with our estimates for preparing the DFL panel of labeling, where this information appears.

The Quantitative Sodium, Potassium, and Phosphorus Labeling Guidance also recommends how drug firms can provide quantitative information on sodium, potassium, and phosphorus in prescription drug labeling to help patients who need to limit their overall consumption of these substances. Prescription drugs are not subject to the OTC labeling regulations, but the content and format of prescription drug labeling is set forth in 21 CFR 201.56 and 201.57 and approved under OMB control number 0910–0572. In the guidance, FDA recommends that when the recommended quantitative information about sodium, potassium, and phosphorus is included in prescription drug labeling, it should be presented within the DESCRIPTION section of that labeling, following the list of inactive ingredients. We estimate that the recommendations of the guidance regarding disclosing quantitative information about sodium, potassium, and phosphorus in prescription drug labeling will have no effect on the overall burden estimate for prescription drug labeling as a whole, which is addressed under OMB control number 0910–0572.

Our estimate of burden for OTC drug labeling that appears within the DFL reflects several considerations. For those OTC drug products that are marketed pursuant to an application approved under section 505 of the FD&C Act (21 U.S.C. 355), we assume a substantial part of the burden of developing labeling is addressed in the submission of the new drug application, which includes submission of the proposed labeling. The information collections associated with new drug applications are approved under OMB control number 0910–0001. For OTC drugs that are legally marketed under section 505G of the FD&C Act that do not have an approved application under section 505 of the FD&C Act, a substantial part of the DFL's content, including applicable Uses (Indications), Warnings, and Directions, is established under section 505G, either by final administrative orders or by section 505G(a)(3). Collections of information made under section 505G of the FD&C Act are exempt from the PRA. Therefore, labeling required by administrative orders under section 505G of the FD&C Act or required by section 505G(a)(3) of the FD&C Act, even if it would ordinarily be a collection of information,[3] is exempt from the PRA and is not considered in our burden estimate for the DFL (see section 505G(o) of the FD&C Act). Finally, we note that the DFL of many individual products already being marketed will remain unchanged within a given year. Thus, our annualized burden estimate encompasses only new products or those otherwise undergoing changes, such as reformulation, or changes in package quantity that necessitate revisions to the DFL, whether those products are marketed under approved applications (*e.g.,* new drug application/abbreviated new drug application) or pursuant to section 505G of the FD&C Act.

Our annualized estimate of burden addresses new products and products for which the DFL and/or net quantity of contents otherwise change in a 12-month period.

C. Labeling Related to Adverse Event Reporting

Section 502(x) of the FD&C Act requires the label of a nonprescription drug product marketed in the United States without an application approved under section 505 of the FD&C Act to include a domestic address or domestic telephone number through which a manufacturer, packer, and distributor may receive a report of a serious adverse event associated with its product(s). To help implement this provision, we developed the guidance for industry entitled ''Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers'' (September 2009) (available at *https://www.fda.gov/media/77411/download).* This guidance document is intended to assist respondents in complying with this statutory labeling requirement and provides recommendations for manufacturers to include an additional labeling statement identifying the purpose of the domestic address or telephone number to improve the usefulness of the labeling for consumers.

D. Submissions To Request Exemptions or Deferrals From OTC Drug Labeling Requirements

FDA regulations in § 201.66(e) authorize FDA to exempt or defer specific requirements in § 201.66 if FDA finds that the requirement is inapplicable, impracticable, or contrary to public health or safety. A manufacturer, packer, or distributor can seek such an exemption or deferral by submitting a written request in accordance with the requirements of § 201.66(e), which address the content of such a written request submission and how and where to submit it. A request for an exemption or deferral must be submitted in triplicate for each OTC drug product and contain certain

[2] When final, this guidance will represent FDA's current thinking on this topic.

[3] Some labeling required by these administrative orders or section 505G(a)(3) of the FD&C Act is not a collection of information at all, but rather, is the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public (see 5 CFR 1320.3(c)(2))).

information allowing the Agency to make an informed decision on the request. FDA uses the submitted information to assess whether the grounds for an exemption or deferral are met. Based on historical experience and from feedback received from respondents who have submitted similar requests, FDA estimates that it will take 24 hours to prepare and submit each submission and that on average annually, the Agency will receive one request for a waiver or exemption from the drug labeling requirement.

In addition, § 201.63(d) states that FDA may grant exemptions from the specific OTC drug product warning for patients who are pregnant or breast feeding that is ordinarily required to appear in labeling by § 201.63(a). To request such an exemption, the regulations call for submission of a citizen petition in accordance with § 10.30 (21 CFR 10.30). The submission of citizen petitions under § 10.30, including those petitions that request this labeling exemption, is approved under OMB control number 0910–0191, and we do not address its burden further in this document.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN FOR NEW OTC DRUG PRODUCTS [1]

Information collection activity—labeling	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Declaration of Net Quantity of Contents Labeling for Nonprescription Drug Products—§ 201.62.	875	9	7,918	* 0.5	3,959
Statement of Identity Labeling for Nonprescription Drug Products that are not covered by a final OTC Drug Monograph under section 505G of the FD&C Act—§ 201.61.	292	11.5	3,383	2.5	8,457.5
Additional Statement of Identity and Strength information in labeling of nonprescription drug products that are not covered by a final OTC Drug Monograph under section 505G of the FD&C Act (Guidance For Industry (GFI): Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products, section III).	292	11.5	3,383	2.5	8,457.5
Additional Statement of Identity and Dosage Form information in labeling of nonprescription drug products that are covered by a final OTC Drug Monograph under FD&C Act section 505G (GFI: Statement of Identity and Strength—Content and Format of Labeling for Human Nonprescription Drug Products, section III).	292	19	5,614	2.5	14,035
DFL for Nonprescription Drug Products—§ 201.66(c) and (d) (including content within DFL described in §§ 201.21(b), 201.63(a), 201.64(b), 201.70(b), 201.71(b), 201.72(b), or in guidance).	875	9	7,918	12	95,016
Address and phone number of responsible person added to labeling for nonprescription drug products marketed without an application approved under section 502(x) of the FD&C Act and GFI: Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Q&A—section III).	300	3	900	4	3,600
Total					133,525

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY REPORTING BURDEN FOR OTC DRUG PRODUCTS [1]

Information collection activity—labeling	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Requests for exemptions/deferrals of OTC drug product Drug Facts labeling requirements—§ 201.66(e)	1	1	1	24	24

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. OTC Monograph Drug User Fee Program Submissions

This information collection also includes submissions associated with the OTC Monograph Drug User Fee Program. Section 744M of the FD&C Act (21 U.S.C. 379j–72) establishes an OTC monograph drug user fee program (commonly called OMUFA) and authorizes FDA to assess and collect: (1) facility fees from qualifying OTC monograph drug facilities and (2) fees from submitters of qualifying OTC Monograph Order Requests (OMORs). The OMUFA program supports FDA

activities related to the regulation of OTC monograph drug products, including provisions of section 505G of the FD&C Act that facilitate innovation and make it easier for FDA to better respond to safety issues when they emerge. We provide information regarding the OMUFA program on our website at *https://www.fda.gov/industry/fda-user-fee-programs/over-counter-monograph-user-fee-program-omufa.*

We developed Form FDA 5009, *Over-The-Counter Monograph User Fee Cover Sheet,* (available at *www.fda.gov/about-fda/reports-manuals-forms/forms,* Search for Form FDA 5009) to facilitate the submission of OMUFA fees and to more efficiently administer the OMUFA program. Form FDA 5009 provides FDA with necessary information to determine the total user fee payment amount required and to help the Agency track payments. Respondents to this collection are qualifying finished dosage form manufacturers of OTC monograph drugs and submitters of qualifying OMORs submitted under section 505G(b)(5) of the FD&C Act.

We estimate the burden of collection of information as follows:

TABLE 3—ESTIMATED ANNUAL OMUFA REPORTING BURDEN [1]

Form FDA 5009—OMUFA cover sheet	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission associated with facility fees	1,184	1	1,184	*0.5	592
Submission associated with fees for qualifying OMORs	5	1	5	*0.5	2.5
Total					594.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

Based on data from our electronic Drug Registration and Listing System, we estimate that there will be 1,184 respondents who will provide information in conjunction with facility fee payments annually. In addition, consistent with the Over-the-Counter Monograph User Program Performance Goals and Procedures commitment letter (available at *https://www.fda.gov/media/106407/download*), we estimate submitters will provide the user fee information using Form FDA 5009 in conjunction with an average of five qualifying OMORs annually. We assume the user fee-related submissions will require an average of 30 minutes to prepare, for a total of 594.5 hours annually.

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19502 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0528]

Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drug Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drug Products.'' This draft guidance is intended to assist industry in providing information in labeling about the quantities at which sodium, potassium, and phosphorus as constituents of active or inactive drug ingredients are present in human over-the-counter (OTC) and prescription drug products.

DATES: Submit either electronic or written comments on the draft guidance by November 8, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–D–0528 for ''Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drugs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential

information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drugs Products.'' This draft guidance focuses on sodium, potassium, and phosphorus when present as constituents of active or inactive drug product ingredients (*e.g.,* sodium as a constituent of the inactive ingredient anhydrous trisodium citrate, phosphorus as a constituent of the inactive ingredient dibasic calcium phosphate, or sodium as a constituent of the active ingredient naproxen sodium).

Sodium, potassium, and phosphorus are often present in drug products as constituents of active or inactive ingredients. The amounts of these constituents can vary among drug products, including drugs with the same active ingredient, depending on factors such as the manufacturer, formulation, and dosage form. For example, the amount of sodium, potassium, or phosphorus may differ between a reference listed drug and a generic version of the drug, or the amount may vary among different generic versions of the same drug.

This draft guidance restates the legal requirements set forth in current regulations for the quantitative labeling of sodium and potassium for OTC products intended for oral ingestion. There is no current regulation requiring quantitative information specifically for sodium or potassium in prescription drugs. However, this draft guidance recommends that manufacturers of OTC and prescription drug products include quantitative information for sodium, potassium, and phosphorus (when present above threshold levels described in the draft guidance) in the product's labeling to assist healthcare providers and patients.

Healthcare providers generally recommend that patients with certain clinical conditions such as heart failure, hypertension, or chronic kidney disease, restrict dietary intake of sodium, potassium, or phosphorus. Including information about the quantities of these constituents in drug product labeling would allow healthcare providers and patients to account for the amounts of these constituents present in a patient's daily drug regimen when determining an individual's total daily intake. Quantifying these constituents in drug product labeling as recommended in this draft guidance may allow healthcare providers and patients to select drug products with lower amounts of these constituents when necessary if such alternatives are available.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Quantitative Labeling of Sodium, Potassium, and Phosphorus for Human Over-the-Counter and Prescription Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's 60-day notice requesting public comment on the proposed collection of information entitled, ''Agency Information Collection Activities; Proposed Collection; Comment Request; General Drug Labeling Provisions and Over-the-Counter Monograph Drug User Fee Submissions.'' The proposed collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). As required by the PRA, FDA has published an analysis of these information collection provisions elsewhere in this edition of the **Federal Register** and will submit them for OMB approval following the period for public comment.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in certain sections of 21 CFR part 201 have been approved under OMB control number 0910–0572; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/*

vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents or *https://www.regulations.gov*.

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19501 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–1263]

Submitting Documents Using Real-World Data and Real-World Evidence to the Food and Drug Administration for Drug and Biological Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drug and Biological Products.'' To facilitate FDA's internal tracking of submissions to the Agency that include real-world data (RWD) and real-world evidence (RWE), this guidance encourages sponsors and applicants to identify in their submission cover letters certain uses of RWD/RWE. This guidance does not address FDA's substantive review of the RWD/RWE submitted as part of the Agency's standard review process. This guidance finalizes the draft guidance entitled ''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drugs and Biologics'' issued on May 9, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on September 9, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2019–D–1263 for ''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Raymond Chiang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2232, Silver Spring, MD 20993–0002, 301–796–1940; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled

''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drug and Biological Products.'' As one mechanism to inform FDA's RWE program under the 21st Century Cures Act (Pub. L. 114–255), and specifically to help FDA understand the scope and use of RWD/RWE submitted to support regulatory decisions regarding safety and/or effectiveness, the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Oncology Center of Excellence (OCE) track certain types of submissions involving RWD/RWE. As described in this guidance and to promote consistency in this effort, CDER, CBER, and OCE encourage sponsors and applicants to identify whether their submissions include certain uses of RWD/RWE. To assist FDA in tracking of RWD/RWE submissions, FDA recommends that the sponsor or applicant include the following information in their cover letter: (1) purposes of using RWD/RWE, (2) study designs using RWD to generate RWE, and (3) RWD sources used to generate RWE.

This guidance finalizes the draft guidance entitled ''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drugs and Biologics'' issued on May 9, 2019 (84 FR 20368). FDA considered comments received on the draft guidance as the guidance was finalized, and changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Submitting Documents Using Real-World Data and Real-World Evidence to FDA for Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 6, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19494 Filed 9–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Intent To Make Temporary Changes in the State Title V Maternal and Child Health Block Grant Allocations

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Response to solicitation of comments.

SUMMARY: HRSA plans to move forward in implementing temporary changes to the method of calculating poverty-based allocations under Title V of the Social Security Act for HRSA's State Title V Maternal and Child Health (MCH) Services Block Grant, beginning in Fiscal Year (FY) 2023. Since FY 2017, the poverty-based allocation has been based on the U.S. Census Bureau's 3-year American Community Survey (ACS) estimates using three pooled 1-year estimates. However, due to the COVID–19 pandemic, there were disruptions in the ACS data collection in 2020 resulting in data quality issues that prevented the Census Bureau from releasing standard 1-year ACS estimates; instead, the Census Bureau released experimental estimates. The ACS 2020 experimental estimates will be excluded from calculating Title V MCH Services Block Grant allocations, and the FY 2023 funding allocation will be based on the same poverty data used in the FY 2022 allocation (*i.e.,* pooled 1-year estimates for 2017, 2018, and 2019 ACS). Funding allocations for FY 2024 and FY 2025 will continue to incorporate the latest 1-year ACS data while skipping 2020 (*i.e.,* for FY 2024, the 2018, 2019, and 2021 ACS data will be used; for FY 2025, the 2019, 2021, and 2022 ACS data will be used). In FY 2026, the temporary change to the method for calculating allocations will no longer be necessary, and HRSA will resume pooling of three consecutive 1-year estimates (2021–2023).

DATES: *Effective Date:* October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Dykton, Acting Director of the Division of State and Community Health, Maternal and Child Health Bureau, HRSA, Room 18N35, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 433–2204; email: *MCHBlockGrant@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Beginning in FY 2023, HRSA will temporarily change the method of calculating the poverty-based allocation to States and the District of Columbia under section 502(c) of Title V of the Social Security Act (42 U.S.C. 702(c)). Because of data collection disruptions due to the COVID–19 pandemic, the Census Bureau did not release standard 1-year ACS estimates for 2020. Survey administration methods (mailed questionnaires and interviewing in-person) were impacted beginning in March 2020, which affected response rates, in terms of who was most likely to complete mailed surveys or participate in interviews, etc.[1] The Census Bureau concluded that the 2020 ACS 1-year data were not ''reasonable'' as respondents disproportionately ''had higher levels of education, had more married couples and few never married citizens, had less Medicaid coverage, had higher median household incomes, and fewer non-citizens, and were more likely to live in single-family housing units'' than respondents in previous years. Instead, the Census Bureau decided to provide only experimental estimates for 2020 ACS 1-year data.[2]

HRSA examined the 2020 ACS experimental estimates and compared the change in poverty share using a 3-

[1] *https://www.census.gov/library/working-papers/2021/acs/2021_CensusBureau_01.html.*

[2] The Census Bureau defines experimental data products as ''innovative statistical products created using new data sources or methodologies that benefit data users in the absence of other data products . . . Census Bureau experimental data may not meet all of HRSA's data quality standards. Because of this, HRSA clearly identifies experimental data products and includes methodology and supporting research with their release.'' *https://www.census.gov/data/experimental-data-products.html.*

year estimate incorporating the 2020 experimental estimate with prior year-to-year changes since 2014—the first year of annual updates to poverty share data using 3-year ACS estimates. HRSA noted greater observed data variability and a greater number of States that would experience large decreases in their poverty share. HRSA was concerned about the accuracy of the 2020 experimental estimates as applied to the Title V MCH Services Block Grant allocation.

In order to ameliorate these concerns and because of the nature of the data, the ACS 2020 experimental estimates will not be used in calculating Title V MCH Services Block Grant allocations. Instead, HRSA will base the FY 2023 funding allocation on the same poverty data used in the FY 2022 allocation (*i.e.,* pooled 1-year estimates for 2017, 2018, and 2019 ACS). Funding allocations for FY 2024 and FY 2025 will continue to incorporate the latest 1-year ACS data while skipping the 2020 experimental data (*i.e.,* for FY 2024, the 2018, 2019, and 2021 ACS data will be used; for FY 2025, the 2019, 2021, and 2022 ACS data will be used). In FY 2026, the temporary change to the method for calculating allocations will no longer be necessary, and HRSA will resume pooling of three consecutive 1-year estimates (2021–2023).

The proposed temporary change in State Title V MCH Services Block Grant allocations was announced in the **Federal Register** at 87 FR 37873 on June 24, 2022. A comment period of 30 days was established to allow interested parties to submit comments. HRSA received two responses. One comment expressed support for the proposed temporary change. HRSA appreciates this comment. The other comment is beyond the scope of this notice, as it did not specifically address the proposed changes in the State Title V MCH Services Block Grant allocation, but instead expressed concern about child vaccinations.

Diana Espinosa,

Deputy Administrator.

[FR Doc. 2022–19477 Filed 9–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Information Collection: Urban Indian Organization On-Site Review

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments; request for approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on a new information collection titled, ''Urban Indian Organization On-Site Review.'' IHS is requesting the Office of Management and Budget (OMB) to approve this new collection. The purpose of this notice is to announce the IHS' intent to submit this collection to OMB and to allow 30 days for public comment to be submitted directly to OMB.

DATES: Consideration will be given to all comments received by October 11, 2022.

ADDRESSES: A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID: IHS_FRDOC_0001).

Direct Your Comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION:

Summary of Comments: There was one comment that was submitted to the Agency regarding the 60-Day **Federal Register** Notice published on February 11, 2022 (87 FR 8020).

Comment Summary: The National Council of Urban Indian Health (NCUIH) was the only comment to the FRN, and a summary of the comments, requests, and recommendations in response to the February 11, 2022, notice, is summarized below. These comments can be found in full on *www.regulations.gov* (see Docket ID: IHS_FRDOC_0001) and based on NCUIH's consultations with Urban Indian Organizations (UIOs) and NCUIH's subject matter expertise. In summary, the NCUIH recommends the following:

- Update the Manual regularly and as needed to remain consistent with other relevant accreditation processes.
- Provide greater flexibility in the Manual to accommodate diverse UIO program/facility goals and services.
- The IHS to provide a consolidated list of requirement documents to UIOs prior to the on-site review.
- Ensure that UIOs can use existing administrative or site visit data in meeting the requirements of the Manual.

Additional Recommendations for UIOs includes that the Office of Urban Indian Health Programs (OUIHP) host an Urban Confer with UIOs to learn directly from UIO leaders about their experiences with the Manual and overall review process. The NCUIH also wanted consideration on (1) Provide a timeline for processing information collected in the annual review process; and (2) Improve overall review by ensuring reviewers are licensed medical providers.

IHS Response: The IHS Urban Indian Organization On-Site Review is conducted annually by the IHS Area Offices to evaluate IHS-funded UIOs' compliance with the Federal Acquisition Regulations (FAR), the Indian Health Care Improvement Act (IHCIA), and other contract and grant requirements. The on-site review requirements are based on best-practice standards for delivering safe and high quality health care. The OUIHP at IHS Headquarters provides national oversight of the annual on-site reviews.

In Fiscal Year (FY) 2018, the OUIHP executed an Indefinite-Delivery, Indefinite Quantity contract to revise the outdated 2013 Annual On-site Review Manual using current Accreditation Association for Ambulatory Health Care (AAAHC), The Joint Commission, and Commission on Accreditation of Rehabilitation Facilities accreditation standards, and the IHS Manual to improve consistency and usefulness of on-site reviews. IHS solicited feedback and recommendations from UIOs by conducting seven site visits: 1 outreach and referral program, 2 limited ambulatory programs, 2 comprehensive ambulatory programs, and 2 residential and outpatient treatment centers. In FY 2020, the OUIHP finalized the Annual On-site Review Manual incorporating UIOs' feedback and recommendations.

In FY 2021, the OUIHP began development of an electronic Annual On-site Review application to replace the hardcopy and a national dashboard to enhance the efficiency of on-site reviews. The application enables IHS Area Office staff and UIOs to document on-site reviews electronically by (1) completing corrective action plans; (2) documenting on-site reviews simultaneously at UIOs by IHS and UIO staff; (3) uploading on-site review documents; (4) calculating compliance scores to provide real-time feedback; (5)

generating compliance trend data as a baseline measure; (6) uploading on-site review data if no internet connection is available; and (7) printing options for the on-site review manual and completed reviews. The advantages of automating the Annual On-site Review Manual and process will increase productivity, increase communication on status of on-site reviews, increase efficient use of the Annual On-site Review Manual, and improve implementation of corrective action plans. In FY 2022, the OUIHP continues to develop the electronic Annual On-site Review Manual and process including seeking OMB approval.

The standardization of the Annual On-site Review Manual and process was in line with the 2017–2021 OUIHP strategic plan to improve the consistency, usefulness, and efficiency of annual on-site reviews for IHS Area Offices and UIOs.

The IHCIA at 25 U.S.C. 1655, states that the IHS will annually review and evaluate each UIO funded under the law. The IHCIA also requires IHS to develop procedures for evaluating compliance with awards made under the statute. Section 1655 states, in part:

(a) Contract Compliance and Performance

The Secretary, through the Service, shall develop procedures to evaluate compliance with grant requirements under this subchapter and compliance with, and performance of contracts entered into by [UIOs] under this subchapter. Such procedures shall include provisions for carrying out the requirements of this section.

(b) Annual On-Site Evaluation

The Secretary, through the Service, shall conduct an annual on-site evaluation of each [UIO] which has entered into a contract or received a grant under Section 1653 of this title for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract or the terms of such grant.

To meet statutory compliance, the IHS will conduct annual on-site reviews of UIOs funded under the IHCIA to ensure grant and contract compliance and the delivery of safe and high-quality health care.

This notice announces our intent to establish a new information collection.

Title: Urban Indian Organization On-Site Review. *Need and Use of Information Collection:* The Office of Urban Indian Health Programs (OUIHP) at IHS Headquarters provides national oversight of the annual on-site reviews. The IHS Urban Indian Organization On-Site Review is conducted annually by the IHS Area Offices to evaluate IHS-funded Urban Indian Organizations' compliance with Federal Acquisition Regulation (FAR) contractual requirements and grant requirements established through the IHCIA. The on-site review requirements are based on best-practice standards for delivering safe and high quality health care. *Agency Form Number:* none. *Members of Affected Public:* IHS-funded Urban Indian Organizations. *Status of the Proposed Information Collection:* new.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
UIOs	41	1	16	656
Total	41	1	16	656

There are no direct costs to respondents to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–19493 Filed 9–8–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0351]

Consolidated Port Approaches and International Entry and Departure Transit Areas Port Access Route Studies (PARS) Integral to Efficiency of Possible Atlantic Coast Fairways

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of the Consolidated Port Approaches and International Entry and Departure Transit Areas Port Access Route Studies (CPAPARS). This report summarizes the findings of four regional port access route studies: the Northern New York Bight; Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware; Approaches to the Chesapeake Bay, Virginia; and the Seacoast of North Carolina Including Approaches to the Cape Fear River and Beaufort Inlet, North Carolina. This notice announces the conclusion of the studies supplemental to the Atlantic Coast Port Access Route Study (ACPARS), announced on in the **Federal Register** on March 15, 2019.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email John Stone, Coast Guard; telephone 202–372–1093, email *john.m.stone@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

Atlantic Coast Port Access Route Study

On April 5, 2017, the Coast Guard announced the completion of the Atlantic Coast Port Access Route Study in the **Federal Register** (82 FR 16510), which is available for viewing and

download from the Coast Guard Navigation Center's website at *https://www.navcen.uscg.gov/port-access-route-studies.*

The ACPARS identified navigation safety corridors along the Atlantic Coast based on the predominant two-way vessel traffic and customary routes identified with AIS data for offshore deep draft and coastal seagoing tug/tow vessels. The study recommended developing these corridors into official shipping safety fairways or other appropriate vessel routing measures.

Based on the recommendations provided in the ACPARS, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (85 FR 37034) on June 19, 2020. This ANPRM, which is available for viewing and download from the **Federal Register** docket USCG–2019–0279 at *www.regulations.gov,* sought comments regarding the possible establishment of fairways along the Atlantic Coast of the United States identified in the ACPARS.

Consolidated Port Approaches and International Entry and Departure Transit Areas Port Access Route Studies

Recognizing the ACPARS only analyzed coastal, longshore, and predominantly north/south vessel transit routes along the Atlantic Coast, the Coast Guard announced new studies focused on port approaches and international entry and departure areas along the Atlantic Coast supplemental to the ACPARS, on March 15, 2019. This report summarizes the findings of four regional port access route studies: the Northern New York Bight; Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware; Approaches to the Chesapeake Bay, Virginia; and the Seacoast of North Carolina. The CPAPARS has been completed and has been uploaded to the docket and at *https://www.navcen.uscg.gov/port-access-route-study-reports* for public review.

This notice is issued under authority of 46 U.S.C. 70003(c).

Dated: September 2, 2022.

M.D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2022–19546 Filed 9–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0022]

Notice of the Establishment of the Tribal Homeland Security Advisory Council; Solicitation of Inaugural Members

AGENCY: Department of Homeland Security (DHS), Office of Partnership and Engagement (OPE).

ACTION: Notice of the establishment of a Tribal Homeland Security Advisory Council; solicitation of inaugural members.

SUMMARY: The Department of Homeland Security, through the Office of Partnership and Engagement, is establishing the Tribal Homeland Security Advisory Council (THSAC). The goal of the THSAC is to provide recommendations on policies, programs, and initiatives that the Department is undertaking that have implications for tribes and Tribal Nations. The Office of Partnership and Engagement seeks inaugural members of the THSAC.

DATES: Applications to join the THSAC will be accepted until 11:59 p.m., Eastern Daylight Time, on October 10, 2022.

ADDRESSES: Nominations may be submitted via first class mail to Colleen Silva, Office of Partnership and Engagement, MS 0385, Department of Homeland Security, 2707 Martin Luther King Jr Ave. SE, Washington, DC 20528–0385 or via email to *TribalHSAC@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Colleen Silva, Associate Director, Office of Intergovernmental Affairs, Office of Partnership and Engagement, telephone 202–282–9930, email *TribalHSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The THSAC will provide recommendations and advice on matters related to intergovernmental relations including, but not limited to: (a) DHS's implementation of Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments,* and the President's January 26, 2021, Memorandum on *Tribal Consultation and Strengthening Nation-to-Nation Relationships;* (b) implementation and execution of the DHS Tribal Consultation Policy; and (c) upholding the Federal Government's and DHS's trust and treaty responsibilities to Tribal Nations. The duties of the Council are solely advisory and shall extend only to the submission of advice and recommendations.

In order for DHS to fully leverage broad-ranging experience and education, the THSAC shall be diverse with regard to leadership, profession, and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a council that reflects the diversity of Tribal Nations. Members of the THSAC shall be appointed based on their qualifications to serve as representatives of a Tribal Nation or tribal organization. Such qualifications to be considered are listed below:

a. Educational background (*e.g.,* Native American studies, homeland security, Indian Law, or public policy);

b. Leadership, experience, and accomplishments (*e.g.,* tribal elected officials, tribal association appointment, tribal coordination efforts); and

c. Employment and membership in associations (*e.g.,* tribal government employee, tribal programs volunteer, active in tribal associations or groups).

With the establishment of the THSAC, the Office of Partnership and Engagement is accepting submissions of interest to be members of the Council.

When submitting nominations, please do not provide any sensitive personal information. Nominations should be submitted via email or via first class mail, with the required information in the body of the email or in an attachment. Nominations must include the following:

1. The nominee's name, contact information (*i.e.,* email and phone number), location, and Tribal Nation, Alaska Native Corporation, or tribal organization affiliation;

2. A summary resume that describes the individual's qualifications and experience with respect to the subject matter areas listed above (not to exceed five pages); and

3. A statement acknowledging that support from the Tribal Nation or tribal organization will be required if selected. (Support meaning the Tribal Nation or tribal organization agrees with the individual's participation.)

Do not include sensitive personal information, such as dates of birth, home addresses, Social Security numbers, etc. Note too, that Nominees will be vetted for national security considerations.

Please submit nominations no later than October 10, 2022, via first class mail or email to the addresses in the **ADDRESSES** section above.

Federal Advisory Committee Act (''FACA'') Exemption: Due to the special relationship between Tribal Nations and the Federal Government and the sensitive nature of the discussions that will take place during committee

meetings, the THSAC is exempted by the Secretary of Homeland Security from the public notice, reporting, and open meeting requirements of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), pursuant to the Homeland Security Act of 2002, 871(a) [(6 U.S.C. 451(a))].

Michael J. Miron,

Committee Management Officer.

[FR Doc. 2022–19352 Filed 9–7–22; 11:15 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL01000.L161000000.PN0000; MO #4500163958; MTM–89170–01]

Public Land Order No. 7913; Withdrawal of Public Land for the Zortman-Landusky Mine Reclamation Site; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) withdraws 2,688.13 acres of public lands in Phillips County, Montana, from location or entry under the United States mining laws, but not from the mineral leasing or mineral materials disposal laws, for a 20-year period, subject to valid existing rights, to protect the Zortman-Landusky Mine reclamation site.

DATES: This PLO takes effect on September 9, 2022.

FOR FURTHER INFORMATION CONTACT: Micah Lee, Realty Specialist, Bureau of Land Management, Havre Field Office, telephone (406) 262–2851, email at *mrlee@blm.gov,* during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose of the withdrawal established by this PLO is to protect the Zortman-Landusky Mine area and facilitate reclamation and stabilization of the site.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location or entry under the United States mining laws, but not from the mineral leasing or the mineral materials disposal laws.

Principal Meridian, Montana

T. 25 N., R. 24 E.,
- Sec. 10, lots 7 thru 11 and NE¼SE¼;
- Sec. 11, lot 8;
- Sec. 12, lots 8, 20, 23, and 24 and SE¼SW¼;
- Sec. 13, W½NW¼;
- Sec. 14, lots 1 and 2, lots 4 thru 11, E½NE¼, SW¼NE¼, and N½SE¼;
- Sec. 15, lots 4 thru 18;
- Sec. 21, SE¼NE¼, NE¼SE¼, and W½SE¼SE¼;
- Sec. 22, lot 1, lots 3 thru 7, SE¼NE¼, W½NW¼, N1/2SW¼, NE¼SW¼SW¼, N½SE¼SW¼, and NW¼SE¼;
- Sec. 23, W½NE¼ and NW¼.

T. 25 N., R. 25 E.,
- Sec. 7, lots 5 thru 9, lots 14, 17, 18, 22, 23, 24, and 26, lots 28 thru 32, and NW¼NE¼;
- Sec. 8, SW¼SW¼;
- Sec. 17, lots 3 and 4, NW¼NE¼, S½NE¼, E½NW¼, N½NE¼NE¼SE¼, N½NW¼NE¼SE¼, N½NE¼NW¼SE¼, and N½NW¼NW¼SE¼;
- Sec. 18, lots 2 thru 5, lots 9, 10, 13, and 14, and SW¼NE¼.

The areas described aggregate 2,688.13 acres, according to the official plats of the surveys of the said lands on file with the BLM.

2. This withdrawal will expire 20 years from the effective date of this order, unless as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

(Authority: 43 CFR 2300.)

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–19503 Filed 9–8–22; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP01000 L14400000.PN0000 223L1109AF; OMB Control No. 1004–XXXX]

Agency Information Collection Activities; Information Required To Cross Private Land for Access to BLM Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes a new information collection.

DATES: Interested persons are invited to submit comments on or before November 8, 2022.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–XXXX in the subject line of your comments. Please note that electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Marietta Esquibel by email at *mesquibe@blm.gov,* or by telephone at 505–954–2130. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This form will gather information from the public that is required by private landowners in order to cross private lands in order to access BLM lands. The information is necessary to help ensure the accountability of those seeking to cross private lands in order to access BLM public lands.

Title of Collection: Information Required to Cross Private Land for Access to BLM Lands.

OMB Control Number: 1004–XXXX.

Form Number: TBD.

Type of Review: New collection (Request for a new OMB Control Number).

Respondents/Affected Public: Individuals or households (those seeking to cross private land in order to access BLM lands.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 10 minutes.

Total Estimated Number of Annual Burden Hours: 17.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2022–19539 Filed 9–8–22; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34439; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before August 27, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by September 26, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 27, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

KEY: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

Los Angeles County

Reinway Court (Bungalow Courts of Pasadena TR), 380 Parke St., Pasadena, 82005152

Monterey County

Asilomar Conference Grounds Warnecke Historic District, 800 Asilomar Blvd., Pacific Grove, BC100008261

San Francisco County

Pflueger, Timothy L., House, 1015 Guerrero St., San Francisco, SG100008228

Sonoma County

NORLINA (shipwreck and remains), Address Restricted, Jenner vicinity, SG100008248

DISTRICT OF COLUMBIA

District of Columbia

St. Joseph's Seminary, 1200 Varnum St. NE, Washington, SG100008232

FLORIDA

Duval County

West 4th Street Church of God, 723 West 4th St., Jacksonville, SG100008233

Escambia County

Motor Inn Number 2, 500 West Jackson St., Pensacola, SG100008234

IDAHO

Ada County

Owyhee Motorcycle Club, 6600 North Cartwright Rd., Boise vicinity, SG100008236

KANSAS

Allen County

Kress Building (S.H. Kress & Company Store), 9 South Jefferson St., Iola, SG100008240

Bourbon County

Brant, Claude and Alberta, House, 216 South Eddy St., Fort Scott, SG100008241

Douglas County

East Lawrence Industrial Historic District (Boundary Increase), 619, 620 East 8th Street, 804–846 Pennsylvania St., and 716 East 9th St., Lawrence, BC100008243

Johnson County

Shawnee Indian Cemetery, 10825 West 59th Terr., Shawnee, SG100008244

Riley County

Viking Manufacturing Company Building, 1531 Yuma St., Manhattan, SG100008245

LOUISIANA

Livingston Parish

Settoon, Luther V. and Josie N., House, 32210 2nd St., Springfield, SG100008254

Orleans Parish

Murray Henderson Elementary School, 1912 L.B. Landry Ln., New Orleans, SG100008238

MISSOURI

Carter County

Carter County Courthouse, 105 Main St., Van Buren, SG100008239

St. Louis County

Sancta Maria in Ripa, 320 East Ripa Ave., St. Louis, SG100008257

OHIO

Hamilton County

Madeira Railroad Depot, 7701 Railroad Ave., Madeira, SG100008258

PENNSYLVANIA

Delaware County

Williamson Free School of Mechanical Trades, 106 South New Middletown Rd., Middletown Township, SG100008235

SOUTH CAROLINA

Charleston County

Read Building, 593 King St., Charleston, SG100008253

Greenville County

Ellison Flour Mill, 100 Ellison St., Fountain Inn, SG100008251

Richland County

South Carolina State Library, 1500 Senate St., Columbia, SG100008259

York County

Fennell, Dr. W.W. and Mary, House, 334 North Confederate Ave., Rock Hill, SG100008250

WISCONSIN

La Crosse County

Bangor Commercial Historic District, 1501–1630 Commercial St., 1515–1601 Bangor St., 105–106 16th Ave. North, Bangor, SG100008252

Milwaukee County

A.O. Smith Corporation Headquarters, 3025 West Hopkins St. and 3533 North 27th St., Milwaukee, SG100008256

Additional documentation has been received for the following resources:

ARKANSAS

Faulkner County

Conway Commercial Historic District (Additional Documentation), Roughly bounded by Main, Harkrider, Spencer just south of Mill St., and Locust Sts., Conway, AD10000779

CALIFORNIA

Monterey County

Asilomar Conference Grounds, Asilomar Blvd., Pacific Grove, AD87000823

TEXAS

Nacogdoches County

Zion Hill Historic District, (Nacogdoches MPS), Roughly bounded by Park St., Lanana Cr., Oak Grove Cemetery, and North. Lanana St., Nacogdoches, AD92001759

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 31, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2022–19466 Filed 9–8–22; 8:45 am]

BILLING CODE 4312–52–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–070]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP).

DATES: Thursday, September 29, 2022, 3:30 p.m. to 5:00 p.m., central time.

ADDRESSES: NASA Marshall Space Flight Center, Martin Road SW, Huntsville, AL 35808.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, ASAP Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Fourth Quarterly Meeting for 2022. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the International Space Station Program
—Updates on the Commercial Crew Program
—Updates on Exploration System Development Program
—Updates on Advanced Exploration Systems Program
—Updates on Human Lunar Exploration Program.

This meeting is only available telephonically. Any interested person may call the USA toll free conference call number 888–566–6133; passcode 8343253 and then the # sign. At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel via electronic submission to Ms. Hackley at the email address previously noted. Verbal presentations and written statements should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol Hamilton,

Executive Director (ASAP), National Aeronautics and Space Administration.

[FR Doc. 2022–19486 Filed 9–8–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Request for Information on Federal Video and Image Analytics Research and Development Action Plan

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF).

ACTION: Request for Information (RFI); extension of comment period.

SUMMARY: On July 14, 2022, the NITRD NCO and NSF, as part of the NITRD Video and Image Analytics Team, published in the **Federal Register** a document entitled ''Request for Information on Federal Video and Image Analytics Research and Development Action Plan''. Through this RFI, the NITRD NCO seeks input from all interested parties on updating the 2020

Federal Video and Image Analytics (VIA) Research and Development (R&D) Action Plan (VIA R&D Action Plan), *Research and Development Opportunities in Video and Image Analytics.* The public input provided in response to this RFI will assist the NITRD VIA Team in updating the VIA R&D Action Plan. To allow prospective commenters additional time to adequately consider and respond to the RFI, the NITRD NCO and NSF have determined that an extension of the comment period until September 16, 2022, is appropriate.

DATES: The end of the comment period for the document entitled ''Request for Information on Federal Video and Image Analytics Research and Development Action Plan'', published on July 14, 2022 (87 FR 42212), is extended from September 5, 2022, until on or before 11:59 p.m. (ET) September 16, 2022.

ADDRESSES: Comments submitted in response to 87 FR 42212 may be sent by any of the following methods:

- *Email: VIA-RFI@nitrd.gov.* Email submissions should be machine-readable and not be copy-protected; submissions should include ''RFI Response: Federal Video and Image Analytics Research and Development Action Plan'' in the subject line of the message
- *Mail:* Attn: Jacqueline Altamirano, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI (87 FR 42212) is voluntary. Each individual or institution is requested to submit only one response. Submissions must not exceed 10 pages in 12-point or larger font, with a page number provided on each page. Include the name of the person(s) or organization(s) filing the comment in your response. Responses to this RFI (87 FR 42212) may be posted for public access online at *https://www.nitrd.gov.* Therefore, we request that no business proprietary information, copyrighted information, sensitive personally identifiable information, or personal signatures be submitted as part of your response.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI (87 FR 42212).

FOR FURTHER INFORMATION CONTACT: Jacqueline Altamirano at (202) 459–9677 or *VIA-RFI@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. (ET), Monday through Friday.

SUPPLEMENTARY INFORMATION: *Background:* On July 14, 2022, the NITRD NCO and NSF, as part of the NITRD Video and Image Analytics Team, published in the **Federal Register** a document requesting input to the work of the VIA Team to prepare updates to the 2020 Federal Video and Image Analytics (VIA) Research and Development (R&D) Action Plan (VIA R&D Action Plan), *Research and Development Opportunities in Video and Image Analytics.* The VIA Team was formed to coordinate Federal VIA R&D across thirty Federal organizations and to foster a robust multisector ecosystem to support this rapidly developing research area. The RFI (87 FR 42212) was issued to seek public input on suggestions of revisions or improvements for the VIA R&D Action Plan, including comments on the six strategic goals and objectives regarding additions, removals, or modifications, as well as suggestions on implementation of strategic goals and objectives. The public input in response to this RFI (87 FR 42212) will assist the VIA Team in updating the VIA R&D Action Plan. The document stated that the comment period would close on September 5, 2022. An extension of the comment period will provide additional opportunity for the public to consider the RFI (87 FR 42212) and prepare comments to address the questions posed therein. Therefore, NITRD NCO and NSF are extending the end of the comment period for the RFI (87 FR 42212) from September 5, 2022, until September 16, 2022.

Submitted by the National Science Foundation in support of the NITRD NCO on September 2, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–19463 Filed 9–8–22; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME AND DATE: 1:00 p.m., Thursday, September 8, 2022.

PLACE: Via Conference Call.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Committee Meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. CALL TO ORDER
II. Sunshine Act Approval of Public Notice Waiver
III. FY22 External Audit—BDO
IV. Sunshine Act Approval of Executive (Closed)
V. Special Topic
VI. Executive Session With Chief Audit Executive
VII. Action Item Finance—Accounts Payable/ACH Transactions (NetSuite) FY21
VIII. Internal Audit Status Reports
  a. Internal Audit Reports Awaiting Management's Response
  b. Internal Audit Performance Scorecard
  c. FY22 Plan Projects' Activity Summary as of Aug. 8, 2022
  d. Implementation of Internal Audit Recommendations
IX. Tracking Open Recommendations
  a. Dependent on other IT Projects
  b. Dependent on Identity Access Management (IAM)
X. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2022–19584 Filed 9–7–22; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0158]

Holtec Decommissioning International, LLC, Palisades Nuclear Plant, Post-Shutdown Decommissioning Activities Report; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt; availability; public meeting; and request for comment; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on August 26, 2022, regarding the post-shutdown decommissioning activities report (PSDAR) for the Palisades Nuclear Plant

(Palisades). This notice provided receipt of the Palisades PSDAR and made it available for public comment, including the details of a public meeting in the vicinity of the Palisades site to discuss and collect comments on the PSDAR. This action is necessary to correct the time zone listed in association with the public meeting. The original notice lists the Palisades PSDAR public meeting time as 6 p.m. until 8 p.m. central time (CT), but the meeting will take place from 6 p.m. until 8 p.m. eastern time (ET), which is the local time zone for the Palisades site.

DATES: This document was published in the **Federal Register** on August 26, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0158 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–2022–0158. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Palisades PSDAR is available in ADAMS under Accession No. ML20358A232.
- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3178, email: *Marlayna.Doell@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the FR on August 26, 2022, in FR Doc. 2022–18387, on page 52599, first paragraph of column 1 and second paragraph of column 3, correct ''6:00 p.m. until 8:00 p.m. Central Time (CT) and 6:00 p.m. until 8:00 p.m. (CT)'' to read ''6 p.m. until 8 p.m. eastern time (ET) and 6 p.m. until 8 p.m. (ET),'' respectively.

Dated: September 6, 2022.

For the Nuclear Regulatory Commission.

Marlayna V. Doell,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–19540 Filed 9–8–22; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17499 and #17500; OKLAHOMA Disaster Number OK–00157]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4657–DR), dated 06/29/2022.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/02/2022 through 05/08/2022.

DATES: Issued on 08/26/2022.

Physical Loan Application Deadline Date: 09/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 03/29/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 06/29/2022, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/28/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–19465 Filed 9–8–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11854]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''The First Homosexuals: Global Depictions of a New Identity, 1869–1930'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''The First Homosexuals: Global Depictions of a New Identity, 1869–1930'' by Alphawood Foundation, through its subsidiary Alphawood Exhibitions LLC, at the Wrightwood 659 Gallery, Chicago, Illinois, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–19492 Filed 9–8–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11856]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Uta Barth: Peripheral Vision'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Uta Barth: Peripheral Vision'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–19489 Filed 9–8–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11853]

60-Day Notice of Proposed Information Collection: Eligibility Questionnaire for HAVANA Act Payments

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 8, 2022.

ADDRESSES:

You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0030'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: HIRTFStaffers@state.gov*.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Susan Ware Harris, Senior Advisor, Health Incidents Response Task Force, who may be reached on 202–679–0127, or at *HIRTFStaffers@state.gov*.

SUPPLEMENTARY INFORMATION:

≤• *Title of Information Collection:* Eligibility Questionnaire for HAVANA Act Payments.

- *OMB Control Number:* 1405–0250.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* S/HIRTF, Health Incidents Response Task Force.
- *Form Number:* DS–4316.
- *Respondents:* Department of State employees, former employees, and their dependents, and the qualified physicians whom they have consulted.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 50 hours.
- *Frequency:* Once.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

On October 8, 2021, President Biden signed the ''Helping American Victims Affected by Neurological Attacks'' (HAVANA) Act of 2021 (Pub. L. 117–46). In this statute, Congress authorized federal agencies to make payments to affected current employees, former employees, and their dependents for qualifying injuries to the brain. The DS–4316 provides the required medical substantiation for claims filed pursuant to the HAVANA Act and the Department's recent rule, which was effective August 15,2022.

Methodology

An individual wishing to make a claim under the HAVANA Act IFR will fill out the ''Patient Demographics'' portion of the DS–4316, and provide it to a U.S. board-certified physician (currently certified by the American Board of Psychiatry and Neurology (ABPN) or the American Board of Physical Medicine and Rehabilitation (ABPMR)), who will complete the form after examining the individual and reviewing their records and will fax or email the completed form to the Department.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2022–19449 Filed 9–8–22; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 11857]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''A Splendid Land: Paintings From Royal Udaipur'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''A Splendid Land: Paintings from Royal Udaipur'' at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, District of Columbia; at the Cleveland Museum of Art, Cleveland, Ohio; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–19490 Filed 9–8–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Proposed Change of Airport Property Land Use From Aeronautical to Non-Aeronautical Use at Bill and Hillary Clinton National Airport, Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a request from the City of Little Rock-Little Rock Airport Commission to change approximately 21.29 acres, located on the south side of the airport bordered by Grundfest Drive and East Roosevelt Road, from aeronautical use to non-aeronautical use and to authorize the conversion of the airport property.

DATES: Comments must be received on or before October 11, 2022.

ADDRESSES: Send comments on this document to Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177. Email: *Glenn.A.Boles@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Peyton, Director of Properties, Planning and Development, Bill and Hillary Clinton National Airport, One Airport Road, Little Rock, AR 72202, telephone (501) 372–3439. Email: *speyton@clintonairport.com;* or Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177, telephone (817) 222–5639. Email: *Glenn.A.Boles@faa.gov.*

Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The proposal consists of 21.29 acres comprised of portions of two tracts of land, consisting of 9.66 acres within Tract 1 and 11.63 acres within Tract 6. Tract 1 was included in the original airport tract of 802 acres, which was transferred under provisions of the Surplus Act of 1944 to the City of Little Rock in May 1951. Tract 6 which in total is 88.8 acres was purchased with Federal Aid under FAA Grant #9–03–17–C818.

The land comprising these parcels is outside the forecasted need for aviation development and is not needed for indirect or direct aeronautical use. The Airport wishes to develop this land for compatible non-aeronautical use. The Airport will retain ownership of this land and ensure the protection of Part 77 surfaces and compatible land use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

Issued in Fort Worth, TX.

Ignacio Flores,

Director, Airports Division, FAA, Southwest Region.

[FR Doc. 2022–19464 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Organization Designation Authorizations for Transport Airplanes Expert Review Panel Membership

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

ACTION: Solicitation of nominations for appointment to the Organization Designation Authorizations (ODA) for Transport Airplanes Expert Review Panel (''Review Panel'').

SUMMARY: The FAA is publishing this notice to solicit nominations for membership on the ODA for Transport Airplanes Expert Review Panel (''Review Panel'').

DATES: Nominations must be received no later than 5 p.m. Eastern Time on October 11, 2022. Nominations received after the due date may be retained for evaluation of any remaining vacancies after all other nominations received by the due date have been evaluated and considered.

ADDRESSES: Nominations must be submitted electronically (by email) to Johann Hadian at *Johann.Hadian@faa.gov.* The subject line should state ''ODA Review Panel Nomination.'' The body of the email must contain content or attachments that address all requirements as specified in the below

''Materials to Submit'' section. Incomplete/partial submittals as well as those that exceed the specified document length may not be considered for evaluation.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (781) 238–7150; email *Kevin.Dickert@faa.gov.*

Background

The Review Panel is established pursuant to Section 103, ''Expert Review of Organization Designation Authorizations for Transport Airplanes,'' of the Aircraft Certification, Safety, and Accountability Act, Public Law 116–260, Div. V, § 103 (the Act). The objectives of the Review Panel are to review and make recommendations for each holder of an ODA for the design and production of transport airplanes (transport airplanes as defined in section 137(6) of the Act), on the following matters:

a. The extent to which the holder's safety management processes promote or foster a safety culture consistent with the principles of the International Civil Aviation Organization Safety Management Manual, Fourth edition (ICAO Doc. No. 9859) or any similar successor document.

b. The effectiveness of measures instituted by the holder to instill among employees and contractors of such holder that support organization designation authorization functions, a commitment to safety above all other priorities.

c. The holder's capability, based upon the organizational structures, requirements applicable to officers and employees of such holder, and safety culture, of making reasonable and appropriate decisions regarding functions delegated to the holder pursuant to the organization designation authorization.

d. Any other matter determined by the Administrator for which inclusion in the review would be consistent with the public interest in aviation safety.

Description of Duties

a. Carry out the review of ODA holders for the design and production of transport airplanes as identified in the preceding panel objectives.

b. Make recommendations to the Administrator regarding suggested actions to address any deficiencies found after review of the matters listed in the preceding panel objectives.

c. Not later than 270 days after the date of the first meeting of the Review Panel, create a report documenting the findings and resulting recommendations, in accordance with the criteria of section 103(a)(5) of the Act. The report shall be submitted to the Administrator and the Congressional committees of jurisdiction.

Membership

The Administrator shall establish a Review Panel of members from the aviation community. The Review Panel shall consist of 24 members as outlined in section 103(a)(3) of the Act. Review Panel member organizations must include representatives of the following interest in the number prescribed by section 103(a)(3) of the Act: NASA, FAA Aircraft Certification Service, FAA Flight Standards Service, labor unions (airline pilots, transport airplane assembly, FAA engineers, FAA safety inspectors, transport airplane design), independent engineering experts, air carriers, ODA holders, and legal experts.

All members serve at the pleasure of the FAA Administrator and will be appointed for a period of one year. Member employing organizations bears all costs related to its members' participation.

Members must have the ability to support all Review Panel meetings (virtual and face-to-p face once travel restrictions lifted).

Each individual member of the Review Panel must execute a Disclosure of Financial Interests agreement with the Administrator as outlined in section 103(a)(6)(B) prior to the first meeting of the Review Panel.

Non-Federal government members of the review panel must execute a Non-Disclosure Agreement with the Administrator, as outlined in section 103(a)(6)(C)(ii), prior to the first meeting of the Review Panel.

Qualifications

Candidates must be in good public standing and meet any specific member qualification requirements specified in the section 103(a)(3) for the membership position being sought.

Candidates should highlight any level of familiarization/experience with the following:

a. Safety management processes and systems;

b. Application of International Civil Aviation Organization Safety Manual, Fourth Edition; and

c. Assessing organizational structure, culture and dynamics.

Nomination Process

The Administrator is seeking individual nominations for membership to the Review Panel. Any interested person may nominate one or more qualified individuals for membership on the Review Panel. Self-nominations are also accepted. Nominations must include, in full, the following materials to be considered for Review Panel membership. Failure to submit the required information may disqualify a candidate from the review process.

Nominations must include the following materials to be considered for membership.

a. A short biography of the nominee, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information (email, telephone, and mailing address).

c. A one-page statement describing how the candidate will benefit the Review Panel, considering current membership and the candidate's unique perspective that will advance the conversation. This statement must also identify a primary and secondary interest to which the candidate's expertise best aligns.

d. Candidates should identify, within the above materials or separately, their previous experience on Federal Advisory Committees and/or Aviation Rulemaking Committees (if any), their level of knowledge in their above stakeholder groups (if applicable), and the size of their constituency they represent or are able to reach.

e. Up to three letters of recommendation may be submitted, but are not required. Each letter may be no longer than one page.

Evaluations will be based on the materials submitted. An email confirmation from the FAA will be sent upon receipt of all complete nominations that meet the criteria. The FAA will notify those appointed by the Administrator to serve on the panel via email.

Issued in Washington, DC, on September 6, 2022.

Jodi L. Baker,

Deputy Associate Administrator Aviation Safety.

[FR Doc. 2022–19541 Filed 9–7–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0087]

Cybersecurity Best Practices for the Safety of Modern Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of federal guidelines.

SUMMARY: On January 12, 2021, NHTSA released its draft *Cybersecurity Best Practices for the Safety of Modern Vehicles* guidance (''Draft Best Practices'' or ''guidance'') in an effort to support industry-led efforts to improve the industry's cybersecurity posture as well as provide NHTSA's views on how the automotive industry can develop and apply sound, risk-based cybersecurity management processes during the vehicle's entire lifecycle. These guidelines are intended to be applicable to all individuals and organizations involved in the design, development, manufacture and assembly of a motor vehicle and its electronic systems and software. These entities include, but are not limited to, small and large-volume motor vehicle and motor vehicle equipment designers, suppliers, manufacturers, and modifiers. This document summarizes comments received in response to the draft guidance, responds to those comments, and describes changes made to the draft guidance in response to those comments. This document also announces the issuance of the final version of the *Cybersecurity Best Practices for the Safety of Modern Vehicles* guidance. While this is the final version of this iteration of the Best Practices, NHTSA routinely assesses cybersecurity risks as well as emerging best practices and will consider future updates as motor vehicles and their cybersecurity evolve.

DATES: The changes made in this document are effective upon publication.

FOR FURTHER INFORMATION CONTACT: For technical issues, please contact Mr. John I. Martin of NHTSA's Office of Vehicle Safety Research at 937–366–3246 or *john.martin@dot.gov.* For legal issues, contact Ms. Sara R. Bennett of NHTSA's Office of Chief Counsel at 202–366–2992 or *sara.bennett@dot.gov.*

SUPPLEMENTARY INFORMATION: This final version of the Cybersecurity Best Practices for the Safety of Modern Vehicles does not have the force and effect of law and is not a regulation. This guidance document will not be published in the Code of Federal Regulations but will be posted on NHTSA's website, *www.nhtsa.gov.*

I. Introduction

In January 2021, NHTSA released its draft *Cybersecurity Best Practices for the Safety of Modern Vehicles* guidance document (''Draft Best Practices'' or ''guidance'') with the goal of supporting industry-led efforts to improve the industry's cybersecurity posture and provide the Agency's views on how the automotive industry can develop and apply sound, risk-based cybersecurity management processes during the vehicle's entire lifecycle. As background, the Draft Best Practices document is an update to NHTSA's first cybersecurity best practices document, *Cybersecurity Best Practices for Modern Vehicles* (''2016 Best Practices''). NHTSA requested comment on the Draft Best Practices in an accompanying **Federal Register** notice.[1]

The Draft Best Practices builds upon agency research and industry progress since 2016, including emerging voluntary industry standards, such as the International Organization for Standardization (ISO)/SAE International (SAE) Draft International Standard (DIS) 21434, ''Road Vehicles—Cybersecurity Engineering.'' [2] In addition, the Draft Best Practices references a series of industry best practice documents developed by the Automotive Information Sharing and Analysis Center (Auto-ISAC) through its members. The Draft Best Practices also reflects findings from NHTSA's continued research in motor vehicle cybersecurity, including over-the-air updates, formal verification, static code analysis, new learnings obtained through researchers and stakeholder engagement as well as continued building of our capability in cybersecurity testing and diagnostics. The updates included in the Draft Best Practices incorporate insights gained from public comments received in response to the 2016 guidance and from information obtained during the annual SAE/NHTSA Vehicle Cybersecurity Workshops.

The Draft Best Practices touches on a wide array of issues associated with safety-related cybersecurity practices, and provides recommendations to industry on the following topics:

- General Cybersecurity Best Practices
- Education
- Aftermarket/User-Owned Devices
- Serviceability
- Technical Vehicle Cybersecurity Best Practices

The first topic in the list, ''General Cybersecurity Best Practices,'' is the largest topic and discusses cybersecurity practices with respect to industry stakeholders. There are a variety of practices in this category. For example, one practice suggests that manufacturers should evaluate all commercial off-the-shelf and open-source software components used in vehicle Electronic Control Units (ECUs) against known vulnerabilities.[3]

The second topic, ''Education,'' discusses the role and responsibilities of industry and academia in supporting an educated cybersecurity workforce.

The third topic, ''Aftermarket/User-Owned Devices,'' discusses the issues associated with connecting aftermarket devices to vehicle systems. For instance, the guidance suggests that any connection to a third-party device should be authenticated and provided with appropriate, limited access.[4]

The fourth topic, ''Serviceability,'' touches on industry's obligation to simultaneously provide for both cybersecurity and third-party serviceability.

The last topic, ''Technical Vehicle Cybersecurity Best Practices,'' discusses cybersecurity practices with respect to the vehicle. As an example, one of the 25 technical vehicle cybersecurity best practices suggests that network segmentation and isolation techniques should be used to limit connections between wireless-connected ECUs and low-level vehicle control systems, particularly those controlling safety critical functions, such as braking, steering, propulsion, and power management.

This notice summarizes the comments received, NHTSA's responses to those comments, and finalizes the Draft Best Practices document. The final Best Practices document continues to use the numbering scheme introduced in the Draft Best Practices document. For example, it uses [G.1] through [G.45] for general cybersecurity best practices and [T.1] through [T.25] for technical vehicle cybersecurity best practices. Additions to the Draft Best Practices mean that there are some numbering differences between the draft and final versions of the Best Practices. This **Federal Register** notice exclusively refers to the final Best Practices

[1] 86 FR 2481 (Jan. 12, 2021).

[2] ISO/SAE 21434:2021 Road Vehicles—Cybersecurity Engineering, available at: *https://www.iso.org/standard/70918.html.*

[3] G.12 in NHTSA's Cybersecurity Best Practices for the Safety of Modern Vehicles.

[4] G.42 in NHTSA's Cybersecurity Best Practices for the Safety of Modern Vehicles.

numbering scheme, rather than the draft version. Cases where there are differences between the draft and final numbering scheme are noted with a footnote. Finally, the agency stresses that the final Best Practices remain voluntary and non-binding, as has been the case with this guidance beginning with its initial 2016 edition.

II. Summary of Differences Between the Draft and Final Cybersecurity Best Practices for the Safety of Modern Vehicles

The purpose of this section is to provide a summary of the differences between the draft and final Cybersecurity Best Practices for the Safety of Modern Vehicles. The next section of this document, ''Summary of Public Comments Received in Response to Draft Cybersecurity Best Practices,'' will discuss the comments received and the reasons why these changes were made.

The following provides a high-level summary of changes made in the final version. First, in response to a comment, NHTSA clarified, with a minor edit, that the scope of the Best Practices includes all individuals and organizations involved in the maintenance of a motor vehicle. Second, the Agency updated all references to the ISO/SAE 21434 standard to reflect the finalized version of the subject industry standard, which occurred after the Draft Best Practices were published for comments. Third, in the General Cybersecurity Best Practices section, several headings were retitled in response to comments, and the new changes clarified terms, and altered the order of mention of the Auto-ISAC and standards development organizations (SDO) in some places to avoid unintended potential referencing to Auto-ISAC as an SDO. Additionally, NHTSA added a new general cybersecurity best practice to address future risks and bifurcated an existing one into two separate practices based on well-supported comments. Fourth, in the Technical Cybersecurity Best Practices section, NHTSA added mention of current cryptographic techniques and their implementation and made wording changes to clarify protections from unauthorized disclosure and accessibility to other vehicles. The Agency also added a new technical practice to limit firmware version rollback attacks and rewrote a technical practice [T.11].[5] The new practice now reads ''[T.11] [6] Employ best practices for communication of critical information over shared and possibly insecure channels. Limit the possibility of replay, integrity compromise, and spoofing. Physical and logical access should also be highly restricted.'' Fifth, NHTSA added definitions of ''global symmetric keys'' and ''recovery'' to the appendix's Terms and Descriptions section. Finally, NHTSA updated and added minor wording changes and references throughout, including addressing clerical errors.

III. Summary of Public Comments Received in Response to Draft Cybersecurity Best Practices

NHTSA received comments from a total of 38 entities in response to the Draft Best Practices, published in January 2021. These comments came from government entities,[7] industry associations,[8] standards development organizations,[9] automotive and equipment manufacturers,[10] consumer and safety advocacy organizations,[11] university and research organizations,[12] and individuals.[13] The comments represent an evolution of vehicle cybersecurity opinion among stakeholders and the general public. Comments to the 2016 guidance tended to be general and higher-level (*i.e.,* bigger-picture). In contrast, comments received in response to the Draft Best Practices focused on discrete issues important to commenters. This evolution is also likely due to the introduction of vehicle-specific cybersecurity standards and best practices in the automotive sector. Overall, most commenters seemed supportive of NHTSA's efforts to encourage continual progress in the automotive sector through the issuance of best practices, though there was some divergence as to the details of what those best practices should contain, the level of detail necessary to fulfill the agency's goals, and other specific topics commenters stated NHTSA should address. The aggregated comments presented several high-level themes, and thus, this document presents comments organized by the following categories of request:

- More specifics in the guidance;
- Industry collaboration;
- Minor editorial amendments;
- Additional references to ISO/SAE 21434;
- Additional references to other standards;
- Clarification of entity designations;
- Changes in scope; and
- Right to repair.

In the sections that follow, NHTSA summarizes each category of major comments received in response to the Draft Best Practices and the agency's response.

a. Commenter Requested More Specifics in the Guidance

Several commenters requested that NHTSA make certain language in the guidance more specific to address issues important to the commenter. As background, NHTSA intends to maintain wide applicability in the Draft Best Practices, so that it can encompass the many industry stakeholders, variety of business models, and vehicle and equipment architectures available on the market. This guidance is also intended to be flexible enough to encompass future business models and vehicle and equipment designs, to help ensure that this guidance remains helpful and relevant beyond a single point in time. Even so, NHTSA found it possible to integrate several suggestions from commenters in response to requests for more specificity. As such, NHTSA added two definitions to the document's glossary, and made the changes described below.

The two definitions that NHTSA added in response to comments are for the terms, ''recovery,'' and ''global symmetric keys.'' The Institute of Electrical and Electronics Engineers (IEEE), a standards setting professional organization, suggested defining the term ''recovery'' in the context of referencing the National Institute of Standards and Technology (NIST) Cybersecurity Framework's five principal functions ''Identify, Protect, Detect, Respond and Recover.'' IEEE suggested that the document did not describe what was meant by ''recovery.'' Toyota Motor Corporation (Toyota) and Geotab suggested defining the specific term ''global symmetric keys'' because, in their opinion, the meaning may not

[5] In the draft version, this was T.10.

[6] In the draft version, this was T.10.

[7] California Highway Patrol.

[8] Alliance for Automotive Innovation, American Alliance for Vehicle Owner's Rights, American Trucking Association, Auto Care Association, Automotive Aftermarket Suppliers Association, Automotive Recyclers Association, Specialty Equipment Market Association, National Motor Freight Traffic Association, National Automobile Dealers Association, Motor Equipment Manufacturers Association and Consumer Technology Association.

[9] SAE and Institute of Electrical and Electronics Engineers.

[10] General Motors LLC, Toyota Motor Corporation, Continental Automotive Systems, Denso Corporation, ZF North America, Robert Bosch GmbH, Amazon Web Services, Blackberry Corporation, AT&T, GeoTab, Nuro, Arilou Automotive Cybersecurity and LKQ Corporation.

[11] Center for Auto Safety, Privacy4Cars, SecuRepairs and Digital Right to Repair Coalition.

[12] Carnegie Mellon Software Engineering Institute, Sandia National Laboratories, Underwriters Laboratories LLC.

[13] Norman Field, Rik Farrow,Ryan Moss and Howard Hoffman.

be obvious. NHTSA considered the merits of adding these new definitions for improving clarity and agreed that their addition would be beneficial for public understanding, and thus, added them to the final Best Practice's appendix in ''Terms and Definitions''.

In section 8.2 of the Draft Best Practices, ''Cryptographic Credentials,'' Sandia National Laboratories (Sandia) and DENSO Corporation (Denso) suggested additional specific discussion of cryptographic techniques and standards. In response, NHTSA has modified section 8.2 with additional text and a slight title change that reflects section 8.2's new focus on techniques.

Sandia also expressed the comment that, ''The claim that Public key cryptography techniques are more secure than symmetric key systems should be caveated with 'properly implemented techniques' are 'generally' more secure. . . .''.[14] While Sandia made this comment with respect to section 8.3 of the Draft Best Practices, ''Vehicle Diagnostic Functionality,'' NHTSA responded to Sandia's comment by incorporating the text ''While the selection of appropriate cryptographic techniques is an important design criterion, it should be noted that implementation issues often determine any system's security'' into section 8.2. NHTSA considered Sandia's assertion to be correct, and NHTSA agrees that implementation issues are very important.

NHTSA also incorporated a comment from SAE that asked for technical guidance that would limit firmware version rollback attacks where an attacker may use software update mechanisms to place older, more vulnerable software on a targeted device. NHTSA agrees that the practice of manufacturers allowing the installation of older, potentially vulnerable versions of firmware in vehicles and vehicle equipment should be avoided whenever possible. In response, NHTSA added practice [T.23].

Because of NHTSA's desire for the document to remain broadly applicable, many comments asking for additional specifics were not incorporated into the guidance. For instance, NHTSA did not accept comments suggesting that the agency explicitly define terms such as ''lifecycle,'' ''end-of-life,'' and ''state of the art,'' among others. NHTSA acknowledges that many of these terms may have different meanings to different companies and stakeholders, but NHTSA did not believe it would be appropriate to define these terms in such a way that might inadvertently suggest limitations to or conflicts with company responsibilities, such as manufacturers' responsibility to notify NHTSA of any safety defect in its motor vehicles or motor vehicle equipment.[15]

Similarly, while NHTSA encourages companies to pay close attention to cybersecurity throughout its corporate structures and supply chain, NHTSA does not view this guidance as a mechanism to suggest how corporate responsibilities among companies should be distributed. This guidance does not attempt to provide any particular view of the automotive supply chain, and NHTSA recognizes that many of these considerations may be handled via contract. Although ISO/SAE 21434 does address supply chain responsibilities to some extent, NHTSA's Best Practices purposefully does not provide such details.

In other cases of requested specificity, NHTSA determined that some commenters' requests inadvertently resulted in limiting the applicability of the document. As stated before, one of NHTSA's underlying goals of this document was to ensure it remains accessible to a wide audience and all of NHTSA's regulated entities.

NHTSA also tries to maintain the document's generality by limiting language specific to a particular corporate process, perhaps even specific to a particular corporation. Comments that make suggestions encompassing specific corporate processes have not been incorporated into the updated document.

In addition, a comment asked NHTSA to address forensic data retrieval. NHTSA recognizes the importance of forensic data retrieval but has determined that the subject is out-of-scope for this document.

b. Commenter Encourages Industry Collaboration

Many commenters expressed the sentiment that industry collaborative efforts are a good idea, including the Alliance for Automotive Innovation (Alliance) and Amazon Web Services (Amazon), both of which provided specific comments encouraging collaboration. The Alliance suggested that NHTSA create a new section on emerging risks where there may not be established best practices developed to manage those risks. The Alliance suggested that this new section should include high-level recommendations to encourage industry-wide collaboration to establish best practices to treat those risks. Amazon suggested NHTSA should encourage industry collaboration to identify attempted and successful exploitations and attacks not previously considered in the design and assessment phases.

NHTSA agrees with the importance of industry collaboration, especially within the automotive cybersecurity realm. Therefore, NHTSA has encouraged membership and active participation in the Auto-ISAC and collaboration through its annual cybersecurity forum that the agency holds with SAE. In response to these commenters, NHTSA added a new general practice [G.24] that states: ''As future risks emerge; industry should collaborate to expediently develop mitigation measures and best practices to address new risks.'' NHTSA believes that this addition and the rest of the guidance covers both commenters' suggestions.

c. Commenter Requested Minor Editorial Amendments

Many commenters provided a wealth of suggested additional word choices, terminology changes, and phrasing modifications. NHTSA appreciates these suggestions and adopted these changes wherever possible and is grateful for the improvements these suggestions provide.

Multiple comments[16] pointed out a typographical error in section 4.5 where ''[G.27[a]–[c]]''[17] should have been ''[G.28[a]–[c].''[18] NHTSA adopted the suggested change. Other editorial amendments include modifying the word ''standards'' in [G.9] to ''expectations.'' In the draft Best Practices, [G.9] stated ''Clear cybersecurity standards should be specified and communicated to the suppliers that support the intended protections.'' NHTSA adopted the change to the word ''expectations'' because commenters suggested they needed additional clarification as to what word ''standards'' means in that particular practice. NHTSA believes ''expectations'' would maintain the agency's intended breadth while also clarifying any ambiguity for stakeholders.

Another commenter suggested that NHTSA remove ''that'' from ''NHTSA recommends that:'' in section 4.3 of the Draft Best Practices. NHTSA adopted this edit accordingly.

Some commenters suggested changes to section titles to add additional clarity

[14] See Comment ID ''NHTSA–2020–0087–0009'' for Document ''NHTSA–2020–0087–0002'' on the regulations.gov website.

[15] 49 U.S.C. 30118(c).

[16] ZF North America, Arilou Automotive Cybersecurity, National Motor Freight Traffic Administration.

[17] In the draft version, this was G.26.

[18] In the draft version, this was G.27.

for stakeholders. In two instances, NHTSA adopted those suggestions to change section titles. Section 4.2.7 was originally titled ''Penetration Testing and Documentation'' in the draft guidance and is now titled ''Cybersecurity Testing and Vulnerability Identification'' in the final guidance. NHTSA felt that the new title was appropriately general. Similarly, section 4.2.4 was originally titled ''Unnecessary Risk Removal'' and is now ''Removal or Mitigation of Safety-Critical Risks.'' The new title better describes the section.

SAE suggested changes to [T.4] [19] that changed the existing text to ''Cryptographic credentials that provide an authorized, elevated level of access to vehicle computing platforms should be protected from unauthorized disclosure or modification''. NHTSA welcomes this change because it additionally emphasizes the consequences of modifying platform credentials.

Several commenters recommended minor amendments to [T.5] [20] ''Any credential obtained from a single vehicle's computing platform should not provide access to multiple vehicles.'' The technical guidance now reads ''other vehicles'' rather than ''multiple vehicles'' as was included in the draft guidance. NHTSA feels that the use of the word ''other'' more clearly focuses the issues involved in using universally applicable credentials.

National Motor Freight Traffic Association (NMFTA) recommended minor amendments to general practice [G.6] ''Manufacturers should consider the risks associated with sensor vulnerabilities and potential sensor signal manipulation efforts such as GPS spoofing, road sign modification, Lidar/Radar jamming and spoofing, camera blinding, or excitation of machine learning false positives.'' The general guidance now reads ''. . . camera blinding, and excitation . . .'' rather than ''. . . camera blinding, or excitation. . . .'' NHTSA agrees with NMFTA's comment that the use of ''or'' rather than ''and'' incorrectly suggests that manufacturers could focus on any one of the presented spoofing issues rather than considering all the spoofing issues.

SAE suggested that [G.10] needed to focus on hardware and software rather than just software. In the Draft Best Practices, general practice [G.10] stated ''Manufacturers should maintain a database of operational software components used in each automotive ECU, each assembled vehicle, and a history log of version updates applied over the vehicle's lifetime.'' NHTSA agrees that software inventory management alone is not sufficient and made changes to [G.10] to include a discussion of inventory management of both hardware and software. Robert Bosch GmbH (Bosch) additionally suggested that the subject of [G.10] needed to be ''Suppliers and vehicle manufacturers'' rather than ''Manufacturers.'' NHTSA agrees with the change because it maintains the desired generality while directing the reader to specific entities.

In the Draft Best Practices, general practice [G.30] [21] stated ''Organizations should document the details of each identified and reported vulnerability, exploit, or incident applicable to their products. These documents should include information from onset to disposition with sufficient granularity to support response assessment.'' Underwriters Laboratories (UL) suggested rephrasing the second sentence as: ''The nature of the vulnerability and the rationale for how the vulnerability is managed should also be documented.'' NHTSA agrees that UL's suggested wording is an improvement. NHTSA also felt that [G.30] [22] could be better expressed as two separate general practices and made a new general practice to reflect UL's wording.

SAE suggested changes to [G.41] [23] in the Draft Best Practices, which stated ''The automotive industry should consider the incremental risks that could be presented by these devices when connected with vehicle systems and provide reasonable protections.'' The commenter suggested removing the word ''incremental,'' changing ''automotive industry'' to ''automotive manufacturers,'' and changing ''these devices'' to ''user owned or aftermarket devices.'' NHTSA declines to change ''automotive industry'' to ''automotive manufacturers'' because the goal of this guidance document is to retain broad utility for the entire automotive industry, not just manufacturers. NHTSA agreed to remove the word ''incremental'' from the general practice and to replace the term ''these devices'' with a more accurate phrase, ''user owned or aftermarket devices.''

In the Draft Best Practices, [T.11] [24] stated ''Critical safety messages, particularly those passed across non-segmented communication buses, should employ a message authentication method to limit the possibility of message spoofing.'' SAE felt that [T.11] [25] needed to be reworded as: ''Employ best practices for communication of critical information over shared and possibly insecure channels. Limit the possibility of replay, integrity compromise, and spoofing. Physical and logical access should also be highly restricted.'' NHTSA adopted SAE's suggested language for technical practice because the new wording expresses more general guidance than the draft version while encompassing the draft version's meaning.

There were many other suggestions for minor wording or phrasing changes that NHTSA considered. NHTSA adopted those that would not change the underlying intent of that particular section of the guidance document, but many suggestions from commenters would have worked to either limit or narrow the scope of the guidance. As such, those suggestions were not adopted since they would be contrary to the intent and goals of this document.

d. Commenter Requested Additional References to ISO/SAE 21434

ISO/SAE 21434 is a newly developed standard titled ''Road Vehicles—Cybersecurity Engineering.'' [26] This standard serves as an overarching industry consensus standard for vehicle cybersecurity, and it is extensively referenced in NHTSA's ''Cybersecurity Best Practices for the Safety of Modern Vehicles.'' Many commenters pointed out that NHTSA referenced the earlier Draft International Standard (DIS) version of ISO/SAE 21434, and suggested that NHTSA needed to update the references in the final Best Practices to the final ISO/SAE 21434 version, which was due to be released in Fall 2021. NHTSA followed this advice. In the final Best Practices, NHTSA has changed the latest the guidance to reflect the content of the latest ''FDIS'' or ''Final Draft International Standard'' version of ISO/SAE 21434.

While NHTSA extensively referenced ISO/SAE 21434, the commenters pointed out areas where NHTSA could have included a reference to a relevant section of ISO/SAE 21434 and did not. As an example, commenters pointed out that [G.12] and [G.37] [27] could refer to the relevant clauses of ISO/SAE 21434. NHTSA adopted these suggestions and added a reference to ISO/SAE 21434

[19] In the draft version, this was T.3.

[20] In the draft version, this was T.4.

[21] In the draft version, this was G.29.

[22] In the draft version, this was G.29.

[23] In the draft version, this was G.39.

[24] In the draft version, this was T.10.

[25] In the draft version, this was T.10.

[26] ISO/SAE 21434:2021 *Road vehicles—Cybersecurity engineering,* available at: *https://www.iso.org/standard/70918.html and https://www.saemobilius.sae.org.*

[27] In the draft version, this was G.35.

clause 6 in [G.12]. General practice [G.37] [28] now references requirements in clauses 5 and 6 of ISO/SAE 21434. Another commenter corrected NHTSA's reference to ISO/SAE 21434 in a footnote to general practice [G.16]. NHTSA accepted that correction.

NHTSA also included the website *https://www.saemobilius.sae.org* as a source for ISO/SAE 21434 in addition to the previously referenced *https://www.iso.org.*

e. Commenter Requested Additional References to Other Standards

Another category of comments requested that NHTSA provide new references to additional source material that were favored by the commenter. In many cases, NHTSA was able to incorporate these suggestions. NHTSA added only those references and referenced materials that the agency found were: (1) Sufficiently high level; (2) Specific to automotive industry or could be obviously applied to the automotive industry; (3) Not under development; and/or (4) Not duplicative of information or references already included in the Draft Best Practices.

For example, one commenter stated that NHTSA should add references to the NIST cryptography standards to supplement technical practice [T.4],[29] dealing with cryptographic credentials. NHTSA decided that this modification met the criteria described above, and the agency adopted this suggestion by adding a technical practice [T.3] and a reference to NIST's Federal Information Processing Standards (FIPS) 140 Series. The FIPS 140 series is a set of documents updated by NIST that describes minimum standards for cryptography.

Another commenter stated that NHTSA should reference ISO 24089 ''Road vehicles—Software update engineering'' in the Best Practices. NHTSA did not incorporate this comment because ISO 24089 is under development at this time. NHTSA may revisit this decision in future iterations of its cybersecurity best practices after ISO 24089 is finalized.

NMFTA requested that NHTSA reference the Cybersecurity and Infrastructure Security Agency's (CISA's) binding operational directive 20–01 in general practice [G.27]'s [30] discussion of vulnerability reporting. NHTSA agreed with this change and felt that it provided support for the guidance.

In response to a comment from SAE, NHTSA also added a reference to a NIST white paper titled ''Mitigating the Risk of Software Vulnerabilities by Adopting a Secure Software Development Framework (SSDF)'' for general practice [G.22], dealing with best practices for secure software development.

Responding to a comment from NMFTA, NHTSA added a footnote reference to the SAE CyberAuto Challenge and the Cyber Truck Challenge as examples for general practice [G.40],[31] dealing with educational efforts targeted at workforce development in the field of automotive cybersecurity. NHTSA also used this additional footnote to call out NHTSA's efforts to fund and develop cybersecurity curricula.

Other commenters requested that NHTSA add in references to the World Forum for Harmonization of Vehicle Regulation's (WP.29) United Nations (UN) Regulation 155—''Cyber security and cyber security management system.'' In most cases, the public comments recommended high-level alignment, without further specifying the sources of potential misalignment that may have been a concern. UN ECE 155 is a type-approval regulation [32] that establishes not only recommended practices but also sufficiency standards for approval. Standards for type approval are well beyond the scope and intent of NHTSA's Best Practices document. Therefore, NHTSA did not explicitly reference the UN ECE 155. NHTSA could revisit this topic in future iterations based on more specific public feedback.

f. Commenter Requested Clarification of Entity Designations

Several comments pointed out that the NHTSA's Cybersecurity Best Practices seemed to falsely suggest that the Auto-ISAC is a standard setting organization (SSO). NHTSA has modified general practices [G.18] and [G.23] in an effort to correct this impression. Even so, these modifications should not be interpretated as anything more than textual clarifications. The modifications do not represent any change in NHTSA's position that guidance to industry, whether from a SSO or not, can be valuable to encourage progress in cybersecurity practices of the automotive industry.

g. Commenters Requested Changes in Scope

Many commenters requested a variety of changes in scope for the Draft Best Practices. Commenters diverged in their requests for changes to the scope. NHTSA did not incorporate most of the requested scope changes because NHTSA carefully considered the scope of the Draft Best Practices document at the development and drafting stages, and NHTSA believes that the existing scope of the document is most compatible with its mission and goals for this document. For example, narrowing the scope might imply inaccurately that NHTSA does not intend this guidance to be useful to all its regulated entities, and broadening the scope might exceed the agency's intended audience.

While most comments concerning the document's scope were not incorporated, NHTSA responded to the National Automobile Dealers Association's comments concerning the critical role of automotive dealers by adding the word ''maintenance'' to the following text of the Scope, which was an explicit clarification that scope includes that function: ''Importantly, all individuals and organizations involved in the design, manufacturing, assembly and maintenance of a motor vehicle have a critical role to play with respect to vehicle cybersecurity.''

Many commenters felt that NHTSA needed to address heavy trucks more explicitly and directly, but NHTSA believes this would be unnecessary since the scope of the Draft Best Practices already includes heavy trucks.

Other commenters felt that NHTSA needed to more explicitly address vehicles equipped with Automated Driving Systems (ADS), asserting that these vehicles would have cybersecurity needs much different from modern vehicles. NHTSA believes that the underlying technical sources of cybersecurity vulnerabilities as well as risk-based approaches and toolsets to address them are unlikely to be substantially different for vehicles equipped with ADS. Therefore, at the levels of guidance included, the Draft Best Practices already covers vehicles equipped with ADS, and NHTSA believes that any more specificity for ADS is unnecessary at this time.

[28] In the draft version, this was G.35.

[29] In the draft version, this was T.3.

[30] In the draft version, this was G.26.

[31] In the draft version, this was G.38.

[32] UN ECE 155 is a regulation established under the United Nations Economic Commission for Europe (UNECE) 1958 Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions (*Available at https://unece.org/trans/main/wp29/wp29regs*), and the United States is not party to this agreement. Further, UN Regulation 155 is a regulation for type approving authorities, and the United States is not a country that engages in type approval of motor vehicles or motor vehicle equipment.

However, the Agency believes that the societal risk tolerance associated with cybersecurity risks for vehicles equipped with ADS may be significantly lower than for traditional vehicles, and, thus, the Agency will continue to monitor factors around these recommendations with incoming research results and consider them in future updates.

Some commenters stated that NHTSA should explicitly address enterprise information technology (IT) issues. While NHTSA agrees that enterprise IT security is an important topic, NHTSA specifically avoided making suggestions regarding internet infrastructure that do not directly touch vehicles. NHTSA recognizes that a hypothetical situation, such as the theft of vehicle code signing keys from a poorly secured, internet-connected server, could be an example of an enterprise IT security issue that could impact a vehicle. However, as part of this document's scope, NHTSA focuses primarily on those cybersecurity issues that directly impact vehicles, and thus occupant and road user, safety. In addition to cybersecurity safety issues, NHTSA is invested in vehicle theft prevention and engages in activities to reduce motor vehicle theft through its Vehicle Theft Prevention Program.

Another set of commenters requested that NHTSA expand the scope of the Draft Best Practices to address a variety of consumer privacy issues. Many of these commenters indicated that they believed that a substantial part of cybersecurity implicates privacy and privacy cannot be separated from cybersecurity. In this vein, some comments suggested that NHTSA needed to address a concept called the confidentiality, integrity, and availability triad, aka ''CIA triad.'' [33] While NHTSA agrees about the general importance of the topic of consumer confidentiality, NHTSA's Best Practices retains its intended focus on cybersecurity, particularly those cybersecurity issues that could impact the safety of the vehicle or equipment safety. NHTSA believes this focus most closely aligns with its safety mission. We believe privacy issues can and should be addressed elsewhere.

Finally, many commenters expressed concern that NHTSA's Cybersecurity Best Practices focused on the automotive industry at the expense of advising the consumer. NHTSA's intended audience for the Best Practices is the regulated industry. The primary responsibility for vehicle and equipment safety, including that of vehicle software and any cybersecurity protections applied, is industry, and NHTSA retains this focus in the final version. NHTSA is interested in consumer education topics, but the agency believes that an educated consumer provides an additional layer of protection that does not change the best practices recommendations to the automotive industry.

h. Right To Repair

Many comments discussed right-to-repair issues. Some of the right-to-repair comments suggested that NHTSA assign software rights to various parties. As stated in the Draft Best Practices and elsewhere,[34] NHTSA considers serviceability to be so important that in the Best Practices retain a separate section on the issue that includes the general practice [G.45]: [35] ''The automotive industry should provide strong vehicle cybersecurity protections that do not unduly restrict access by alternative third-party repair services authorized by the vehicle owner.'' Providing any party with a particular access or right to vehicle software is outside the scope and intent of this document, even though NHTSA's interest in facilitating serviceability without undue restrictions remains the same. The Best Practices do not hinder industry's ability to facilitate appropriate levels of access to any party while achieving cybersecurity goals.

IV. Economic Analysis for Cybersecurity Best Practices for the Safety of Modern Vehicles

NHTSA is finalizing its Cybersecurity Best Practices for the Safety of Modern Vehicles, which is non-binding (*i.e.,* voluntary) guidance provided to serve as a resource for industry on safety-related cybersecurity issues for motor vehicles and motor vehicle equipment. As guidance, the document touches on a wide array of issues related to safety-related cybersecurity practices, and provides recommendations to industry on the following topics: (1) General Cybersecurity Best Practices, (2) Education, (3) Aftermarket/User Owned Devices, (4) Serviceability, and (5) Technical Vehicle Cybersecurity Best Practices.

NHTSA considered the potential benefits and costs that may occur if companies in the automotive industry decide to integrate the recommendations in the Best Practices into their business practices. The following is a summary of the considerations that NHTSA evaluated for purposes of this section.

First, although as guidance the Best Practices is voluntary, NHTSA expects that many entities will conform their practices to the recommendations endorsed by NHTSA. NHTSA believes that the Cybersecurity Best Practices for the Safety of Modern Vehicles serve as means of facilitating common understanding across industry regarding best practices for cybersecurity.

Second, the diversity among the entities to which the Best Practices apply is vast. The recommendations found in Cybersecurity Best Practices for the Safety of Modern Vehicles are necessarily general and flexible enough to be applied to any industry entity, regardless of size or staffing. The recommendations contained within the best practices are intended to be applicable to all individuals and organizations involved in the design, development, manufacture, and assembly of a motor vehicle and its electronic systems and software. These entities include, but are not limited to, small and large volume motor vehicle and motor vehicle equipment designers, suppliers, manufacturers, modifiers, and alterers. NHTSA recognizes that there is a great deal of organizational diversity among the intended audience, resulting in a variety of approaches, organizational sizes, and staffing needs. NHTSA also expects that these entities have varying levels of organizational maturity related to cybersecurity, and varying levels of potential cybersecurity risks. These expectations, combined with NHTSA's lack of detailed knowledge of the organizational maturity and implementation of any recommendations contained within the guidance, make it difficult for NHTSA to develop a reasonable quantification of the per-organization cost of implementing the recommendations.

Third, any costs associated with applying the Best Practices would be limited to the incremental cost of applying the new recommendations included in the document (as opposed to those in the 2016 Best Practices). The updated Cybersecurity Best Practices for the Safety of Modern Vehicles document highlights a total of 70 enumerated best practices, 21 of which could be considered ''new'' relative to the first version published in 2016.

Fourth, costs could be limited by organizations who have implemented some of the recommendations prior to this request for comment. NHTSA is unaware of the extent to which various entities have already implemented NHTSA's recommendations, and

[33] *https://en.wikipedia.org/wiki/Information_security.*

[34] *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/nhtsa_testimony_in_response_to_ma_committee_letter_july_20_2020.pdf.*

[35] In the draft version, this was G.43.

determining the incremental costs associated with full implementation of the recommendations is effectively impossible without detailed insight into the organizational processes of every company.

Fifth, many of NHTSA's recommendations lean very heavily on industry standards, such as ISO/SAE 21434. Three of the 21 ''new'' best practices simply reference the ISO/SAE 21434 industry standard. Since many aspects of NHTSA's recommendations are mapped to an industry standard, costs would also be limited for those companies who are adopting ISO/SAE 21434 already. Thus, it would be very difficult to parse whether a company implemented ISO/SAE 21434 or whether it had decided to adopt NHTSA's voluntary recommendations. While the Best Practices have some recommendations [36] that cannot be mapped to an industry standards document at this time, most of those recommendations involve common vehicle engineering and sound business management practices, such as risk assessment and supply-chain management. For these recommendations, NHTSA's inclusion in the Best Practices serve as a reminder.

Regarding benefits, entities that do not implement appropriate cybersecurity measures, like those guided by these recommendations, or other sound controls, face a higher risk of cyberattack or increased exposure in the event of a cyberattack, potentially leading to safety concerns for the public. Implementation of the best practices can, therefore, facilitate ''cost prevention'' in the sense that failure to adopt appropriate cybersecurity practices could result in other direct or indirect costs to companies (*i.e.,* personal injury, vehicle damage, warranty, recall, or voluntary repair/updates).

The best practices outlined in this document help organizations measure their residual risks better, particularly the safety risks associated with potential cybersecurity issues in motor vehicles and motor vehicle equipment that they design and manufacture. Further, the document provides a toolset of techniques organizations can utilize commensurate to their measured risks and take appropriate actions to reduce or eliminate them. Doing so could lower the future liabilities these risks represent in terms of safety risks to public and business costs associated with addressing them.

In addition, quantitatively positive externalities have been shown to stem from vehicle safety and security measures (Ayres & Levitt, 1998). The high marginal cost of cybersecurity failures (crashes) extends to third parties. Widely accepted adoption of sound cybersecurity practices limits these potential costs and lessens incentives for attempts at market disruption (*i.e.,* signal manipulation, Global Positioning System (GPS) spoofing, or reverse engineering).

[36] For example, G.6 in Section 4.2.3 recommends consideration of sensor vulnerabilities as part of risk assessment; and G.10 and G.11 in Section 4.2.6 recommend tracking software components on vehicles in a manner similar to hardware components.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2022–19507 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket No. NHTSA–2022–0074; Notice 1]

Baby Trend, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Baby Trend, Inc., (BT), has determined that certain BT Hybrid 3-in-1 Combination Booster Seat child restraint systems (CRSs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* BT filed an original noncompliance report dated July 6, 2022. BT subsequently petitioned NHTSA on August 1, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of BT's petition.

DATES: Send comments on or before October 11, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, *kelley.adamscampos@dot.gov,* (202) 366–7479.

SUPPLEMENTARY INFORMATION:

I. Overview

BT determined that certain BT Hybrid 3-in-1 Combination Booster Seat CRSs do not fully comply with paragraph S5.4.1.2(a) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213).

BT filed an original noncompliance report dated July 6, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BT petitioned NHTSA on August 1, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of BT's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Child Restraint Systems Involved

Approximately 101,361 BT Hybrid 3-in-1 Combination Booster Seat CRSs, manufactured from December 6, 2021, to June 6, 2022,[1] are potentially involved:

III. Noncompliance

BT explains that the lower anchor webbing in the subject CRSs failed the minimum breaking strength when tested in accordance with S5.1 of FMVSS No. 209,[2] referenced in FMVSS No. 213 S5.4.1.2(a). Specifically, the breaking[3] strength of the lower anchor webbing of the Lower Anchors and Tethers for CHildren (LATCH[4]) system in the subject CRSs was 13,926 Newtons (N), 13,940 N, and 14,087 N when tested by NHTSA.

IV. Rule Requirements

Paragraph S5.4.1.2(a) of FMVSS No. 213 includes the requirements relevant to this petition. The webbing of belts provided with a child restraint system and used to attach the system to the vehicle must have a minimum breaking strength for new webbing of not less than 15,000 N, including the tether and lower anchorages of a child restraint anchorage system, when tested in accordance with S5.1 of FMVSS No. 209. ''New webbing'' means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in FMVSS No. 213.

V. Summary of BT's Petition

The following views and arguments presented in this section, ''V. Summary of BT's Petition,'' are the views and arguments provided by BT. They have not been evaluated by the Agency and do not reflect the views of the Agency. BT describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Upon receiving an information request from NHTSA on June 6, 2022, regarding the subject noncompliance, BT states that production and distribution of the subject CRSs were halted, and BT began an investigation. BT states that, as part of its investigation, it conducted dynamic sled testing, webbing testing and examined internal processes to determine the root cause of the noncompliance. As a result of its investigation, BT found that the wrong webbing was installed in a portion of the subject CRSs, but BT believes, through its analysis of existing and new test data, that the subject noncompliance is inconsequential to motor vehicle safety.

BT claims that FMVSS No. 213 dynamic sled testing ensures the structural integrity of the subject CRSs and that this is supported by NHTSA's November 2, 2020, notice of proposed rulemaking[5] regarding FMVSS No. 213. In its petition, BT questions ''the utility of considering the webbing strength tests in isolation rather than the integrity of the LATCH system as required under FMVSS 213.'' BT believes the webbing tests specified in FMVSS No. 213 have utility in safety ''only in the context of maintaining strength of the webbing with wear and tear of the child restraint following years of use and asserts that the unabraded webbing strength test is not necessary to ensure the structural integrity of a CRS.

BT states that it conducts, in addition to the dynamic sled testing required by FMVSS No. 213, dynamic sled testing through Consumer's Union (CU), on child restraints produced by each of its factories. BT contends that if NHTSA previously found the dynamic sled testing at 48 kph to be sufficient to ensure the structural integrity of a CRS, BT's additional testing is also similarly sufficient.

The CU dynamic testing, as BT explains, has important differences from that required by FMVSS No. 213. First, the test is conducted at 56 kph whereas the FMVSS No. 213 test is conducted at 48 kph. Second, the bench used is derived from a vehicle seat, providing ''a boundary condition for LATCH attachment and seat cushion-to-CRS interaction.'' Finally, the CU test protocol includes a structure to represent the seat in front of the CRS seat position, which, BT claims, provides a ''clear tell-tale'' of failure in any way of the LATCH lower anchor belt in adequately restraining the CRS and its occupant.

BT also claims that the minimum LATCH lower anchor webbing strength requirements of FMVSS No. 213 are unrealistic, based on dynamic crash testing it conducted on the subject CRSs using the same incorrect webbing used on the noncompliant CRSs that are the subject of this petition, and without attaching the CRS' tether to the tether anchor. This testing, as BT explains, was conducted on the test bench proposed by NHTSA in the 2020 FMVSS No. 213 NPRM. Other test apparatus and conditions used in its testing were those either specified in FMVSS No. 213, and/or the current NPRM, or ''widely accepted'' as due care tests. For the tests BT conducted in the frontal direction, sled test speeds ranging from 57.1 kph to 63.9 kph were used. See the Table[6] in BT's petition for the parameters used in its testing. BT states that it is confident that its frontal sled testing conducted at ''64 kph . . . encompasses all crashes including the most severe crashes'' and that ''at no time and in no test did the LATCH Lower Anchor webbing or belt system fail to perform its intended purpose of restraining the CRS.'' BT also found ''that at no time during any of these tests did the LATCH Lower Anchor webbing load exceed 5000 Newtons and, more importantly, come even close to the 15,000 Newton minimum threshold'' required by FMVSS No. 213.

In its petition, BT shares a graphic[7] to illustrate its beliefs for the minimum strength of various components in the LATCH system and points to examples where, ''in the rare instances of failures of the LATCH system, the failures occurred in . . . the LATCH lower anchor on the vehicle.'' Thus, BT contends that the webbing is not the weak link in the LATCH lower anchor system, and that ''any deficiencies with

[1] As reported in BT's July 6, 2022, Part 573 filing.

[2] In its petition, BT refers to the test in S5.1 of FMVSS No. 209 as tensile.

[3] In its petition, BT refers to breaking as tensile.

[4] ''LATCH'' refers to the child restraint anchorage system that FMVSS 225, ''Child restraint anchorage systems,'' requires to be installed in motor vehicles. Industry and advocates have developed the term ''LATCH'' to refer to Standard 225's child restraint anchorage system.

[5] Federal Motor Vehicle Safety Standards; Child Restraint Systems, Incorporation by Reference; 85 FR 69388 (November 2, 2020.)

[6] Section 3 of its petition.

[7] Section 5 of its petition.

the strength of the LATCH Lower Anchor webbing would have been revealed in the dynamic sled tests of FMVSS 213.''

BT states that there is no evidence of webbing failure in any CRS in the real world, that it has never received a complaint, nor has any knowledge of, a webbing failure on any of its products in the real world.

BT concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject child restraints that BT no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve child restraint distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child restraints under their control after BT notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–19516 Filed 9–8–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0069; Notice 1]

Hercules Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Hercules Tire & Rubber Company, (Hercules), has determined that certain Ironman iMOVE PT specialty trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Hercules filed an original noncompliance report dated May 10, 2022, and amended the report on May 12, 2022. Hercules petitioned NHTSA on June 21, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Hercules's petition.

DATES: Send comments on or before October 11, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview

Hercules determined that certain Ironman iMOVE PT specialty trailer tires do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Hercules filed an original noncompliance report dated May 10, 2022, and amended the report on May 12, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Hercules subsequently petitioned NHTSA on June 21, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Hercules's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Tires Involved

Approximately 555 Ironman iMOVE PT specialty trailer tires, manufactured between August 14, 2021, and August 20, 2021, are potentially involved:

III. Noncompliance

Hercules explains that the subject tires are labeled with a tire

identification number (TIN) that does not contain the correct date code, as stated by 49 CFR 574.5(b)(3), and therefore does not comply with paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the date code as stated in the TIN on the subject tires is ''3231'' when it should state ''3321.''

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR 574.5(b)(3) include the requirements relevant to this petition. Each tire (manufactured on or after September 1, 2009) must be labeled with the TIN, as required by 49 CFR part 574, on the intended outboard sidewall of the tire. The date code, consisting of four numerical symbols, is the final group of the TIN and must identify the tire's week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture.

V. Summary of Hercules's Petition

The following views and arguments presented in this section, ''V. Summary of Hercules's Petition,'' are the views and arguments provided by Hercules. They have not been evaluated by the Agency and do not reflect the views of the Agency. Hercules describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Hercules explains that two of the numerical symbols used in the TIN were inadvertently transposed and incorrectly states the date code ''3231.'' Hercules says that the tires should have been marked ''3321,'' to indicate that ''the tires were manufactured in calendar week 33 of calendar year 2021.'' Other than the incorrect date code, Hercules states that the TIN is correct and the subject tires ''otherwise conform to the performance requirements applicable to specialty trailer tires.''

Hercules claims that the subject noncompliance ''will not confuse or mislead the consumer,'' and is similar to prior inconsequentiality petitions that NHTSA has granted. Although the numeric symbols representing the date code in the TIN were transposed, Hercules believes the subject noncompliance causes ''no increased risk to motor vehicle safety'' because the incorrect date code represents a future year of production ''and is so far into the future to be implausible.''

Hercules contends that NHTSA has stated that its main concern is the potential safety risk to consumers using an aged tire that is ''beyond the manufacturer's recommended service life, regardless of the condition of the tire.'' Therefore, Hercules believes that a consumer using the incorrect date code listed on the subject tires would determine that the year of production indicated by the date code is 1931 or 2031, which would ''cause a rational consumer to question the accuracy of the year of manufacture.'' Furthermore, Hercules says that the guidance provided on NHTSA's website advises that ''tires should be replaced within 6 to 10 years regardless of treadwear.'' For these reasons, Hercules says the consumer would not ''be misled into believing that the tire has a substantial service life ahead of it.'' Hercules also states that ''even if a dealer were to store the subject tires for several years before selling them, there is no risk of misleading the consumer about the age of the tire.''

In the event of a recall, Hercules states that the subject tires can be identified through its internal database using the TIN and ''any consumer communication could include the TIN as it is listed on the tire sidewall so that consumers could check the recall notification against the tire sidewall for verification purposes.'' Hercules says that upon registration of the subject tires, it ''will continue to be able to isolate and identify the affected tires in its internal systems as having actually been produced in calendar week 33, calendar year 2021.''

According to Hercules, the following prior petitions NHTSA has granted describe noncompliances that are similar to the subject petition, and therefore, support Hercules's contention that its petition should be granted:

- Cooper Tire & Rubber Company, 86 FR 47726 (August 26, 2021).
- Bridgestone/Firestone, Inc., Grant of Petition, 71 FR 4396 (January 26, 2006).
- Bridgestone/Firestone, Inc., Grant of Petition, 66 FR 45076 (August 27, 2001).
- Bridgestone/Firestone Grant of Inconsequentiality Petition, 64 FR 20,090 (May 28, 1999).
- Cooper Tire & Rubber Co., Grant of Inconsequentiality Petition, 68 FR 16,115 (April 2, 2003).
- See Bridgestone/Firestone North America, LLC, Grant of Inconsequentiality Petition, 71 FR 4396 (January 26, 2006).

Hercules concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Hercules no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hercules notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–19515 Filed 9–8–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines

Project Committee will be held Tuesday, October 11, 2022, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19451 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, October 12, 2022.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, October 12, 2022, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19454 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, October 12, 2022.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Wednesday, October 12, 2022, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St., MC 1005, Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19452 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Tuesday, October 11, 2022, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19455 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms

and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Tuesday, October 11, 2022, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information, please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19453 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Thursday, October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, October 13, 2022, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 2, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19456 Filed 9–8–22; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 87 Friday,
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Part II

Department of Homeland Security

8 CFR Parts 103, 212, 213, et al.
Public Charge Ground of Inadmissibility; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 213, and 245

[CIS No. 2715–22; DHS Docket No. USCIS–2021–0013]

RIN 1615–AC74

Public Charge Ground of Inadmissibility

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is amending its regulations to prescribe how it determines whether noncitizens are inadmissible to the United States because they are likely at any time to become a public charge. Noncitizens who are applicants for visas, admission, and adjustment of status must establish that they are not likely at any time to become a public charge unless Congress has expressly exempted them from this ground of inadmissibility or has otherwise permitted them to seek a waiver of inadmissibility. Under this rule, DHS would determine that a noncitizen is likely at any time to become a public charge if the noncitizen is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. On August 14, 2019, DHS issued a different rule on this topic, Inadmissibility on Public Charge Grounds Final Rule (2019 Final Rule), which is no longer in effect. This rule implements a different policy than the 2019 Final Rule.

DATES: This final rule is effective December 23, 2022. This final rule will apply to applications postmarked on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Andrew Parker, Branch Chief, Residence and Admissibility Branch, Residence and Naturalization Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AAO—Administrative Appeals Office
ADA—Americans with Disabilities Act
ANPRM—Advance Notice of Proposed Rulemaking
ASC—Application Support Center
BIA—Board of Immigration Appeals
BLS—Bureau of Labor Statistics
CBP—Customs and Border Protection
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
CHIP—Children's Health Insurance Program
COS—Change of Status
COVID–19—Coronavirus Disease 2019
DACA—Deferred Action for Childhood Arrivals
DHS—U.S. Department of Homeland Security
DOD—Department of Defense
DOS—U.S. Department of State
DOJ—Department of Justice
E.O.—Executive Order
EOS—Extension of Stay
FAM—Department of State Foreign Affairs Manual
FBR—Federal Benefit Rate
FDA—Food and Drug Administration
FPG—Federal Poverty Guidelines
FOIA—Freedom of Information Act
HCBS—Home and Community-Based Services
HCV—Housing Choice Voucher
HHS—U.S. Department of Health and Human Services
HSA—Homeland Security Act
HUD—U.S. Department of Housing and Urban Development
IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
IRCA—Immigration Reform and Control Act
LPR—Lawful Permanent Resident
LRIF—Liberian Refugee Immigration Fairness Act
NACARA—Nicaraguan Adjustment and Central American Relief Act
NATO—North Atlantic Treaty Organization
NEPA—National Environmental Policy Act
NOID—Notice of Intent to Deny
NPRM—Notice of Proposed Rulemaking
OAW—Operation Allies Welcome
OMB—Office of Management and Budget
PHA—Public Housing Agency
PHE—Public Health Emergency
PRA—Paperwork Reduction Act
PRWORA—Personal Responsibility and Work Opportunity Reconciliation Act of 1996
RFA—Regulatory Flexibility Act of 1980
RFE—Request for Additional Evidence
RIA—Regulatory Impact Analysis
SIPP—Survey of Income and Program Participation
SNAP—Supplemental Nutrition Assistance Program
SSA—Social Security Administration
SSI—Supplemental Security Income
TANF—Temporary Assistance for Needy Families
TPS—Temporary Protected Status
TVPA—Trafficking Victims Protection Act
UMRA—Unfunded Mandates Reform Act of 1995
USCIS—U.S. Citizenship and Immigration Services
USDA—U.S. Department of Agriculture
VAWA—Violence Against Women Act
WIC—Special Supplemental Nutrition Program for Women, Infants, and Children

I. Executive Summary

A. Purpose of the Regulatory Action

This rule implements the public charge ground of inadmissibility, found in section 212(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(4), in a manner that will be

consistent with congressional direction; that will be clear and comprehensible for officers as well as for noncitizens [1] and their families; and that will lead to fair and consistent adjudications, thereby mitigating the risk of unequal treatment of similarly situated individuals.

Under the INA, noncitizens are inadmissible and therefore (1) ineligible for a visa, (2) ineligible for admission, and (3) ineligible for adjustment of status, if, in the opinion of DHS (or the Department of Justice (DOJ)) or consular officers of the Departments of State (DOS), as applicable),[2] they are likely at any time to become a public charge.[3] While the statute does not define the term ''public charge,'' it does provide that in making an inadmissibility determination, administering agencies must ''at a minimum consider the alien's age; health; family status; assets, resources, and financial status; and education and skills.'' [4] The agencies may also consider an Affidavit of Support Under Section 213A of the INA submitted on the noncitizen's behalf when such is required.[5]

Beginning in 1999, public charge inadmissibility determinations were made in accordance with the May 26, 1999, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* (1999 Interim Field Guidance), issued by the former Immigration and Naturalization Service (INS).[6] Under that approach, ''public charge'' was defined as a noncitizen who is ''primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.'' [7] Under the 1999 Interim Field Guidance, a noncitizen's reliance on or receipt of non-cash benefits such as the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps; Medicaid (except for support for long-term institutionalization); and housing vouchers and other housing subsidies were not considered by DHS in determining whether a noncitizen was deemed likely at any time to become a public charge.

On August 14, 2019, DHS issued a rule on the public charge ground of inadmissibility, which is no longer in effect.[8] The 2019 Final Rule expanded DHS's definition of ''public charge'' and imposed a heavy direct paperwork burden on applicants and DHS officers. The 2019 Final Rule was associated with widespread collateral effects as discussed in section III.E below, primarily with respect to those who were not even subject to the public charge ground of inadmissibility, such as U.S. citizen children in mixed-status households. Notwithstanding these widespread collateral effects, during the time that the 2019 Final Rule was in effect, of the 47,555 applications for adjustment of status to which the rule was applied, DHS issued only three denials (which were subsequently reopened and approved) and two Notices of Intent to Deny (which were ultimately rescinded, after which the applications were approved) based on the totality of the circumstances of a public charge inadmissibility determination under section 212(a)(4)(A) and (B) of the INA, 8 U.S.C. 1182(a)(4)(A) and (B).

This final rule would implement a different policy than the 2019 Final Rule. As stated above, in this new rule, DHS will implement section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), in a manner that will be clear and comprehensible for officers as well as for noncitizens and their families and will lead to fair and consistent adjudications, thereby mitigating the risk of unequal treatment of similarly situated individuals. In this rule, DHS has declined to include certain aspects of the 2019 Final Rule that in DHS's view caused undue fear and confusion, such as (1) a complicated and unnecessarily broad definition of ''public charge''; (2) mandatory consideration of past, current, and future receipt of certain supplemental public benefits, notwithstanding that most noncitizens subject to the public charge ground of inadmissibility would not have been eligible for such benefits at the time of application (and notwithstanding the potential collateral effects of this policy on U.S. citizen children in mixed-status households and noncitizens who are not subject to the public charge ground of inadmissibility); (3) burdensome and in some instances duplicative information collection requirements; (4) designation of certain factors or sets of factual circumstances as ''heavily weighted''; and (5) imposition of a ''public benefit condition'' for extension of stay and change of status, notwithstanding that the nonimmigrant population to whom this condition applied is largely ineligible for such benefits.

As discussed at greater length below, DHS believes that, in contrast to the 2019 Final Rule, this rule would effectuate a more faithful interpretation of the statutory phrase ''likely at any time to become a public charge''; avoid unnecessary burdens on applicants, officers, and benefits-granting agencies; and mitigate the possibility of widespread ''chilling effects'' [9] with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially with respect to individuals who are not subject to the public charge ground of inadmissibility. Under this rule, similar to the 1999 Interim Field Guidance that was in place for two decades prior to the

[1] For purposes of this discussion, DHS uses the term ''noncitizen'' to be synonymous with the term ''alien'' as it is used in the INA.

[2] Three different agencies are responsible for applying the public charge ground of inadmissibility, each in a different context or contexts. DHS primarily applies the public charge ground of inadmissibility to applicants for admission at or between ports of entry and when adjudicating certain applications for adjustment of status. DOS consular officers are responsible for applying the public charge ground of inadmissibility as part of the visa application process and for determining whether a visa applicant is ineligible for a visa on public charge grounds at the time of application for a visa. This rule does not revise DOS standards or processes. DOJ is responsible for applying the public charge ground of inadmissibility with respect to noncitizens in immigration court. Immigration judges adjudicate matters in removal proceedings, and the Board of Immigration Appeals and in some cases the Attorney General adjudicate appeals arising from such proceedings. This rule does not revise DOJ standards or processes. DOS consular officers are responsible for applying the public charge ground of inadmissibility as part of the visa application process and for determining whether a visa applicant is ineligible for a visa on public charge grounds at the time of application for a visa. This rule does not revise DOS standards or processes.

[3] *See* INA sec. 212(a)(4)(A), 8 U.S.C. 1182(a)(4)(A). Congress has by statute exempted certain categories of noncitizens, such as asylees and refugees, from the public charge ground of inadmissibility. *See, e.g.,* INA secs. 207(c)(3) and 209(c), 8 U.S.C. 1157(c)(3) and 1159(c). A full list of exemptions is included in this rule.

[4] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[5] *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[6] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689 (May 26, 1999). Due to a printing error, the **Federal Register** version of the field guidance appears to be dated ''March 26, 1999'' even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the **Federal Register** on May 26, 1999.

[7] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28692 (May 26, 1999).

[8] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292 (Aug. 14, 2019), as amended by ''Inadmissibility on Public Charge Grounds; Correction,'' 84 FR 52357 (Oct. 2, 2019).

[9] The term ''chilling effects'' used throughout this rule is meant to convey the indirect effect of chilling an individual's participation in public benefit programs, regardless of whether they are subject to the public charge ground of inadmissibility, based on fear of negative immigration consequences.

2019 Final Rule, noncitizens would be considered likely at any time to become a public charge if they are likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

This final rule also makes important clarifications and changes as compared to the 1999 Interim Field Guidance. For instance, this rule clarifies DHS's approach to consideration of disability and long-term institutionalization at government expense; states a bright-line rule against considering the receipt of public benefits by an applicant's dependents (such as a U.S. citizen child in a mixed-status household); and changes the Form I–485 to collect additional information relevant to the public charge inadmissibility determination. DHS also added streamlined provisions to clarify acceptance, form, and amount of USCIS public charge bonds, as well as cancellation of public charge bonds. Finally, later in this preamble, in response to public comments, DHS further clarifies that primary dependence connotes significant reliance on the government for support, and means something more than dependence that is merely transient or supplementary.

The rule also contains multiple additional provisions and definitions, some of which are consistent with aspects of the 1999 Interim Field Guidance (and the 2019 Final Rule), and some of which differ in material respects.

B. Summary of Legal Authority

The authority of the Secretary of Homeland Security (Secretary) for the regulatory amendments is found in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), which governs public charge inadmissibility determinations; section 235 of the INA, 8 U.S.C. 1225, which addresses applicants for admission; and section 245 of the INA, 8 U.S.C. 1255, which addresses eligibility criteria for applications for adjustment of status. In addition, section 103(a)(3) of the INA, 8 U.S.C. 1103(a)(3), authorizes the Secretary to establish such regulations as the Secretary deems necessary for carrying out the Secretary's authority under the INA.

C. Summary of the Proposed Rule

On February 24, 2022, DHS published a notice of proposed rulemaking, *Public Charge Ground of Inadmissibility* (NPRM).[10] The NPRM proposed to prescribe how DHS would determine whether a noncitizen is inadmissible to the United States under section 212(a)(4) of the INA). Under the NPRM, a noncitizen would be considered likely at any time to become a public charge if they are likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. In the NPRM, DHS proposed definitions for the terms ''likely at any time to become a public charge,'' ''public cash assistance for income maintenance,'' ''long-term institutionalization at government expense,'' ''receipt (of public benefits),'' and ''government.''

In the NPRM, DHS proposed to adopt a standard similar to the one used in the 1999 Interim Field Guidance and related 1999 NPRM, which tied public charge inadmissibility to primary dependence on the government for subsistence, as demonstrated by the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. The NPRM also identified the groups of individuals generally subject to or exempt from the public charge inadmissibility ground and provided a list of statutory and regulatory exemptions from and waivers of the public charge ground of inadmissibility.

DHS continues to believe that the ''primarily dependent'' standard properly balances the competing policy objectives established by Congress.[11] Although the term ''public charge'' does not have a single clear meaning, its basic thrust is clear: significant reliance on the government for support. This has been the longstanding purpose of the public charge ground of inadmissibility; individuals who are unable or unwilling to work to support themselves, and who do not have other nongovernmental means of support such as family members, assets, or sponsors, are at the core of the term ''public charge.'' Individuals who are likely to primarily rely on their own resources, while secondarily relying on some government support, are less readily characterized as public charges. DHS does not believe that the term is best understood to include a person who receives benefits from the government to help to meet some needs but is not primarily dependent on the government and instead has one or more sources of independent income or resources upon which the individual primarily relies.

To evaluate a person's likelihood to become primarily dependent on the government for subsistence, DHS proposed to designate a list of public benefits that would be considered for purposes of a public charge inadmissibility determination. DHS recognized that the universe of public benefits is quite large. In seeking to provide clear notice of the effects of the rule and to limit certain undesired collateral effects that may be associated with the rule (such as indirect effects on social service providers and chilling effects), DHS proposed to designate public cash assistance for income maintenance (*i.e.,* Supplemental Security Income (SSI), cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF), and State, Tribal, territorial, or local cash benefit programs for income maintenance) and long-term institutionalization at government expense as the benefits that DHS would consider as part of the public charge inadmissibility determination.

DHS believes that this approach—the ''primarily dependent'' standard and the focus on the specific benefits contained in the proposed rule—is consistent with a more faithful interpretation of the term ''public charge'' and has the additional benefit of being more administrable and

[10] 87 FR 10570 (Feb. 24, 2022).

[11] In the 2019 Final Rule, DHS canvassed a range of sources to support the proposition that the statute was ambiguous and that the new definition represented a reasonable interpretation of such ambiguity in light of the policy goals articulated in PRWORA. For example, DHS wrote that the rule ''is not inconsistent with Congress' intent in enacting the public charge ground of inadmissibility in [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)], or in enacting PRWORA.'' *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41317 (Aug. 14, 2019). DHS noted that Congress enacted those two laws in the same year, that IIRIRA amended the public charge inadmissibility statute, and that PRWORA contained the statements of national policy. DHS continued by stating that the rule, ''in accordance with PRWORA, disincentivizes immigrants from coming to the United States in reliance on public benefits.'' *Ibid.* Similarly, in support of a similar definition of ''public charge'' in the 2018 NPRM, DHS wrote that ''the term public charge is ambiguous as to how much government assistance an individual must receive or the type of assistance an individual must receive to be considered a public charge. The statute and case law do not prescribe the degree to which an alien must be receiving public benefits to be considered a public charge. Given that neither the statute nor the case law prescribes the degree to which an alien must be dependent on public benefits to be considered a public charge, DHS has determined that it is permissible and reasonable to propose a different approach.'' *See* ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51164 (Oct. 10, 2018). DHS continues to believe that the statute is ambiguous, but for reasons discussed throughout this preamble, DHS now believes the interpretation contained in this rule reflects a reasonable and indeed the most appropriate interpretation of the statute.

consistent with longstanding practice than the 2019 Final Rule.[12] DHS has also determined that this approach is less likely to result in the significant chilling effects among both noncitizens who are not subject to the public charge ground of inadmissibility and U.S. citizens, along with certain effects on State and local governments and social service providers (such as increases in inquiries regarding the public charge implications of receiving certain benefits and increases in uncompensated care), that were observed following promulgation of the 2019 Final Rule.

DHS sought comment on the proposal to consider cash assistance for income maintenance, but not non-cash benefits (apart from long-term institutionalization at government expense), in determining whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence. As explained below, following receipt of a range of public comments on this topic (including proposals to narrow, expand, or maintain the proposed list of public benefits), DHS has decided to finalize this aspect of the proposed rule without change other than the inclusion of an additional provision in the final rule clarifying the continuation of this policy, which was articulated in the 1999 Interim Field Guidance and reiterated in the recent NPRM.

In addition to proposing new definitions, DHS proposed the factors that DHS would consider in prospectively determining whether an applicant for admission or adjustment of status before DHS is inadmissible on the public charge ground in the totality of the circumstances. Those factors include the statutory minimum factors of age; health; family status; assets, resources, and financial status; and education and skills; as well as past receipt of designated public benefits. DHS specifically stated that the fact that an applicant has a disability, as defined by section 504 of the Rehabilitation Act (Section 504), would not alone be a sufficient basis to determine whether the noncitizen is likely at any time to become a public charge.

In addition, DHS proposed to revise the existing information collection, Form I–485, Application to Register Permanent Residence or Adjust Status, to include additional questions regarding several of the statutory minimum factors: family status; assets, resources, and financial status; education and skills; as well as past receipt of the designated public benefits. As proposed, the additional questions would apply to only those applicants who are subject to the public charge ground of inadmissibility.

DHS also proposed to require that all written denial decisions issued by USCIS to applicants reflect consideration of each of the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA, where required, and the noncitizen's current and/or past receipt of public benefits, consistent with the standards set forth in the proposed rule, and to specifically articulate the reasons for the officer's determination.

DHS also proposed to tailor its rule to limit the effects of certain regulatory provisions on discrete populations. DHS proposed not to consider public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, or for which the noncitizen received a waiver of public charge inadmissibility, as well as not to consider any public benefits received by a noncitizen who was made eligible by Congress for resettlement assistance, entitlement programs, and other benefits available to refugees, even if the noncitizen was not admitted as a refugee under section 207 of the INA, 8 U.S.C. 1157.

Finally, DHS proposed amending regulations related to T nonimmigrant status holders, clarifying that these T nonimmigrants seeking adjustment of status are not subject to the public charge ground of inadmissibility.

DHS received 223 comments on the proposed rule, the majority of which expressed support or qualified support for the policy approach articulated in the proposed rule. A few of the public comments supported a return to the framework contained in the 2019 Final Rule. The preamble to this final rule includes summaries of the significant issues raised in the comments, and includes responses to those comments and explanations for policy changes.

D. Summary of Changes From the NPRM to the Final Rule

Following careful consideration of public comments received, DHS has made several changes to the regulatory text proposed in the NPRM.[13] As discussed in detail in the comment responses, the changes in this final rule are as follows:

1. Definitions

a. Definition of Household

In response to public comments, DHS added a definition of ''household'' to be used in connection with the family status and assets, resources, and financial status factors. The noncitizen's household will include:

- The noncitizen;
- If physically residing with the noncitizen, the noncitizen's spouse, parents, unmarried siblings under 21 years of age, and children;
- Any other individuals who are listed as dependents on the noncitizen's federal income tax return; and
- Any other individuals who list the noncitizen as a dependent on their federal income tax return.

DHS notes that a noncitizen's household's income includes income provided to the household from sources who are not members of the household, including but not limited to alimony or child support.

b. Definition of Long-Term Institutionalization at Government Expense

DHS replaced the term ''alien'' with the term ''beneficiary'' to clarify that the forward-looking nature of the public charge inquiry includes long-term institutionalization that occurs after the applicant for admission or adjustment of status is no longer an ''alien,'' as that term is defined in the INA.

c. Definition of Receipt (of Public Benefits)

DHS replaced the term ''alien'' with the term ''individual'' to clarify that the forward-looking nature of the public charge determination includes public cash assistance for income maintenance that is received after the applicant for admission or adjustment of status is no longer an ''alien,'' as that term is defined in the INA.

2. Statutory Minimum Factors

DHS modified 8 CFR 212.22(a)(1) from the proposed version in the following ways:

d. General

DHS eliminated the duplicative text ''at a minimum'' from paragraph (a)(1).

e. Health

DHS added text stating that DHS will consider the noncitizen's health as evidenced by a report of an immigration medical examination performed by a civil surgeon or panel physician where

[12] The 2019 Final Rule also designated a specific list of public benefits as relevant to the public charge determination, which included benefits other than cash assistance for income maintenance and long-term institutionalization at government expense such as SNAP, most non-emergency forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher (HCV) Program, Section 8 Project-Based Rental Assistance, and public housing under the Housing Act of 1937.

[13] 87 FR at 10668–10671 (Feb. 24, 2022).

such examination is required in making public charge inadmissibility determinations. DHS will generally defer to the report of the examination unless there is evidence that the report is incomplete.

f. Family Status

DHS added text stating that DHS will consider the noncitizen's family status as evidenced by the noncitizen's household size. ''Household'' is defined in 8 CFR 212.21(f).

g. Assets, Resources, and Financial Status

DHS added text stating that DHS will consider the noncitizen's assets, resources, and financial status as evidenced by the noncitizen's household's income, assets, and liabilities (excluding any income from public benefits listed in 8 CFR 212.21(b) and income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales).

h. Education and Skills

DHS added text stating that DHS will consider the noncitizen's education and skills as evidenced by the noncitizen's degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates.

3. Consideration of Current and/or Past Receipt of Public Benefits

DHS clarified the regulatory text by stating that DHS will not consider the receipt of, or certification or approval for future receipt of, public benefits not referenced in 8 CFR 212.21(b) or (c), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, any benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits. This policy was discussed at length in the proposed rule's preamble, but DHS has included a more direct statement to that effect in the final regulatory text. As further explained in the proposed rule's preamble and in response to comments below, DHS has opted for an approach in which it considers past or current receipt of the benefits most indicative of whether a person is likely to become primarily dependent on the government for subsistence while excluding from consideration a range of benefits that are less probative of primary dependence—and for which applicants for admission and adjustment of status are most often ineligible in any event. This choice, informed by on-the-record input from benefits-granting agencies, allows DHS to faithfully administer the statute without deterring eligible noncitizens and their families, including U.S. citizen children, from seeking important benefits for which they are eligible and which it is in the public interest for them to receive.

4. Public Charge Bonds

a. Cancellation and Breach of Public Charge Bonds

DHS is amending 8 CFR 103.6(c)(1), relating to the cancellation and breach of public charge bonds. With these amendments, DHS is:

- Clarifying that a public charge bond will be cancelled upon death, permanent departure, or naturalization of the immigrant, provided that the immigrant did not breach such bond by receiving public cash assistance for income maintenance or long-term institutionalization at government expense;
- Stating that a public charge bond may be cancelled by USCIS after the fifth anniversary of the immigrant's admission or adjustment of status, provided the immigrant files a Form I–356, Request for Cancellation of Public Charge Bond, requesting the cancellation, and USCIS finds that the immigrant did not receive public cash assistance for income maintenance or long-term institutionalization at government expense prior to that fifth anniversary; and
- Making technical updates to clarify that bond cancellation authority lies with USCIS rather than district directors.

b. Public Charge Bond Acceptance, Form, and Amount

DHS is amending 8 CFR 213.1, relating to the acceptance of public charge bonds. With these amendments, DHS is:

- Adding a new paragraph specifying that USCIS may invite adjustment of status applicants who are inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and whose applications are otherwise approvable, to submit a public charge bond in USCIS' discretion and clarifying that USCIS will set the bond amount and provide instructions for submission of the bond;
- Modifying the existing regulatory language relating to acceptance of bonds from noncitizens seeking immigrant visas from DOS, clarifying that USCIS will provide instructions for the submission of the bond, USCIS is the agency that accepts the bond, and that the consular officer will set the amount of the bond; and
- Revising the existing regulatory language about form and bond amount of public charge bonds by eliminating reference to a specific form number, stating that USCIS or the consular officer will set the amount of the bond of an amount no less than $1,000, and requiring USCIS to provide a receipt to the noncitizen or an interested party on a form designated by USCIS for such purpose.

E. Implementation

DHS will begin implementing this final rule on its effective date (*i.e.,* on December 23, 2022). This final rule will apply to applications for adjustment of status that are postmarked on or after the effective date. During the period between publication and the effective date, DHS will also conduct necessary public outreach to minimize the risk of confusion or chilling effects among both noncitizens and U.S. citizens. On or before this date, consistent with 8 CFR 212.22(b) DHS will issue subregulatory guidance to inform, but not dictate the outcome of, officers' totality of the circumstances determinations.

F. Summary of Costs and Benefits

The rule will result in new costs, benefits, and transfers. To provide a full understanding of the impacts of the rule, DHS considers the potential impacts of this final rule relative to two baselines. The No Action Baseline represents a state of the world under the 1999 Interim Field Guidance, which is the policy currently in effect. The second baseline is the Pre-Guidance Baseline, which represents a state of the world before the issuance of the 1999 Interim Field Guidance (*i.e.,* a state of the world in which the 1999 Interim Field Guidance did not exist). DHS also considers the potential effects of a regulatory alternative that is a rulemaking similar to the 2018 NPRM and the 2019 Final Rule. As DHS suggested in the 2019 Final Rule, those effects would primarily be experienced by persons who are not subject to the public charge ground of inadmissibility and who might disenroll from public benefits or forgo enrollment in public benefits due to fear and confusion regarding the scope of the regulatory alternative.[14] Further discussion of the

[14] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41313 (Aug. 14, 2019).

regulatory alternative can be found in the ''Regulatory Alternative'' section.

Relative to the No Action Baseline, the primary source of quantified new direct costs for the final rule is the increase in the time required to complete Form I–485. DHS estimates that the rule would impose additional new direct costs of approximately $6,435,755 annually to applicants filing Form I–485. In addition, the rule will result in an annual savings for a subpopulation of affected individuals: T nonimmigrants applying for adjustment of status would no longer need to submit Form I–601 to seek a waiver of the public charge ground of inadmissibility. DHS estimates the total annual savings for this population will be approximately $15,359. DHS estimates that the total annual net costs will be approximately $6,420,396.[15]

Over the first 10 years of implementation, DHS estimates the total net costs of the rule will be approximately $64,203,960 (undiscounted). In addition, DHS estimates that the 10-year discounted total net costs of this rule will be approximately $54,767,280 at a 3-percent discount rate and approximately $45,094,175 at a 7-percent discount rate.

DHS expects the primary benefit of this final rule to be the non-quantified benefit of increased clarity in the rules governing public charge inadmissibility determinations. By codifying into regulations the current practice under the No Action Baseline (the 1999 Interim Field Guidance) with some changes, the final rule reduces uncertainty and confusion.

The following two tables provide a more detailed summary of the provisions and their impacts relative to the No Action Baseline and Pre-Guidance Baseline, respectively.

[15] Calculations: Total annual net costs ($6,420,396) = Total annual costs ($6,435,755)—Total annual savings ($15,359).

Table 1. Summary of Major Provisions and Economic Impacts of the Rule, FY 2022 – FY 2032 (Relative to the No Action Baseline)		
Provision	**Purpose**	**Expected Impact of Rule**
Revising 8 CFR 212.18. Application for Waivers of Inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of noncitizens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** Cost Savings: • Total savings of approximately $15,359 in costs to the government (reimbursed by fees paid by applicants) and reduced time burden annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I-601 seeking a waiver of public charge ground of inadmissibility. Costs • None
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of noncitizens that are subject to the public charge inadmissibility determination.	**Qualitative**: Benefits • The rule will reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. Costs • None
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including "likely at any time to become a public charge," "receipt (of public benefits)," "public cash assistance for income maintenance," "long-term institutionalization at government expense," and "government," and "household."	**Quantitative**: Benefits • None Costs • None **Qualitative**: Benefits • None Costs • None **Transfer Payments**: • The final rule could lead to an increase in transfer payments, primarily due to increased public

		benefit participation by individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations.
Adding 8 CFR 212.22. Public charge inadmissibility determination.	To clarify the prospective totality of the circumstances analysis, the analysis of the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, consideration of an applicant's current and/or past receipt of public benefits.	**Quantitative**: Benefits • None Costs • Total annual direct costs of the rule will be approximately $6,435,755 to applicants applying to adjust status using Form I-485 with an increased time burden. **Qualitative**: Benefits • By clarifying rules governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the rule may reduce time spent by the affected population in deciding whether to apply for adjustment of status or enroll in or disenroll from public benefit programs. Costs • Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the rule and subsequently determine applicability of the rule's

		provisions. DHS estimates that the time to read this rule in its entirety will be 8 to 9 hours per individual. **Transfer Payments**: • The rule could lead to an increase in transfer payments associated with public benefit participation, predominantly by individuals who are not subject to the public charge ground of inadmissibility in any event. This increase would be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility, and which benefits are considered under this rule.
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	**Qualitative**: <u>Benefits</u> • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. <u>Costs</u> • None **Transfer Payments**: • The rule could lead to an increase in public benefit participation and an increase in transfer payments. Some noncitizens who are in a status that is exempt from the public charge ground of inadmissibility or who are made eligible by Congress for certain benefits made available to refugees, may be more likely to participate in public benefit programs for the limited period that they are in such status or eligible for such benefits.

Amending 8 CFR 103.6. Immigration bonds. Amending 8 CFR 213.1. Admission under bond or cash deposit.	To clarify cancellation and breach of public charge bonds. To add specifics to the public charge bond provision for noncitizens who are seeking adjustment of status for a public charge bond.	**Qualitative**: Benefits • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. Costs • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.
Source: USCIS analysis.		

Table 2. Summary of Major Provisions and Economic Impacts of the Rule, FY 2022 – FY 2032 (Relative to the Pre-Guidance Baseline)		
Provision	**Purpose**	**Expected Impact of Rule**
Revising 8 CFR 212.18. Application for waivers of inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of aliens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** Cost Savings: • Total savings of approximately $15,359 in costs to the government (reimbursed by fees paid by applicants) and reduced time burden annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I-601 seeking a waiver of public charge ground of inadmissibility. Costs • None
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of noncitizens that are subject to the public charge inadmissibility determination.	**Qualitative**: Benefits • The rule would reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. Costs • None
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including "likely at any time to become a public charge," "receipt (of public benefits)," "public cash assistance for income maintenance," "long-term institutionalization at government expense," and "government," and "household."	**Quantitative**: Benefits • None Costs • None **Qualitative**: Benefits • None Costs • None **Transfer Payments**: • The final rule could lead to an increase in transfer payments, primarily due to increased public benefit participation by

		individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations.
Adding 8 CFR 212.22. Public charge inadmissibility determination.	To clarify the prospective totality of the circumstances analysis, the analysis of the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, consideration of an applicant's current and/or past receipt of public benefits.	**Quantitative**: Benefits • None Costs • Total annual direct costs of the rule will be approximately $6,435,755 to applicants applying to adjust status using Form I-485 with an increased time burden. **Qualitative**: Benefits • By clarifying standards governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the rule may reduce time spent by the affected population in deciding whether to apply for adjustment of status or enroll in or disenroll from public benefit programs. Costs • Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the rule and subsequently determine applicability of the rule's provisions. DHS estimates that the

		time to read this rule in its entirety will be 8 to 9 hours per individual. **Transfer Payments**: • The rule could lead to an increase in transfer payments associated with public benefit participation, predominantly by individuals who are not subject to the public charge ground of inadmissibility in any event. This increase would be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility and which benefits are considered under the rule.
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	**Qualitative**: <u>Benefits</u> • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. <u>Costs</u> • None **Transfer Payments**: • The primary impact of the rule relative to the Pre-Guidance Baseline will be an increase in transfer payments from the Federal and State governments to individuals. However, DHS is unable to quantify these effects given how much time has passed between the issuance of the 1999 Interim Field Guidance and this rulemaking. • The rule could lead to an increase in public benefit participation and an increase in transfer payments. Some noncitizens who are in a status that is exempt from the public charge ground of inadmissibility or who are made eligible by Congress for certain

		benefits made available to refugees, may be more likely to participate in public benefit programs for the limited period that they are in such status or eligible for such benefits.
Amending 8 CFR 103.6. Immigration bonds. Amending 8 CFR 213.1. Admission under bond or cash deposit.	To clarify cancellation and breach of public charge bonds. To add specifics to the public charge bond provision for noncitizens who are seeking adjustment of status, including the minimum amount required for a public charge bond.	**Qualitative**: Benefits • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. Costs • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.
Source: USCIS analysis.		

II. Background

A. Legal Authority

The Secretary's authority for issuing this rule is found in various sections of the INA (8 U.S.C. 1101 *et seq.*) and the Homeland Security Act of 2002 (HSA).[16]

Section 102 of the HSA, 6 U.S.C. 112, and section 103 of the INA, 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration laws of the United States. Section 101 of the HSA, 6 U.S.C. 111, establishes that part of DHS's primary mission is to ensure that efforts, activities, and programs aimed at securing the homeland do not diminish either the overall economic security of the United States or the civil rights and civil liberties of persons.

In addition to establishing the Secretary's general authority for the administration and enforcement of immigration laws, section 103 of the INA, 8 U.S.C. 1103, enumerates various related authorities, including the Secretary's authority to establish such regulations, prescribe such forms of bond, issue such instructions, and perform such other acts as the Secretary deems necessary for carrying out such authority.

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), provides that an applicant for a visa, admission, or adjustment of status is inadmissible if they are likely at any time to become a public charge.

In general, under section 213 of the INA, 8 U.S.C. 1183, the Secretary has the discretion to admit into the United States a noncitizen who is determined to be inadmissible based only on the public charge ground upon the giving of a suitable and proper bond or undertaking approved by the Secretary.

Section 235 of the INA, 8 U.S.C. 1225, addresses the inspection of applicants for admission, including inadmissibility determinations of such applicants.

Section 245 of the INA, 8 U.S.C. 1255, generally establishes eligibility criteria for adjustment of status to that of a lawful permanent resident.

B. The Public Charge Ground of Inadmissibility

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), provides that an applicant for a visa, admission, or adjustment of status is inadmissible if they are likely at any time to become a public charge. The public charge ground of inadmissibility, therefore, applies to individuals applying for a visa to come to the United States temporarily or permanently (typically adjudicated by DOS consular officers), for admission (typically adjudicated by U.S. Customs and Border Protection officers and U.S. Border Patrol Agents, and governed by this rule), or for adjustment of status to that of a lawful permanent resident (governed by this rule when adjudicated by U.S. Citizenship and Immigration Services officers).[17] By statute, some categories of noncitizens are exempt from the public charge ground of inadmissibility, while others may apply

[16] *See* Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* (2002).

[17] *See* INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4).

for a waiver of the public charge inadmissibility ground.[18]

The INA does not define the term ''public charge.'' It does, however, specify that when determining whether a noncitizen is likely at any time to become a public charge, consular officers and immigration officers must, at a minimum, consider the noncitizen's age; health; family status; assets, resources, and financial status; and education and skills.[19] Additionally, section 212(a)(4)(B)(ii) of the INA, 8 U.S.C. 1182(a)(4)(B)(ii), permits the consular officer or the immigration officer to consider any Affidavit of Support Under Section 213A of the INA submitted on the applicant's behalf, when determining whether the applicant is likely at any time to become a public charge.[20]

Additionally, in general, under section 213 of the INA, 8 U.S.C. 1183, the Secretary has the discretion to admit into the United States a noncitizen who is determined to be inadmissible based only on the public charge ground upon the giving of a suitable and proper bond or undertaking approved by the Secretary.[21]

C. 2019 DHS Inadmissibility on Public Charge Ground Final Rule, Vacatur, and Litigation History

In August 2019, DHS issued a final rule, *Inadmissibility on Public Charge Grounds* (2019 Final Rule).[22] As explained in more detail in the NPRM,[23] the 2019 Final Rule provided key definitions, including ''public charge'' and ''public benefits,'' and provided a multi-factor framework along with associated evidentiary requirements through which USCIS would determine inadmissibility on the public charge ground. The 2019 Final Rule added provisions that rendered certain nonimmigrants ineligible for extension of stay or change of status if they received public benefits for a certain period, and also revised DHS regulations governing the Secretary's discretion to accept a public charge bond under section 213 of the INA, 8 U.S.C. 1183, for those seeking adjustment of status. The 2019 Final Rule did not interpret or change DHS's implementation of the public charge ground of deportability.[24]

Also as discussed in the NPRM,[25] the 2019 Final Rule was set to take effect on October 15, 2019. Before it did, numerous Plaintiffs filed suits challenging the 2019 Final Rule in five district courts, across four circuits.[26] Following a series of preliminary injunctions and stays or reversals of those injunctions, the 2019 Final Rule was ultimately vacated nationwide by a partial final judgment entered by the U.S. District Court for the Northern District of Illinois.[27] DHS subsequently formally removed the 2019 Final Rule from the *Code of Federal Regulations*.[28]

The litigation concerning the 2019 Final Rule continued, with attempts by certain States to intervene in the various cases. On May 12, 2021, a collection of States filed motions to intervene in the U.S. District Court for the Northern District of Illinois for reconsideration of the grant of partial summary judgment and for other relief.[29] The motions were denied, and prospective intervenors noted their appeal to the U.S. Court of Appeals for the Seventh Circuit.

Separately, on March 10, 2021, a collection of prospective intervenors, led by the State of Arizona, filed an unsuccessful motion to intervene before the U.S. Court of Appeals for the Ninth Circuit.[30] The prospective intervenors then filed a motion before the Supreme Court seeking leave to intervene, which the Court ordered to be held in abeyance while the prospective intervenors filed a petition for certiorari from the Ninth Circuit intervention denial, which was filed on June 23, 2021.[31] On October 29, 2021, the Supreme Court granted certiorari on a single issue of the three presented in the petition: ''Whether States with interests should be permitted to defend a rule when the United States ceases to defend.'' On June 15, 2022, the Supreme Court dismissed the writ of certiorari as improvidently granted.[32]

On June 27, 2022, the U.S. Court of Appeals for the Seventh Circuit ruled that the U.S. District Court for the Northern District of Illinois did not abuse its discretion in denying the States' motions to intervene in the proceedings concerning the 2019 Final Rule and request for relief from judgment under Rule 60(b).[33] Other aspects of the litigation concerning the 2019 Final Rule have been stayed, with varying reporting requirements, pending the outcome of the intervention litigation.

D. Current Public Charge Inadmissibility Guidance

As discussed in the NPRM, DHS currently makes public charge inadmissibility determinations in accordance with the statute and the 1999 Interim Field Guidance.[34] The guidance explains how the agency determines if a noncitizen is likely at any time to become a public charge under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). Under the guidance, officers can offer public charge bonds, but the guidance does not provide procedures for public charge bonds.

E. Current Rulemaking

On August 23, 2021, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) to seek broad public feedback on the public charge ground of inadmissibility to inform its development of a future regulatory proposal.[35] USCIS sought input from individuals, organizations, government entities and agencies, and all other interested members of the public. USCIS held two public listening sessions and accepted written comments and related

[18] *See* INA sec. 245(j), 8 U.S.C. 1255(j). *See* 8 CFR 245.11. *See* INA sec. 245(h)(2)(A), 8 U.S.C. 1255(h)(2)(A). *See* INA sec. 245(l)(2)(A), 8 U.S.C. 1255(l)(2)(A). *See* INA sec. 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A).

[19] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[20] *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii). When required, the applicant must submit an Affidavit of Support Under Section 213A of the INA (Form I–864 or Form I–864EZ). With very limited exceptions, most noncitizens seeking family-based immigrant visas and adjustment of status, and some noncitizens seeking employment-based immigrant visas or adjustment of status, must submit a sufficient Affidavit of Support Under Section 213A of the INA in order to avoid being found inadmissible as likely at any time to become a public charge. *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[21] *See* INA sec. 213, 8 U.S.C. 1183.

[22] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292 (Aug. 14, 2019), as amended by ''Inadmissibility on Public Charge Grounds; Correction,'' 84 FR 52357 (Oct. 2, 2019).

[23] *See* 87 FR at 10606 (Feb. 24, 2022).

[24] *See* INA sec. 237(a)(5), 8 U.S.C. 1227(a)(5). *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41295 (Aug. 14, 2019).

[25] *See* 87 FR at 10586 (Feb. 24, 2022).

[26] *CASA de Maryland, Inc., et al.* v. *Trump,* 19–cv–2715 (D. Md.); *City and County of San Francisco, et al.* v. *DHS, et al.,* 19-cv-04717 (N.D.Ca.); *City of Gaithersburg, et al.* v. *Trump, et al.,* 19-cv-02851 (D. Md.); *Cook County et al.* v. *McAleenan et al.,* 19–cv–06334 (N.D. Ill.); *La Clinica De La Raza, et al.* v. *Trump, et al.,* 19–cv–4980 (N.D. Ca.); *Make the Road New York, et al.* v. *Cuccinelli, et al.,* 19-cv-07993 (S.D.N.Y.); *New York, et al.* v. *DHS, et al.,* 19–cv–07777 (S.D.N.Y.); *State of California, et al.* v. *DHS, et al.,* 19–cv–04975 (N.D. Cal.); *State of Washington, et al.* v. *DHS, et al.,* 19–cv–05210 (E.D. Wa.).

[27] *See Cook County* v. *Wolf,* 498 F. Supp. 3d 999 (N.D. Ill. Nov. 2, 2020).

[28] *See* ''Inadmissibility on Public Charge Grounds; Implementation of Vacatur,'' 86 FR 14221 (Mar. 15, 2021).

[29] *See Texas, et al.* v. *Cook County, Illinois, et al.,* 1:19-cv-0633419 (N.D. Ill. May 12, 2021).

[30] *City and County of San Francisco, et al.* v. *USCIS et al.,* 19–17213 (9th Cir.).

[31] *Arizona, et al.,* v. *City and County of San Francisco, et al.,* 20–1775 (U.S. Oct. 29, 2021).

[32] *Arizona, et al.,* v. *City and County of San Francisco, et al.,* 20–1775 (U.S. June 15, 2022).

[33] *Cook County, Illinois, et al.* v. *State of Texas, et al.,* 37 F. 4th 1335 (7th Cir. 2022).

[34] *See* 87 FR at 10585 (Feb. 24, 2022).

[35] *See* ''Public Charge Ground of Inadmissibility,'' 86 FR 47025 (Aug. 23, 2021).

material through October 22, 2021. DHS reviewed all of the comments and considered them in developing the NPRM.[36]

On February 24, 2022, DHS published a proposed rule, *Public Charge Ground of Inadmissibility*.[37] The public comment period closed on April 25, 2022. Following careful consideration of public comments received in response to the NPRM, DHS has made modifications to the regulatory text proposed in the NPRM, as described above and throughout this preamble.

The following section of this preamble includes a detailed summary and analysis of the public comments received on the NPRM. Comments made in response to the ANPRM and the NPRM may be reviewed at the Federal Docket Management System (FDMS) at *https://www.regulations.gov,* docket number USCIS–2021–0013.

III. Response to Public Comments on the Proposed Rule

A. Summary of Public Comments

DHS received a total of 223 public comment submissions in Docket USCIS–2021–0013 in response to the proposed rule. The majority of comment submissions were from advocacy groups or individual commenters. Other commenters included anonymous commenters; healthcare providers; research institutes, universities, and academic researchers; law firms, individual attorneys, and other legal services providers; Federal, State, and local elected officials; State and local government agencies; religious and community organizations; unions; Federal Government officials; professional associations; and trade and business organizations. While some commenters opposed the rule and some commenters supported the rule in its entirety, the majority of commenters expressed support for the rule with suggestions for improvement, or indicated that they believed the proposed rule was flawed in some way, but a significant improvement over the 2019 Final Rule. A few of the public comments supported a return to the framework contained in the 2019 Final Rule.

B. Comments Expressing General Support for the Proposed Rule

Comment: Many commenters were generally in favor of the proposed rule and expressed support for clarifying the public charge ground of inadmissibility. Some of those commenters stated that the rule ensures that the public charge ground of inadmissibility will be implemented in a clear, consistent, and fair manner. Several commenters praised the rule on the grounds that it requires less paperwork for applicants as compared to the 2019 Final Rule, and allows for administration of the public charge ground of inadmissibility without generating undue fear and confusion. Another commenter similarly stated that the rule is the best option because it respects the rights of the greatest number of stakeholders and produces the best outcome with the least harm. This commenter remarked that this rule would allow more people ''who are fit to immigrate a chance to'' do so, while keeping more families together. One commenter expressed support for the proposed rule, stating it is critical that DHS move quickly to finalize a more fair and equitable public charge rule that minimizes the harm to children and families, while recognizing the need to create an inclusive and anti-racist system. One commenter stated that they support the development of a rule that avoids the unequal treatment of similarly situated persons, and that a rule that is straightforward and administrable can be applied fairly and consistently.

Response: DHS agrees that this rule will help ensure that public charge inadmissibility determinations are fair, consistent with law, and informed by relevant data and evidence. Additionally, DHS agrees that this rule reduces unnecessary burdens on applicants as compared to the 2019 Final Rule. Notwithstanding that the 2019 Final Rule resulted in very few adverse determinations, that rule introduced a new form and form instructions spanning over 45 pages, which was in addition to the more than 60 pages of form and form instructions associated with the Form I–485, Application to Register Permanent Residence or Adjust Status. This rule introduces a more targeted information collection that collects the necessary information under the statute and this rule without imposing an unnecessary paperwork burden on the public.

Comment: Several commenters stated that immigrants fill valuable jobs that U.S. citizens may not generally favor, such as direct care work, which can be very challenging and important but poorly compensated. A commenter remarked that immigrants contribute to the United States through paying their taxes, and others stated that increased immigration would have a positive effect on the current pandemic economy. Two other commenters stated that the rule will allow more noncitizens to immigrate and access public education, which will allow them to obtain better jobs and support themselves and their families.

Response: DHS appreciates commenters' support for this rule and notes that any impacts on the U.S. economy, job creation, or better access to education would be indirect effects of the rule, and the rule, designed to implement congressional directions, would be justified even in the absence of such benefits. The fundamental intent of this rule is to help ensure that public charge inadmissibility determinations will be consistent with law, fair, and informed by relevant data and evidence. DHS also expects that this rule will help alleviate the chilling effects caused by previous public charge policies. Historical evidence, both prior to the 2019 Final Rule and from the period of time during which that rule was in effect, does not suggest that this final rule is likely to meaningfully change the overall volume of immigration to the United States.

Comment: One commenter commended USCIS on the overall direction of the NPRM and said that the proposed rule is a reasonable interpretation of the statutory public charge ground of inadmissibility that is generally consistent with long-time agency policy and an improvement on the 1999 Interim Field Guidance. Another commenter stated that the rule clearly seeks to avoid the barriers to immigration imposed by the 2019 Final Rule while preserving the integrity of the enforcement of the public charge ground of inadmissibility.

Response: DHS agrees that this rule is generally consistent with longstanding agency policy and is a reasonable interpretation of the statutory language in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). DHS believes this rule codifies a policy that is fully consistent with law, that reflects empirical evidence to the extent relevant and available, and that allows flexibility for officers to benefit from the emergence of new evidence as time passes. DHS believes that this rule will create clear and comprehensible adjudicative standards that will lead to fair and consistent adjudications and ensure equitable treatment of similarly situated individuals. DHS also believes that this rule will not unduly impose barriers for noncitizens or unduly interfere with the receipt of supplemental public benefits, especially by those who are not subject to the public charge ground of inadmissibility.

Comment: One commenter indicated agreement with the rule and stated that a person who wants permission to enter

[36] *See* 87 FR at 10597 (Feb. 24, 2022).

[37] ''Public Charge Ground of Inadmissibility,'' 87 FR 10570 (Feb. 24, 2022).

the United States should only be allowed to do so if they demonstrate that they would not become a public charge now or sometime in the future. Further, the commenter stated that anyone entering the country illegally should be sent back to their country if they cannot show that they will not become a public charge.

Response: Consistent with section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), any noncitizen who is an applicant for a visa, admission, or adjustment of status must demonstrate that they are not likely at any time to become a public charge, unless Congress has expressly exempted them from this ground. If DHS determines an applicant for admission or adjustment of status who is subject to this inadmissibility ground is likely at any time to become a public charge, the applicant is inadmissible and will not be admitted to the United States or granted adjustment of status unless they are eligible for and receive a waiver or are offered and post a public charge bond.

In regard to noncitizens who are entering the United States without authorization, to the extent that such noncitizens are applicants for admission, and subject to the public charge ground of inadmissibility, if they are unable to demonstrate that they are not likely at any time to become a public charge, they would not be admitted unless they are eligible for and receive a waiver or are offered and post a public charge bond. Such individuals may also be removable on other grounds.

C. Comments Expressing General Opposition to the Proposed Rule

Comment: Many commenters stated that they opposed the rule because, in their opinion, the statutory public charge ground of inadmissibility and as a consequence the corresponding proposed rule are racist, xenophobic, based on white nationalism, or otherwise discriminatory. Several commenters stated that the United States should be doing more to help immigrants, and offering them aid and assistance. One commenter said that this rule is intended to prevent immigration, while another commenter stated that the proposed rule seeks to punish potential immigrants for the simple act of being born outside of the United States, and enforces a wealth test that counteracts the reason for the founding of this nation and the legacy of the American dream. A different commenter similarly said that the proposed rule went against the values of the United States. Some commenters stated that it is unfair to reject immigrants based on the public charge ground of inadmissibility because it would take away opportunities for them to have a better life.

Response: DHS seeks to be faithful to the relevant statute and hence to congressional directions. For that reason, DHS disagrees with the suggestion that the rule is contrary to the laws and values of the United States, or that the rule implies that immigrants are inherently less worthy than U.S. citizens. DHS does not intend or expect that this rule will have a discriminatory effect based on race, nationality, gender, disability, or any other protected ground. Importantly, the statute does not direct DHS to consider a noncitizen's race, nationality, or gender.[38] Under this rule, DHS will not consider such characteristics when making a public charge inadmissibility determination. DHS cannot rule out the possibility of disproportionate impacts on certain groups (whether as a consequence of the policy contained in this rule, the 1999 Interim Field Guidance, or any other policy), but this rule is neutral on its face and DHS in no way intends that it will have such impacts on any protected group. DHS is committed to applying this rule neutrally and fairly to all noncitizens who are subject to it and has included a provision requiring that USCIS denials on public charge grounds be accompanied by a written explanation that specifically articulates the reasons for the officer's determination.[39]

Additionally, this rule does not apply a ''wealth test.'' Consistent with the governing statute, it looks only at whether an applicant for admission or adjustment of status is likely at any time in the future to become primarily dependent on the government for subsistence after consideration of several factors, none of which alone determine the final outcome. In that analysis, the consideration of assets, resources, and financial status is one factor to be considered in the totality of the noncitizen's circumstances.

In addition, as discussed in the NPRM, DHS has taken care to address the potential collateral effects of this rule on the public, including potential chilling effects, by including a range of important provisions. For instance, this rule includes a clear list of statutory exemptions from the public charge ground of inadmissibility; excludes consideration of a noncitizen's past receipt of public benefits while in a status exempt from the public charge ground of inadmissibility; makes clear that a noncitizen's receipt of public benefits solely on behalf of another person (such as a U.S. citizen child) will not work to the noncitizen's disadvantage; and excludes consideration of most non-cash benefits (for which most noncitizens subject to the public charge ground of inadmissibility are ineligible), except in the limited circumstance of long-term institutionalization at government expense.

DHS has concluded that this rule is generally consistent with longstanding agency policy and is a reasonable interpretation of the statutory language. DHS further intends that this rule will lead to fair and consistent adjudications, will avoid unequal treatment of similarly situated individuals, and will not otherwise unduly impose barriers for noncitizens seeking admission to or adjustment of status in the United States.[40] Congress requires DHS to consider an applicant's age; health; family status; assets, resources, and financial status; and education and skills as part of the public charge inadmissibility determination. In the NPRM, DHS proposed to include an objective, data-informed consideration in the totality of the circumstances analysis and is retaining this consideration in this final rule. Namely, when DHS issues guidance to officers that informs the totality of the circumstances assessment, such guidance will consider how these factors affect the likelihood that a noncitizen will become a public charge at any time, and will be based on an empirical analysis of the best-available data as appropriate. The nature of the public charge inadmissibility determination under this rule—a prospective determination made in the totality of the circumstances ''in the opinion'' of the immigration officer—renders it amenable to sub-regulatory guidance that identifies a range of nonbinding considerations and can be updated to account for advancements in the best-available data. DHS acknowledges that it cannot eliminate the possibility of officer bias, but USCIS adjudicators are trained professionals and as with other immigration determinations, adjudicators will specifically articulate the reasons for a proposed adverse determination and will provide an opportunity to respond.[41]

[38] INA sec. 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

[39] *See* 8 CFR 212.22(c).

[40] *See* Executive Order (E.O.) 14012, ''Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,'' 86 FR 8277 (Feb. 5, 2021).

[41] *See* 8 CFR 212.22(c).

Comment: Several commenters stated that it is immoral for immigration policy to impoverish vulnerable individuals and their family members who are otherwise eligible for cash assistance, physical and mental health care, nutrition, or housing benefits. One commenter remarked that targeting social programs intended to help the general public is a waste of resources, and appears to suggest that the government should instead focus on people who are violating other laws.

Response: This rule is designed to adhere to, and to implement, congressional instructions. It is not designed to impoverish individuals or require individuals to prove their particular utility to the U.S. economy. Consistent with the statutory directive to determine whether a noncitizen is likely at any time to become a public charge, this rule directs DHS to consider the past or current receipt of public cash assistance for income maintenance and long-term institutionalization at government expense. DHS will be doing so in the totality of the noncitizen's circumstances, and will also take into account the amount, duration, and recency of such receipt. Nothing in this rule directs noncitizens to stop receiving any public benefit considered in this rule, and past or current receipt of public benefits is not alone dispositive of whether or not a noncitizen will be determined to be inadmissible on the public charge ground. While the commenter did not explain why they thought this rule targets social programs or in which way, DHS disagrees with the statement that the NPRM or this final rule ''targets'' social programs. Nothing in this rule affects eligibility for any one or more public benefits. Instead, DHS is simply establishing which public benefits it will consider in public charge inadmissibility determinations. The benefits that DHS is considering in this rule are the benefits it believes are more indicative of whether a noncitizen is likely to become primarily dependent on the government for subsistence.

DHS is also seeking to ensure that to the extent consistent with law, the rule will not unduly interfere with the receipt of public benefits, especially by those who are not subject to the public charge ground of inadmissibility. DHS has given consideration to the potential chilling effects of promulgating regulations governing the public charge inadmissibility determination. In considering such effects, DHS has taken into account the former INS's approach to chilling effects in the 1999 Interim Field Guidance and 1999 NPRM, the 2019 Final Rule's discussion of chilling effects, judicial opinions on the role of chilling effects, evidence of chilling effects following the 2019 Final Rule (as well as the minimal number of denials of applications for adjustment of status based on the public charge ground of inadmissibility,[42]) and public comments on chilling effects received in response to the August 2021 ANPRM and the NPRM. To this end, DHS has determined that public charge inadmissibility determinations will be limited to the specified statutory factors; the Affidavit of Support Under Section 213A of the INA where required; and current and/or past receipt of TANF; SSI; State, Tribal, territorial, or local cash benefit programs for income maintenance and long-term institutionalization at government expense.

Comment: A commenter stated that noncitizens who enter the United States on nonimmigrant visas for certain periods of time have already shown that they can provide for themselves and these noncitizens also do not usually have the right to obtain public benefits. That commenter stated that the likelihood those individuals would become a public charge is extremely low because they have no choice but to support themselves or rely on their families. The commenter also stated that immigrants contribute to our society economically and to limit immigration is to limit economic growth, citing a 2019 report by the Center on Budget and Policy Priorities.[43] Another commenter stated that DHS should do more to reduce barriers to obtaining lawful immigration status because doing so also creates positive externalities, including improved efficiency in the labor market, the creation of new business by immigrants, the filling of less desirable labor positions and economic gains from growth, earnings, tax revenues and jobs.

Response: DHS agrees with the commenter who pointed out that many noncitizens, including those present in the United States in nonimmigrant status, are not eligible for certain public benefits. PRWORA, which was passed in 1996, significantly restricted noncitizens' eligibility for many Federal, State, and local public benefits.[44] In the NPRM, DHS included a table listing the major categories of noncitizens eligible for SSI, TANF, or Medicaid who would be subject to a public charge inadmissibility determination were they later to apply for adjustment of status or admission to the United States, unless another statutory exemption applies that is particular to their individual circumstances.[45] DHS presents the table again here, for background purposes only. The table should not be used to determine benefits eligibility.[46]

[42] In the NPRM, DHS acknowledged that notwithstanding ''widespread indirect effects [of the 2019 Final Rule], during the time that the 2019 Final Rule was in place, of the 47,555 applications for adjustment of status to which the rule was applied, DHS issued only 3 denials (which were subsequently reopened and approved) and 2 Notices of Intent to Deny (which were ultimately rescinded, and the applications were approved) based on the totality of the circumstances public charge inadmissibility determination under section 212(a)(4)(A)–(B) of the INA, 8 U.S.C. 1182(a)(4)(A)–(B).'' 87 FR at 10571 (Feb. 24, 2022).

[43] *See* Arloc Sherman et al., ''Immigrants Contribute Greatly to U.S. Economy, Despite Administration's 'Public Charge' Rule Rationale,'' Center on Budget and Policy Priorities (Aug. 15, 2019), *https://www.cbpp.org/research/poverty-and-inequality/immigrants-contribute-greatly-to-us-economy-despite-administrations* (last visited July 7, 2022).

[44] Public Law 104–193, tit. IV, 8 U.S.C. 1601 through 1646.

[45] 87 FR 10570, 10583 (Feb. 24, 2022).

[46] DHS included this table in the NPRM and welcomed proposed clarifications or corrections, but received no substantive comments.

Table 3. Categories of noncitizens eligible for SSI, TANF, or Medicaid for long-term institutionalization whose past or current benefit use may be considered in a public charge inadmissibility determination		
Population	**Eligible for which benefits?**	**Notes**
Noncitizens who were paroled into the United States for more than one year	SSI, TANF, Medicaid for long-term institutionalization	SSI eligibility only in limited circumstances.[1] Medicaid and TANF eligibility subject to 5-year waiting period in most cases.
Noncitizens granted withholding of removal who are allowed to remain in the United States	SSI, TANF, Medicaid for long-term institutionalization	SSI eligibility only in limited circumstances.[1]
Certain citizens of Micronesia, the Marshall Islands, or Palau, who can lawfully reside and work in the United States under the Compacts of Free Association	Medicaid for long-term institutionalization	
Cuban and Haitian Entrants under section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note)	SSI, TANF, Medicaid for long-term institutionalization	SSI eligibility only in limited circumstances.[1] Not subject to the public charge inadmissibility ground if also in an exempt immigration status.[2]
Lawfully present children and pregnant individuals, including those individuals in the required 60-day postpartum period or a 12-month postpartum period (depending on the State's election), in States that have elected to cover this population in Medicaid	Medicaid for long-term institutionalization	Not subject to the public charge inadmissibility ground if also in an exempt immigration status.[2]
Noncitizen members of federally recognized Indian tribes	SSI, Medicaid for long-term institutionalization	Not subject to the public charge inadmissibility ground if also in an exempt immigration status.[2]
Conditional entrants under section 203(a)(7) of the INA as in effect before April 1, 1980	SSI, TANF, Medicaid for long-term institutionalization	SSI eligibility only in limited circumstances.[1]
Returning lawful permanent residents (LPRs) who are seeking admission to	SSI, TANF, Medicaid	LPR eligibility for SSI, TANF, and Medicaid varies depending on factors

the United States as described in section 101(a)(13)(C) of the INA (8 U.S.C. 1101(a)(13)(C)), including those absent from the United States for more than 180 days	for long-term institutionalization	such as whether the State requires LPRs to have 40 qualified work quarters and whether subject to the 5-year waiting period.
Notes [1] *See* Social Security Administration (SSA), Supplemental Security Income for Non-Citizens, Publication No. 05-11051, available at: *https://www.ssa.gov/pubs/EN-05-11051.pdf* (last visited Jul. 27, 2022). [2] *See* 8 CFR 212.23.		

DHS notes that while the commenter focused on nonimmigrants, this rule will apply only to noncitizens applying for admission or adjustment of status. As discussed elsewhere in this preamble, including sections III.D.3.b. and III.F., unlike the 2019 Final Rule, this rule does not apply to nonimmigrants seeking extension of stay or change of status in the United States.

DHS has concluded that this rule will faithfully administer the public charge ground of inadmissibility. As compared to the 1999 Interim Field Guidance, the rule does not necessarily reduce burdens for applicants, but will provide important clarity and predictability as part of DHS's overall efforts to reduce barriers for applicants for admission and adjustment of status. As compared to the 2019 Final Rule, this rule does reduce burdens, including the direct paperwork burden imposed on applicants. Under this rule, DHS will not require a separate information collection form regarding the public charge ground of inadmissibility but will instead incorporate a more manageable set of questions in Form I–485, Application to Register Permanent Residence or Adjust Status, that will collect public charge-related information from applicants who are subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

DHS also notes that while the public charge ground of inadmissibility and this final rule include the consideration of an applicant's education and skills when assessing the likelihood at any time of becoming a public charge, DHS is not engaging in an analysis of the utility of a noncitizen to the U.S. labor market nor assessing the impact of an applicant for admission or adjustment of status on the broader U.S. economy. DHS addresses the economic impacts of this rule later in this preamble.

Comment: One commenter stated that the rule places a disproportionate burden on noncitizens to avoid assistance, where U.S. citizens can use cash assistance and long-term institutionalization, such as a nursing home, without penalty, and also stated that using cash assistance and institutionalization does not automatically disqualify a person from being a productive member of society. Another commenter stated that the rule imposes undue immigration restrictions.

Response: As a matter of law, the public charge ground of inadmissibility applies to noncitizens and not to citizens. It is therefore not inconsistent with law that a rule implementing the public charge ground of inadmissibility would affect noncitizens most directly. In developing this rule, DHS has taken into account the chilling effects historically associated with the public charge ground of inadmissibility [47] and has created a rule that remains faithful to the statutory text and the underlying Congressional purpose, while remaining cognizant of the provisions of PRWORA restricting the use of certain public benefits by certain groups of noncitizens. In this final rule, DHS specifically indicates that public charge inadmissibility determinations must be based on the totality of the individual's circumstances and no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining an applicant is likely at any time to become a public charge.[48]

Comment: One commenter stated that this rule will effectively criminalize poverty and correspond to an increased number of noncitizens who reside in the United States without lawful status because those more likely to become public charges in the future are not likely to be able to afford the cost of departing the United States.

Response: DHS disagrees that this rule will effectively criminalize poverty. The public charge ground of inadmissibility is not a criminal statute, and only applies to individuals when they apply for visas, admission, or adjustment of status. DHS is under an obligation to faithfully administer section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), regardless of whether DHS issues implementing regulations.[49] This rule is intended to apply the public charge ground of inadmissibility in a manner that is consistent with the law, is clear, fair, and comprehensible, and takes into account the chilling effects resulting from previous policies on both noncitizens and U.S. citizens. DHS notes that this rule does not create a new ground of inadmissibility to which noncitizens are subject.

It is unclear why the above commenter believes that a rule implementing the public charge ground of inadmissibility would increase the number of noncitizens who reside in the United States unlawfully. The comment implies a connection between the rule discouraging public benefit use by noncitizens and those noncitizens being unable to afford the travel costs to depart the United States. DHS notes that the great majority of noncitizens are either ineligible for the public benefits covered by this rule prior to admission or adjustment of status or are eligible for those benefits but are exempt from a public charge inadmissibility determination under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). Given this, DHS believes it is unlikely that noncitizens would remain in the United States unlawfully as a result of the rule

[47] *See, e.g.,* 87 FR at 10587–10592 (Feb. 24, 2022).

[48] *See* 8 CFR 212.22(b).

[49] In fact, the vast majority of the grounds of inadmissibility at section 212 of the INA, 8 U.S.C. 1182, have not been implemented by regulation at all, but are administered and enforced by DHS based on the statute.

rendering them unable to afford travel costs as the commenter suggests.

Comment: Some commenters stated that the rule is ''ineffective'' and will encourage the use of public benefits by noncitizens while rendering the public charge ground of inadmissibility ''useless.'' Commenters wrote that, if finalized, the rule will be an incentive for more immigration to the United States by noncitizens who will rely on public benefits without fear of repercussions as they build their lives in the United States and eventually seek to obtain lawful status. They further stated that any changes to the proposed rule that create the appearance of facilitating access to public benefits will only attract more immigration during a time when many noncitizens are entering unlawfully at the southern border.

Another commenter stated that immigrant families may include many family members, which can lead to higher taxes at the State and local level to support education if the children are non-English speaking. Commenters stated that the rule is more concerned with chilling effects but should be concerned with the national value of self-sufficiency established by Congress in more than a century of statutes, a concern also addressed elsewhere in this preamble.

Response: DHS disagrees that the rule is ineffective or will encourage the use of public benefits by noncitizens who are subject to the public charge ground of inadmissibility.

The rule establishes appropriate definitions and regulatory standards, and is accompanied by form changes that will allow DHS to collect information from applicants to make determinations under the public charge ground of inadmissibility. Under this rule, DHS will determine whether any noncitizen who Congress has decided is subject to the public charge ground of inadmissibility is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. In making this determination, DHS considers the statutory factors, an Affidavit of Support Under Section 213A of the INA if required, and the applicant's current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense, in the totality of the circumstances.[50] It is apparent from DHS's approach in this rule, which considers public benefits receipt both as part of the definition for likely at any time to become a public charge as well as when making the public charge inadmissibility determination in the totality of the circumstances, that commenters' concern that this rule will render the public charge ground of inadmissibility ''ineffective'' or ''useless'' is unfounded.

DHS notes that the commenters' preferred approach—the 2019 Final Rule or something similar—ultimately did not result in a single denial of adjustment of status on public charge grounds, although that rule apparently resulted in widespread disenrollment effects among those who were not covered by that rule to begin with.[51] To the extent that commenters suggest that the effectiveness of this rule should be measured by disenrollment effects among those who are not subject to the public charge ground of inadmissibility, or that DHS must pursue public charge rulemaking for the sake of, or without regard to, disenrollment effects among that population, DHS respectfully disagrees. Reducing costs by causing confusion among those who are not covered by the rule, leading them to forgo benefits for which they are eligible, would not be a desirable effect even if the rule were found to have that effect.

As discussed in the NPRM,[52] noncitizens who are subject to the public charge ground of inadmissibility are generally not eligible for public benefits. PRWORA significantly restricted noncitizens' eligibility for many Federal, State, and local public benefits.[53] PRWORA defines the term ''Federal public benefit'' [54] and provides that an ''alien'' who is not a ''qualified alien'' is ineligible for such benefits,[55] subject to certain exceptions.[56] Among the exceptions established by Congress are eligibility among all noncitizens for medical assistance for the treatment of an emergency medical condition; short-term, in-kind, non-cash emergency disaster relief; and public health assistance related to immunizations and treatment of the symptoms of a communicable disease.[57] The exceptions were further clarified by the Department of Justice (DOJ) and some of the agencies that administer these public benefits. On January 16, 2001, DOJ published a notice of final order, ''Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,'' [58] which indicated that PRWORA does not preclude noncitizens from receiving certain other widely available programs, services, or assistance as well as certain benefits and services for the protection of life and safety.

Under this rule, DHS will determine if a noncitizen is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. This rule does not change eligibility for public benefits. Rather, officers will consider a noncitizen's past or current receipt of public cash assistance for income maintenance or long-term institutionalization at government expense when making public charge inadmissibility determinations.

DHS also disagrees that the rule is likely to meaningfully change the overall volume of immigration, including unlawful migration. This rule certainly does not create any greater incentive for unlawful migration than PRWORA (which noted congressional concern with such incentives, and also created benefits eligibility rules for noncitizens to address them, at least in part) or the various subsequent statutory exceptions to PRWORA's general framework. The commenters provided no objective evidence that any of the above policies resulted in a significant increase in immigration, let alone objective evidence that this rule will have that effect. Even if this rule had a minor effect on immigration, due to the misperception that it alters the impact of the receipt of benefits by noncitizens residing in the United States unlawfully, DHS would still issue it because the rule is generally consistent with longstanding agency policy and is

[50] *See* 8 CFR 212.22(a).

[51] *See, e.g.,* 87 FR at 10589 (Feb. 24, 2022).

[52] *See* 87 FR at 10580 (Feb. 24, 2022).

[53] Public Law 104–193, tit. IV, 8 U.S.C. 1601 through 1646.

[54] Public Law 104–193, sec. 401(c), 8 U.S.C. 1611(c).

[55] Public Law 104–193, sec. 401(a), 8 U.S.C. 1611(a).

[56] Public Law 104–193, sec. 401(b), 8 U.S.C. 1611(b).

[57] *See* Public Law 104–193, sec. 401(b)(1), 8 U.S.C. 1611(b)(1). *See* ''Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,'' 66 FR 3613 (Jan. 16, 2001); *see also* ''Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' 62 FR 61344 (Nov. 17, 1997).

[58] *See* ''Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,'' 66 FR 3613 (Jan. 16, 2001); *see also* ''Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,'' 61 FR 45985 (Aug. 30, 1996).

a faithful interpretation of the statutory phrase ''likely at any time to become a public charge''; avoids unnecessary burdens on applicants, officers, and benefits-granting agencies; and mitigates the possibility of widespread ''chilling effects'' with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially with respect to individuals who are not subject to the public charge ground of inadmissibility. As previously noted, this rule has no effect on the limited eligibility of noncitizens for public benefits under PRWORA or any other statute, and for this reason does not have an impact on the availability of public benefits to noncitizens in the United States. Nor should it create an incentive for immigration to the United States.

DHS acknowledges that some non-cash benefits programs involve significant expenditures of government funds, but has concluded that the term ''public charge'' is best interpreted by reference to the degree of an individual's dependence on the government for support, rather than the scale of overall government expenditures for particular programs. DHS further discusses the impact of this rule on States' social welfare budgets later in this preamble.

Finally, DHS notes that the commenter provided no data or sources for their statement that immigrants have larger families, which can lead to higher State and local taxes based on education costs. Under this rule, DHS will consider family status and household size as consistent with the standards in the proposed rule to determine whether an individual is likely at any time to become a public charge; it will not rely on generalizations about the relative size of immigrant households when considering family status.

D. Comments Regarding Legal Authority and Statutory Provisions

1. Statutory Text, Congressional Intent, and the Proposed Rule

Comment: Some commenters said that DHS should be focused on self-sufficiency, with some stating that the rule contradicts Congress' intent, as set forth in 8 U.S.C. 1601,[59] that noncitizens be self-sufficient, and not rely on public resources to meet their needs, but instead rely on their own skills and the resources of their families, their sponsors, and private organizations. These commenters further stated that the rule is inconsistent with 8 U.S.C. 1601 because it incentivizes immigration through the availability of public benefits rather than addressing ''the government's interest in ensuring noncitizens are self-reliant in accordance with national immigration policy.'' Another commenter stated that current eligibility rules for public assistance and unenforceable financial support agreements have not lived up to the intent of the laws to prevent individual noncitizens burdening the public benefits system. A commenter also stated that the role of the Executive Branch is to enforce the laws written by Congress, and suggested that this rule is not enforcing section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and is suspending and dispensing with the ground. A commenter stated that the rule's interpretation of public charge violates the statute's text, intent, and legislative history. A commenter stated that the proposed rule ''fails to address the compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that noncitizens be self-reliant in accordance with national immigration policy.'' The commenter also requested DHS remove the ''incentives'' of the proposed rule and instead provide enforceable consequences to prevent further abuse of already strained public resources.

Response: USCIS agrees that self-sufficiency is a principle discussed in 8 U.S.C. 1601,[60] and that subsection (2) of this provision states that ''it continues to be the immigration policy of the United States that aliens within the Nation's borders not depend on public resources to meet their needs.'' [61] DHS disagrees that this rule contradicts Congress' intent with respect to those principles. The principles of self-sufficiency articulated in 8 U.S.C. 1601(2) are reflected in a range of statutory measures including, most directly, those measures specifically referenced in 8 U.S.C. 1601 itself. In that section, immediately after articulating the above policy, Congress—

- expressed concern that ''[d]espite the principle of self-sufficiency, aliens have been *applying for and receiving* public benefits from Federal, State, and local governments at increasing rates''; [62]
- concluded that ''[c]urrent *eligibility rules for public assistance and unenforceable financial support agreements* have proved wholly incapable of assuring that individual aliens not burden the public benefits system''; [63]
- identified ''a compelling government interest *to enact new rules for eligibility and sponsorship agreements* in order to assure that aliens be self-reliant in accordance with national immigration policy,'' and ''to remove the incentive for illegal immigration *provided by the availability of* public benefits''; [64] and
- stated that ''[w]ith respect to the State authority to make determinations concerning *the eligibility of qualified aliens for public benefits* in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.'' [65]

In short, Congress tied the statement of national policy most closely to two types of actions that have already been taken by Congress itself: further restrictions on noncitizen eligibility for public benefits and enhanced enforceability of the Affidavit of Support Under Section 213A of the INA. Neither of those actions is changed at all by this rule, nor does this rule interfere in any respect with a State's ability to follow the Federal classification in determining the eligibility of noncitizens for public assistance.

DHS acknowledges a relationship between the statement of national policy and the public charge ground of inadmissibility. The two statutes relate to a similar subject matter; Congress has tied the Affidavit of Support Under Section 213A of the INA to the public charge ground of inadmissibility; and Congress enacted the statement of national policy close in time with revisions to the public charge ground of inadmissibility. But Congress left it to DHS (and other agencies administering the public charge ground of inadmissibility) to specify how best to account for this statement of national policy in the context of a public charge inadmissibility determination generally. DHS notes that while the policy goals articulated in 8 U.S.C. 1601(2) with respect to self-sufficiency and the receipt of public benefits inform DHS's administrative implementation of the public charge ground of inadmissibility, DHS believes it is permitted to consider other important goals in implementing this ground of inadmissibility, such as

[59] Public Law 104–193, sec. 400, 8 U.S.C. 1601.

[60] 8 U.S.C. 1601(1).

[61] 8 U.S.C. 1601(2)(A).

[62] 8 U.S.C. 1601(3) (emphasis added).

[63] 8 U.S.C. 1601(4) (emphasis added).

[64] 8 U.S.C. 1601(5)-(6) (emphases added).

[65] 8 U.S.C. 1601(7) (emphasis added).

clarity, fairness, national resilience, and administrability. Moreover, DHS believes that this rule is consistent with the goals set forth in 8 U.S.C. 1601.[66] Indeed, the rule's consideration of receipt of public cash assistance for income maintenance or long-term institutionalization at government expense helps ensure that DHS focuses its public charge inadmissibility determinations on applicants who are likely to become primarily dependent on the government for subsistence. As with all grounds of inadmissibility, DHS is bound to administer and enforce the public charge ground of inadmissibility, but DHS is not bound to issue regulations with respect to each and every ground. In fact, such regulations are exceedingly rare. To whatever extent 8 U.S.C. 1601(2) calls for a more systematic implementation of the public charge ground of inadmissibility, DHS has accomplished that goal through this rulemaking.

DHS also disagrees that, in publishing this rule, it is declining to enforce section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and is suspending and dispensing with the ground of inadmissibility. Contrary to this commenter's assertion, and as noted in the NPRM,[67] this rule reflects DHS's faithful administration of the public charge ground of inadmissibility without making it needlessly difficult for individuals to apply for adjustment of status or obtain supplemental services for which they are eligible. This rule is wholly consistent with section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and 8 U.S.C. 1601, as well as longstanding case law (as discussed at length below), mirrors the approach the Executive Branch used in enforcing the provision for two decades, and provides a rule that is clear and fair to administer.

In addition, while commenters state that DHS has failed to adequately account for government interests and the costs of noncitizens receiving public benefits, commenters critical of the proposed policy have not provided data that illustrate how and to what extent noncitizens subject to the public charge ground of inadmissibility are drawing on limited government resources that fund the public benefit programs DHS is excluding from consideration in public charge inadmissibility determinations. Furthermore, as DHS explained in the NPRM, even during the period when the 2019 Final Rule was in effect, when DHS took into consideration a broader list of public benefits, that approach ultimately did not result in any denials of applications for adjustment of status based on the public charge ground of inadmissibility.

With respect to public comments that stated that current sponsorship agreements are ''unenforceable'' and that DHS has failed to propose or enact new rules for eligibility and sponsorship agreements to assure that noncitizens be self-reliant in accordance with national immigration policy, such comments are largely outside the scope of the proposed rule, which (like the 2019 Final Rule) did not include any changes on those topics. In addition, DHS notes that an Affidavit of Support Under Section 213A of the INA is enforceable by statute.[68] Although DHS may issue regulations governing the Affidavit of Support process, Congress has not tasked DHS with the enforcement of the Affidavit of Support Under Section 213A of the INA; such enforcement may be sought by the sponsored immigrant or by ''the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State.'' [69]

The commenters who opposed the proposed rule on this basis also did not provide data showing how many sponsored immigrants [70] actually receive public benefits, and how often benefits-granting agencies have enforced sponsorship obligations.[71]

While DHS agrees that it did not propose in the NPRM to enact new rules related to the Affidavit of Support Under Section 213A of the INA, and notwithstanding that, changes to the Affidavit of Support regulations at 8 CFR part 213a would be outside the scope of this rulemaking, DHS observes that such changes would not be necessary to ensure that applicants for admission or adjustment of status will not become primarily dependent on the government for subsistence. This is because determining whether an applicant is likely at any time to become a public charge based on a review of the statutory minimum factors is separate and distinct from both determining the sufficiency of an Affidavit of Support Under section 213A of the INA and enforcing the sponsorship obligation and related reimbursement requirements that attach once the intending immigrant is admitted as a lawful permanent resident (although, as noted throughout this rule, there is a relationship between the two statutes, and the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, renders a noncitizen inadmissible under the public charge ground of inadmissibility).

Furthermore, the obligations and requirements related to the affidavit do not go into effect until after the public charge inadmissibility determination has already been made and the intending immigrant has been admitted as an immigrant or granted adjustment of status. Even if changes to such regulations had been contemplated in the proposed rule, DHS would decline to include any provisions regarding enforcement of the support obligation as part of the public charge inadmissibility determination, in part because they would be unduly cumbersome to incorporate into the predictive public charge inadmissibility determination.

Comment: One commenter expressed support for the rule, noting that diminishing chilling effects among groups of immigrants who are eligible for public benefits and not subject to the public charge ground of inadmissibility serves both the public welfare and Congressional intent, as stated in 7 U.S.C. 2011 and the United States Housing Act of 1937. The commenter cited 7 U.S.C. 2011, quoting the statute stating that ''[i]t is declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households.'' The commenter also cited and quoted the United States Housing Act of 1937 stating that assistance under the Housing Act advances ''the national policy of the United States to promote the general welfare'' to help States and localities ''remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety,

[66] 87 FR at 10611 (Feb. 24, 2022).

[67] 87 FR at 10611 (Feb. 24, 2022).

[68] INA sec. 213A, 8 U.S.C. 1183a.

[69] INA sec. 213A(a)(1)(B), (b)(1)(A); 8 U.S.C. 1183a(a)(1)(B), (b)(1)(A).

[70] *See* 8 CFR 213a.1 (''Sponsored immigrant means any alien who was an intending immigrant, once that person has been lawfully admitted for permanent residence, so that the affidavit of support filed for that person under this part has entered into force.'').

[71] DHS notes that in a proposed rule, ''Affidavit of Support on Behalf of Immigrants,'' 85 FR 62432 (Oct. 2, 2020), which was withdrawn on March 22, 2021, *see* ''Affidavit of Support on Behalf of Immigrants,'' 86 FR 15140 (Mar. 22, 2021), DHS acknowledged that it did ''not have data on reimbursement efforts or successful recoveries by benefits granting agencies. USCIS receives limited information from benefit granting agencies or other parties enforcing the Affidavit [Of Support Under Section 213A of the INA or Contract [Between Sponsor and Household Member], despite the information sharing provisions in the statute and regulations and thus is unable to determine whether the proposed rule's benefits are likely to exceed its costs.'' *See* ''85 FR at 62453 (Oct. 2, 2020).

and morals of the citizens of the Nation.'' [72]

Response: In promulgating this final rule, DHS is implementing the public charge ground of inadmissibility in a way that is consistent with the statutory text of and Congressional intent underlying section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), while also ensuring that the implementing regulations are clear, fair, and understandable for the public and officers. As discussed in the NPRM, when deciding which public benefits to consider when looking at past or current receipt of public benefits for the purpose of making public charge inadmissibility determinations, DHS determined that it should not consider special purpose and supplemental programs such as SNAP and affordable housing programs. DHS agrees with the commenter that programs such as SNAP and housing assistance contribute to the well-being of both low-income individuals and communities at large and assist individuals in ultimately depending on themselves and their families and sponsors rather than the government for subsistence. While DHS notes that very few categories of noncitizens who are subject to the public charge ground of inadmissibility are eligible for SNAP and housing benefits, DHS notes that the exclusion of SNAP and housing benefits from public charge inadmissibility determinations may also reduce the chilling effects among individuals who are not subject to the public charge ground of inadmissibility but who were deterred from enrolling or continuing to receive those benefits due to confusion about the 2019 Final Rule.

Comment: Several commenters stated that the rule ignores Congressional intent dating back to the late nineteenth century, relies on interim guidance that was never meant to be the equivalent of a final rule, and seeks to narrowly define critical concepts including ''public charge'' and the types of public benefits used in a public charge inadmissibility determination.

Response: First, DHS disagrees with the commenters who argued that the NPRM's definition of ''public charge'' conflicts with longstanding Congressional intent. Further discussion of how the NPRM's and this rule's standard aligns with long-standing congressional intent is discussed below in this same section in response to other comments.

In addition, DHS disagrees with how these commenters characterized the government's longstanding policy with respect to the public charge ground of inadmissibility. While DHS acknowledges that the 1999 Interim Field Guidance was interim guidance and not a final rule, the Government has interpreted the public charge ground of inadmissibility consistent with that guidance for over 20 years, with the exception of the short period of time during which the 2019 Final Rule was in effect. Accordingly, it is reasonable that DHS reviewed and considered the guidance's provisions when developing the NPRM and this rule. At the same time, DHS disagrees with any insinuation by commenters that DHS did not independently consider the merits of the guidance when developing this rule. Although this rule ultimately adopts portions of the guidance as regulations, DHS did not simply adopt the guidance wholesale without further analysis, and, in fact, there are a number of differences between the guidance and this rule.[73] Ultimately, as explained in the NPRM, DHS believes that the approach taken by the 1999 Interim Field Guidance, as further refined in the NPRM and this final rule, reflects a reasonable interpretation of the public charge ground of inadmissibility and is consistent with the statutory text and with Congressional intent, and longstanding caselaw.

DHS has determined that not all public benefits should be considered in public charge inadmissibility determinations because, among other things, not all benefits are equally indicative of primary dependence on the government for subsistence. For one thing, as discussed in more detail later in the preamble, many modern public benefit programs take the form of payments or in-kind benefits to help individuals meet particular needs and are not limited to individuals without a separate primary means of support. For another, as both the 1999 Interim Field Guidance and the NPRM explained, under PRWORA, most noncitizens are not eligible for most types of public benefits. Moreover, most categories of noncitizens eligible for public benefits under PRWORA are also statutorily exempt from the public charge ground of inadmissibility.[74] In addition, and as discussed in more detail elsewhere in this rule, some public benefits like public housing and SNAP assist individuals and families to remain employed and support themselves and their families but are on their own insufficient to meet all or even a substantial portion of their needs. This point is illustrated in the case of SNAP; as USDA informed DHS in its on-the-record letter, SNAP is supplemental in nature; SNAP benefits are relatively modest; and most SNAP supports work.[75] In short, the benefits excluded from consideration under this rule are less probative of primary dependence than the benefits that are considered; their consideration would add scant value for officers while—as detailed elsewhere—deterring noncitizens and their families (including U.S. citizens and those not subject to the public charge ground of inadmissibility) from seeking benefits for which they are eligible. Nothing in the statute dictates that receipt of such supplemental or special-purpose benefits must be considered for public charge inadmissibility determinations.

Comment: One commenter stated concern that the proposed rule mentioned that ''Congress has sought to exclude noncitizens who pose a threat to the safety or general welfare of the country,'' and expressed concern that such exclusion may be based on a range of acts, conditions, or conduct that would cause a noncitizen to be excluded during a public charge inadmissibility determination.

Response: This comment quotes the NPRM, which in turn quotes *Fiallo* v. *Bell,*[76] for the encapsulation of the government's general authority over inadmissibility and exclusion of noncitizens from the United States. While this statement is contained in the NPRM, it was not intended to suggest that public charge inadmissibility determinations would be based on an unspecified range of acts, conditions, and conduct. Rather the NPRM, and the regulatory text in particular, included relevant definitions and factors that would be considered were the proposal

[72] Public Law 75–412, sec. 1, 50 Stat. 888, 888 (Sept. 1, 1937).

[73] *See, e.g.,* 8 CFR 212.22(a)(4) (providing specific guidance that was not in the 1999 guidance regarding the treatment of disabilities in the context of public charge adjudications); 8 CFR 212.21 (providing definitions for key terms, including ''receipt (of public benefits)''and ''household.'').

[74] *See, e.g., Cook County* v. *Wolf,* 962 F.3d 208, 236–37 (7th Cir. 2020) (Barrett, J., dissenting) (''The upshot is that the [2019 Final Rule] will rarely apply to a noncitizen who has received benefits in the past . . . . Notwithstanding all of this, many lawful permanent residents, refugees, asylees, and even naturalized citizens have disenrolled from government-benefit programs since the public charge rule was announced. Given the complexity of immigration law, it is unsurprising that many are fearful about how the rule might apply to them. Still, the pattern of disenrollment does not reflect the rule's actual scope.'').

[75] *See* Letter from USDA Deputy Under Secretary on Public Charge (Feb. 15, 2022), *https://www.regulations.gov/document/USCIS-2021-0013-0199* (last visited July 12, 2022).

[76] 430 U.S. 787, 787 (1977) (''The Supreme Court has 'long recognized [that] the power to expel or exclude aliens [i]s a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.' '').

contained therein to be finalized in a final rule. Such definitions and factors are also in this final rule. USCIS intends to issue additional guidance for officers and the public to further clarify how these definitions and factors should be applied in individual public charge inadmissibility determinations.

Comment: One commenter stated that the rule's definition of ''likely at any time to become a public charge'' is in line with Congressional intent and that the public charge test was never designed to prevent immigration of low- and moderate-income families who may at some point need access to public programs to overcome temporary setbacks. In addition, twenty-six members of Congress submitted a joint comment from the House Judiciary Committee indicating that the rule is consistent with the intent of Congress to apply the public charge ground of inadmissibility to those who are primarily dependent on the government for subsistence, and urged DHS to finalize the rule as it will provide certainty to applicants and petitioners navigating our immigration system. Another commenter stated that DHS should reject any assertion that the definitions of ''public charge'' in the 1933 and 1951 editions of Black's Law Dictionary, and a 1929 immigration treatise, Arthur Cook et al., Immigration Laws of the United States § 285 (1929)), show that receipt of ''any'' amount of public benefits historically rendered the recipient a public charge. The commenter stated that all three of these sources mistakenly rely on a single case, *Ex Parte Kichmiriantz* (involving a noncitizen who had been institutionalized and was ''unable to care for himself in any way.'').[77] The commenter stated that contrary to what the three sources indicate, *Kichmiriantz* reflects the consistent historical focus of the term on those unable to care for themselves and without other support.

Response: DHS generally agrees with these commenters. As an initial matter, DHS acknowledges that Congress has never, in enacting or reenacting the public charge ground of inadmissibility, defined ''public charge,'' ''likely to become a public charge,'' or ''likely at any time to become a public charge.'' In the 1996 amendments, Congress specified which factors, at a minimum, the relevant government agencies must consider when making public charge inadmissibility determinations; Congress did not provide a specific definition of the term ''public charge'' or the phrase ''likely at any time to become a public charge.'' In addition, Congress has long made clear that DHS has broad discretion to administer and interpret the statute. The statute itself uses the words ''in the opinion of,'' which emphasizes the discretionary nature of the determination.[78] The INA also authorizes the Secretary of Homeland Security to promulgate rules to guide public charge inadmissibility determinations.[79]

In the 2018 proposed rule, DHS indicated that its understanding of the term ''public charge'' is consistent with various dictionary definitions of that term.[80] DHS stated that the [then] current edition of the Merriam-Webster Dictionary defines public charge simply as ''one that is supported at public expense.'' [81] DHS further relied on Black's Law Dictionary (6th ed.) that further defines public charge as ''an indigent; a person whom it is necessary to support at public expense by reason of poverty alone or illness and poverty.'' [82] In addition, DHS indicated that the term ''charge'' is defined in Merriam-Webster Dictionary as ''a person or thing committed into the care of another'' [83] and Black's Law Dictionary defines charge as ''a person or thing entrusted to another's care,'' *e.g.,* ''a charge of the estate.'' [84] DHS concluded that the definitions generally suggest that an impoverished or ill individual who receives public benefits for a substantial component of their support and care can be reasonably viewed as being a public charge. DHS also concluded that the then-proposed definition of public charge was also consistent with the concept of an indigent, which is defined as ''one who is needy and poor . . . and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want.'' [85] In the 2019 Final Rule, DHS rejected commenters' assertions that its reliance on dictionary definitions referenced in the proposed rule was flawed because DHS failed to consider the definition of the term ''support,'' which Merriam-Webster defined as ''pay[ing] the cost of'' or ''provid[ing] a basis for the existence or subsistence of.'' [86] DHS indicated that the dictionary definitions did not specify the degree of assistance, noting that the Merriam-Webster's dictionary also defines ''support'' as ''assist, help.'' [87]

DHS continues to conclude that dictionary definitions of the relevant terms do not dictate a specific meaning of the term ''public charge'' nor clearly prescribe the level of dependence on the government necessary to render a person a public charge. Although many dictionary definitions suggest primary or total dependence on the government for subsistence, others may be read to suggest a lesser level of dependence.[88]

The legislative history at the time of the first introduction of a public charge ground of inadmissibility also does not establish a specific definition of the term ''public charge.'' Congress first included a public charge ground of inadmissibility in the Immigration Act of 1882, which prohibited the entry, inter alia, of ''any person unable to take care of himself or herself without becoming a public charge.'' [89] Debate in

[77] 283 F. 697 (N.D. Cal. 1922).

[78] INA sec. 212(a)(4)(A), 8 U.S.C. 1182(a)(4)(A).

[79] INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3).

[80] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (''DHS believes that a person should be considered a public charge based on the receipt of financial support from the general public through government funding (*i.e.,* public benefits). This is consistent with various dictionary definitions of public charge and 'charge' also support a definition that involves the receipt of public benefits.'').

[81] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (citing Merriam-Webster Online Dictionary, Definition of Public Charge, *https://www.merriamwebster.com/dictionary/public%20charge*).

[82] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (citing Black's Law Dictionary 233 (6th ed. 1990), *http://www.republicsg.info/dictionaries/1990_black's-law-dictionary-edition6.pdf*).

[83] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (citing Merriam-Webster Online Dictionary, Definition of Charge, *https://www.merriamwebster.com/dictionary/charge*).

[84] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (citing Black's Law Dictionary, Charge (10th ed. 2014)).

[85] ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51158 (Oct. 10, 2018) (citing Black's Law Dictionary 773 (6th ed. 1990), *http://www.republicsg.info/dictionaries/1990_black's-law-dictionary-edition6.pdf*).

[86] ''Inadmissibility and Deportability on Public Charge Grounds,'' 84 FR 41292, 41354 (Aug. 14, 2019) (citing Webster's Dictionary 1828 Online Edition, definition of ''charge,'' *http://websters dictionary1828.com/Dictionary/charge*).

[87] ''Inadmissibility and Deportability on Public Charge Grounds,'' 84 FR 41292, 41354 (Aug. 14, 2019) (citing Merriam-Webster Online Dictionary, Definition of Support, *https://www.merriamwebster.com/dictionary/support*).

[88] *See also, e.g., Cook County* v. *Wolf,* 962 F.3d 208, 223 (7th Cir. 2020) (''Enter the dueling dictionaries. In Cook County's corner, we have the Century Dictionary, defining a 'charge' as a person who is '*committed* to another's custody, care, concern or management,' Century Dictionary 929 (William Dwight Whitney, ed., 1889) (emphasis added); and Webster's Dictionary, likewise defining a 'charge' as a 'person or thing committed to the care or management of another,' Webster's Condensed Dictionary of the English Language 84 (Dorsey Gardner, ed., 1884). These suggest primary, long-term dependence. In DHS's corner, we have dictionaries defining a 'charge' as 'an obligation or liability,' as in a 'pauper being chargeable to the parish or town,' Dictionary of Am. and English Law 196 (Stewart Rapalje & Robert Lawrence, eds., 1888); and as a 'burden, incumbrance, or lien,' Glossary of the Common Law 56 (Frederic Jesup Stimson, ed., 1881). These definitions can be read to indicate that a lesser reliance on public benefits is enough. Finding no clarity here, we move on.'').

[89] 22 Stat. 214.

the House of Representatives at the time of enactment indicates that Congress was concerned about preventing the future immigration to the United States of people who would depend on or would be ''committed to'' the country's ''poor-houses and alms-houses.'' [90] The record—which relates to a broader list of grounds of inadmissibility, of which public charge was only one—contains references to people committed to poor-houses and almshouses, paupers, and people who had no earnings in recent years and were wholly destitute, all of whom would likely be covered by the definition adopted in this final rule.

Over the years, judicial decisions interpreting the public charge ground generally did not focus exclusively on whether noncitizens seeking admission or adjustment of status had low earnings or were impoverished at the time of the inadmissibility determination. Rather, officers focused on whether, notwithstanding the current condition of poverty, noncitizens could prospectively support themselves. For example, in *In re Feinknopf,* a federal district court suggested that evidence regarding an individual's age, profession, presence of family members, assets, and future employability are relevant to determining whether an immigrant is likely to become a public charge.[91]

In *Gegiow* v. *Uhl,* the Supreme Court concluded that a noncitizen could not ''be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is overstocked.'' [92] The court found that ''[t]he persons enumerated, in short, are to be excluded on the ground of permanent personal objections accompanying them irrespective of local conditions.'' [93] In the 2019 Final Rule, DHS concluded that *Gegiow* did not conclusively establish the contours of the public charge ground of inadmissibility.[94] DHS continues to hold that view, but believes that the Supreme Court's statements there about the public charge ground are nevertheless supportive of the interpretation adopted in this final rule.

In 1917, Congress amended the public charge provision by moving it to the end of a list of factors rendering an ''alien'' inadmissible.[95] The revised statute rendered inadmissible, among others, ''persons . . . who are . . . mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or . . . persons likely to become a public charge.'' [96] Legislative history suggests that Congress may have done so ''in order to indicate the intention . . . that aliens shall be excluded upon [the public charge] ground for economic as well as other reasons'' and did so, specifically, ''to overcom[e] the decision of the Supreme Court in [*Gegiow*].'' [97] Even assuming that Congress moved the placement of the public charge provision to respond to *Gegiow,* it still did not define ''public charge'' or ''likely to become a public charge,'' leaving the application of the provision in the hands of immigration officials and the executive branch.

DHS continues to believe that the 1917 amendments clarified that Congress intended the Executive Branch to consider something more than ''permanent personal objections,'' and in particular to consider certain economic factors, when making public charge inadmissibility determinations, and does not consider this decision as limiting its discretion to find individuals inadmissible even if there is evidence that dependence on the government is not complete or permanent. DHS has not designated local labor market conditions as a regulatory factor to determine whether a noncitizen is likely at any time to become a public charge. DHS is considering a noncitizen's education and skills, as evidenced by their degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates. DHS may also consider other information in the record in the totality of the circumstances, such as a noncitizen's work history, if applicable. While there may be evidence that factors into a factual conclusion that a particular noncitizen is likely to be wholly and/or permanently dependent on the government for subsistence (whether based on ''immutable'' characteristics or not), DHS's inquiry under this rule is broader; under the rule, DHS may determine that a person is inadmissible on public charge grounds even when the record suggests a level of dependence that is less than complete or permanent.

In *Wallis* v. *United States ex rel. Mannara,* the Second Circuit defined a person likely to become a public charge as ''one whom it may be necessary to support at public expense by reason of poverty, insanity and poverty, disease and poverty, idiocy and poverty.'' [98] In that case, the immigrant family's primary income earner was ''certified for senility'' and thus would not be ''capable of continued self-support.'' [99] The court noted that the family had ''insufficient [means] to provide for their necessary wants [for] any reasonable length of time'' and no private sources of support.[100] Similarly, in *Howe* v. *United States ex rel. Savitsky,* immigration officers sought to exclude a noncitizen under the public charge ground because the noncitizen engaged in a dishonest practice (writing a bad check, and being accused of selling another person's equipment and keeping the proceeds). The Ninth Circuit indicated that it was ''convinced that Congress meant the act to exclude persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future. If the words covered jails, hospitals, and insane asylums, several of the other categories of exclusion would seem to be unnecessary.'' [101] And in *Ex parte Hosaye Sakaguchi,* the Ninth Circuit held that an immigrant woman with the skills to support herself was not likely to become a public charge.[102] It ruled that the government had to present evidence of ''mental or physical disability or any fact tending to show that the burden of supporting the [immigrant] is likely to be cast upon the public.'' [103] The court in that case did not explain how much of a burden on the government would make a person a public charge. In the 2019 Final Rule, DHS indicated that it was aware of the *Howe* and *Sakaguchi* decisions but that it did not believe that these cases are inconsistent with the public charge definition set forth in the 2019 Final Rule or with the suggested link between public charge and the receipt of public

[90] 13 Cong. Rec. 5109 (1882).

[91] 47 F. 447, 447, 451 (E.D.N.Y. 1891). The court held that ''there must be a determination by the inspection officer of the fact that the immigrant is likely to become a public charge, made upon competent evidence tending to show such to be the fact . . . .''

[92] 239 U.S. 3, 9–10 (1915).

[93] 239 U.S. at 10 (1915).

[94] 84 FR 41292, 41350 n.317 (Aug. 14, 2019).

[95] In addition, Congress amended the immigration laws three other times between the introduction of the public charge ground in 1882 and 1917, but none of the amendments provided a definition of ''public charge.'' *See* Act of Mar. 3, 1903, ch. 1012, 32 Stat. 1213; Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898; Act of Mar. 26, 1910, ch. 128, 36 Stat. 263.

[96] Act of Feb. 5, 1917, ch. 29, § 3, 39 Stat. 874, 875–76.

[97] *See* 70 Cong. Rec. 3620 (1929).

[98] 273 F. 509, 510–11 (2d Cir. 1921).

[99] 273 F. at 510 (2d Cir. 1921).

[100] 273 F. at 510 (2d Cir. 1921).

[101] 247 F. 292, 294 (9th Cir. 1917).

[102] 277 F. 913, 916 (9th Cir. 1922).

[103] 277 F. at 916 (9th Cir. 1922).

benefits.[104] DHS expressed a belief that courts generally have quantified neither the level of public support nor the type of public support required for purposes of a public charge inadmissibility finding.[105] DHS continues to agree with that broad statement; DHS further believes that judicial and administrative decisions since the enactment of the public charge provision are clearly consistent with a primary dependence standard in that they focus on a noncitizen's ability to support themselves, without treating the possibility that the noncitizen might need publicly subsidized medical care at a hospital, for example, as sufficient to demonstrate that the immigrant is likely to become a public charge.

In *United States ex rel. De Sousa* v. *Day,* the Second Circuit stated that ''[i]n the face of [*Gegiow*] it is hard to say that a healthy adult immigrant, with no previous history of pauperism, and nothing to interfere with his chances in life but lack of savings, is likely to become a public charge within the meaning of the statute.'' [106] This rule is consistent with that decision as well.

In 1952, Congress amended the INA in a way that uses the language of discretion: it deemed inadmissible immigrants ''who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges.'' [107] This language clarifies the temporal dimension of the public-charge determination, but it says nothing about the degree of assistance required. In the special legalization provision under the Immigration Reform and Control Act (IRCA),[108] Congress did not define the term ''public charge,'' but provided that ''[a]n alien is not ineligible for adjustment of status under [that provision] due to being [a public charge] if the alien demonstrates a history of employment in the United States evidencing self-support *without receipt of public cash assistance.*'' [109] The Immigration Act of 1990 also lacked a definition of ''public charge.'' [110]

As noted above, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress for the first time provided guidance on what factors the government agencies tasked with administering the public charge ground of inadmissibility must consider when determining whether a noncitizen is likely to become a public charge.[111] The amended provision instructs government officials ''at a minimum'' to look at age; health; family status; assets, resources, and financial status; and education and skills.[112] They also could consider whether an immigrant had an Affidavit of Support Under Section 213A of the INA from a third party.[113] Furthermore, Congress rejected a proposal to define ''public charge'' to cover ''any alien who receives [means-tested public benefits] for an aggregate of at least 12 months.'' [114]

During the same period that Congress amended the public charge ground of inadmissibility through IIRIRA to add the consideration of certain factors and enforceable affidavit of support requirements, it also enacted PRWORA.[115] As DHS noted in the 2019 Final Rule, language in that statute expresses Congress's desire that immigrants be self-sufficient and not come to the United States with the purpose of benefitting from public welfare programs.[116] To that end, Chapter 14 of Title 8 of the U.S. Code restricts most noncitizens from eligibility for many federal and State public benefits. It grants most lawful permanent residents access to means-tested public benefits only after they have spent five years as a lawful permanent resident.[117] But the exclusions are not absolute. Congress specified instead that immigrants may at any time receive emergency medical assistance; immunizations and testing for communicable diseases; short-term, in-kind emergency disaster relief; various in-kind services such as short-term shelter and crisis counseling; and certain housing and community development assistance.[118]

In addition, a series of administrative decisions after the passage of the INA of 1952 clarified that more than a possibility of receipt of public benefits is needed to lead to a finding of likelihood of becoming a public charge. The cases focused on the presence of more ''permanent'' characteristics along with a relative lack of non-governmental sources of support. In *Matter of Martinez-Lopez,* the Attorney General opined that the statute

> require[d] *more than a showing of a possibility that the alien will require public support.* . . . A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.[119]

Furthermore, in *Matter of Perez,* the Board of Immigration Appeals (BIA) held that ''[t]he determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States. The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.'' [120] This decision supports DHS's position that evidence of past or current receipt of public benefits, alone, is not outcome determinative. In *Matter of Harutunian,* the INS Regional Commissioner determined that public charge inadmissibility determinations should take into consideration factors such as a noncitizen's age, incapability of earning a livelihood, a lack of sufficient funds for self-support, lack of persons in this country willing and able to assure that the noncitizen will not need public support, and the expectation that the noncitizen will depend on old age assistance, a form of financial assistance for low income older adults.[121] In the 2019 Final Rule, DHS cited *Harutunian* and *Matter of Vindman* [122] for the general proposition that ''[a]bsent a clear statutory or regulatory definition,

[104] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41350 (Aug. 14, 2019).

[105] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41350 (Aug. 14, 2019).

[106] 22 F.2d 472, 473–74 (2d Cir. 1927).

[107] An Act to Revise the Laws Relating to Immigration, Naturalization, and Nationality; and for Other Purposes, Public Law 82–414, sec. 212(a)(15), 66 Stat. 163, 183 (1952).

[108] Immigration Reform and Control Act of 1986, Public Law 99–603, 100 Stat. 3359.

[109] Public Law 99–603, tit. II, sec. 201 (Nov. 6, 1986) (codified at section 245A(d)(2)(B)(ii)(IV) of the INA, 8 U.S.C. 1255a(d)(2)(B)(ii)(IV)) (emphasis added); *see also id.* at secs. 302, 303 (similar provision for Special Agricultural Workers).

[110] Public Law 101–649, sec. 601, 104 Stat. 4978, 5067.

[111] Public Law 104–208, div. C, sec. 531, 110 Stat. 3009–546, 3009–674 (1996).

[112] Public Law 104–208, div. C, sec. 531, 110 Stat. 3009–546, 3009–674 (1996).

[113] Public Law 104–208, Div. C, sec. 531, 110 Stat. 3009–546, 3009–674 (1996).

[114] 142 Cong. Rec. 24313, 24425 (1996).

[115] Public Law 104–193 (1996), 110 Stat. 2105.

[116] 8 U.S.C. 1601.

[117] Public Law 104–193 (1996), secs. 401, 403, 411, 8 U.S.C. 1611, 1613, 1621, 110 Stat. 2105.

[118] 8 U.S.C. 1611, 1613, 1621.

[119] 10 I&N Dec. 409, 421–23 (BIA 1962; Att'y Gen. 1964) (emphasis added).

[120] 15 I&N Dec. 136, 137 (BIA 1974).

[121] 14 I&N Dec. 583, 583–89 (Reg'l Comm'r 1974) (finding that the applicant who was 70 years old, lacked means of supporting herself, had no one responsible for her support, and who expected to be dependent for support on old-age assistance was ineligible for a visa, as likely to become a public charge).

[122] *Matter of Vindman,* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977) 132 (''Congress intends that an applicant be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him, and whose chances of becoming self-supporting decrease as time passes'').

some courts and administrative authorities have tied the public charge ground of inadmissibility to the receipt of public benefits.'' [123] This remains DHS's view of those cases—*i.e.,* that they are indicative of the relatively wide ambit of DHS's interpretive authority—although DHS also notes that both cases involved receipt of cash assistance.

In the 1999 Interim Field Guidance, the INS interpreted the 1996 statutory scheme by defining ''public charge'' as someone who is ''primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.'' [124] Consistent with an earlier 1987 rule addressing the IRCA [125] legalization program,[126] and based on input from benefits-granting agencies, the 1999 Interim Field Guidance stated that ''officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.'' [127]

Following PRWORA, later statutory enactments lightened some of the statutory restrictions on noncitizens receiving benefits, in order to allow additional categories of these individuals to qualify for certain benefits without a five-year waiting period.[128]

Some of the courts in recent litigation against the 2019 Final Rule generally agreed that the meaning of the term ''public charge'' is ambiguous, that it has evolved over time, and that Congress granted wide discretion to the Executive Branch to interpret that term.[129] DHS agrees with those principles. Other courts found that the term ''public charge'' has an unambiguous meaning and/or that the 2019 Final Rule definition was contrary to the historical understanding of that term.[130] This conclusion likewise does not preclude the rule at issue here.

With respect to commenters who indicated that *Ex parte Kichmiriantz* [131] reflects the historical understanding of the term public charge, and does not contemplate a standard under which a person is a public charge if they impose any level of burden upon the public, DHS agrees, although of course that individual case is not dispositive. In that case, the court concluded that a noncitizen who was institutionalized in a mental hospital was not a public charge because his family was paying for the institutionalization. The court opined that ''the words 'public charge,' as used in the Immigration Act, mean . . . a money charge upon, or an expense to, the public for support and care.'' The court indicated that when ''a state receives from the relatives what it has fixed as an adequate compensation for such support,'' the noncitizen so cared for is not a public charge, ''within the meaning of the act,'' [132] even if the physical condition of the person suggest a significant level of dependence on others for their basic care. Given that the court was opining about the meaning of the term ''public charge'' in the context of long-term institutionalization, DHS agrees that this case does not stand for the proposition that ''any'' reliance on the government for subsistence would render a noncitizen likely at any time to become a public charge, and thus inadmissible.

In short, DHS has determined that it is appropriate in light of the statute's text and purpose, as well as longstanding judicial and administrative precedent to focus on primary dependence on the government for subsistence, and to do so by reference to public cash assistance for income maintenance and long-term institutionalization at government expense in particular. In addition, when considering past, current, and future receipt of such public benefits, DHS believes it is appropriate to take into consideration the amount, duration, and recency of receipt along with other factors.

Comment: One commenter stated that facilitating the use of public benefits generally by immigrants, even those who may be eligible by the benefits' authorizing statutes, directly conflicts with Congressional intent in enacting the public charge ground of inadmissibility, and that the rule, which ''significantly'' raises the threshold of permissible means-tested benefits usage for purposes of public charge inadmissibility determinations, should be withdrawn. The commenter also stated that Congress, in enacting PRWORA and IIRIRA very close in time, must have recognized that it made certain public benefits available to some noncitizens who are also subject to the public charge ground of inadmissibility, even though receipt of such benefits could render the noncitizen inadmissible as likely to become a

[123] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41349 (Aug. 14, 2019).

[124] ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689 (May 26, 1999).

[125] Immigration Reform and Control Act of 1986, Public Law 99–603, 100 Stat. 3359.

[126] ''Adjustment of Status for Certain Aliens,'' 52 FR 16205, 16211–16212, 16216 (May 1, 1987).

[127] ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689 (May 26, 1999).

[128] *See* Farm Security and Rural Investment Act of 2002, Public Law 107–171, sec. 4401, 116 Stat. 34, 333 (2002); Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, sec. 214, 123 Stat. 8, 56 (2009).

[129] *See Cook County* v. *Wolf,* 962 F.3d 208, 226 (7th Cir. 2020) (''[T]he question before us is not whether Cook County has offered a reasonable interpretation of the law. It is whether the statutory language unambiguously leads us to that interpretation. We cannot say that it does. As our quick and admittedly incomplete overview of this byzantine law has shown, the meaning of 'public charge' has evolved over time as immigration priorities have changed and as the nature of public assistance has shifted from institutionalization of the destitute and sick, to a wide variety of cash and in-kind welfare programs. What has been consistent is the delegation from Congress to the Executive Branch of discretion, within bounds, to make public-charge determinations.''); *id.* at 248, 253 (Barrett, J., dissenting) (noting that ''DHS could have exercised its discretion differently'' than it chose to do in the 2019 Final Rule and that ''the term 'public charge' is indeterminate enough to leave room for interpretation.''); *Casa de Maryland* v. *Trump,* 971 F.3d 220, 229 (4th Cir. 2020) (''[T]he public charge provision has led for almost a century and a half a long and varied life, with different administrations advancing varied interpretations of the provision, depending on the needs and wishes of the nation at a particular point in time. To be sure, the public charge provision ties alien admissibility to prospective alien self-sufficiency. But within that broad framework, Congress has charged the executive with defining and implementing what can best be described as a purposefully elusive and ambiguous term.''), *rehearing en banc granted,* 981 F.3d 311 (4th Cir. 2020).

[130] *See New York* v. *DHS,* 969 F.3d 42, 74–75 (2d Cir. 2020) (''The prevailing administrative and judicial interpretation of 'public charge' ratified by Congress understood the term to mean a non-citizen who cannot support himself, in the sense that he 'is incapable of earning a livelihood, . . . does not have sufficient funds in the United States for his support, and has no person in the United States willing and able to assure that he will not need public support[.]' . . . We think it plain on the face of these different interpretations that the Rule falls outside the statutory bounds marked out by Congress. . . . Whatever gray area may exist at the margins, we need only decide today whether Congress 'has unambiguously foreclosed the [specific] statutory interpretation' at issue. . . . And we conclude that Congress's intended meaning of 'public charge' unambiguously forecloses the Rule's expansive interpretation. We are not persuaded by DHS's efforts to argue otherwise.'' (internal citations omitted)); *City and County of San Francisco* v. *United States Citizenship and Immigration Services,* 981 F.3d 742, 756–58 (9th Cir. 2020) (''From the Victorian Workhouse through the 1999 Guidance, the concept of becoming a 'public charge' has meant dependence on public assistance for survival. Up until the promulgation of this Rule, the concept has never encompassed persons likely to make short-term use of in-kind benefits that are neither intended nor sufficient to provide basic sustenance . . . For these reasons we conclude the plaintiffs have demonstrated a high likelihood of success in showing that the Rule is inconsistent with any reasonable interpretation of the statutory public charge bar and therefore is contrary to law.'').

[131] 283 F. 697, 698 (N.D. Cal. 1922).

[132] 283 F. 697, 698 (N.D. Cal. 1922).

public charge. The commenter cited data and studies, including those conducted by the Center for Immigration Studies,[133] for the proposition that a high percentage of ''immigrant-led'' households depended on safety-net public benefit programs, and that a change in policy by DHS could result in significant cost savings in the context of Medicaid as well as other public benefit programs.

Response: While DHS agrees with commenters that Congress was aware that some noncitizens who are eligible for public benefits under PRWORA are also subject to the public charge ground of inadmissibility and may have their past or current receipt of some benefits considered in the context of public charge inadmissibility determinations, DHS disagrees with the suggestion that it should withdraw the proposed rule. As noted above, the congressional statement of policy at 8 U.S.C. 1601(2) relates most directly to other policy measures enacted (and in fact later relaxed) by Congress, and does not mandate a specific result in this rulemaking.

DHS believes that the rule draws reasonable distinctions consistent with Congressional intent between cash benefits intended for income maintenance and special-purpose and supplemental benefits intended to help recipients remain self-sufficient. Furthermore, DHS has determined that very few noncitizens are both eligible for public benefits and subject to the public charge ground of inadmissibility. DHS has also determined that a great number of households not subject to the public charge ground of inadmissibility could be deterred from receiving important supports (such as medical care or preventive services needed to combat or prevent the spread of communicable disease, or supplemental nutrition assistance for children) because of the chilling effects that would be associated with expanding the list of public benefits considered in making public charge inadmissibility determinations, as this commenter suggested. DHS is uncertain how the commenter arrived at the estimated $4.9 billion in savings in Medicaid by the year 2030 but disagrees that any direct impacts of the rule on the population regulated thereby would result in significant cost savings in the context of Medicaid; rather DHS believes that the commenter is suggesting that chilling effects that could be caused by the rule, influencing primarily those individuals not subject to the rule, would result in what they view as a desirable outcome and cost savings. DHS disagrees that such a policy objective—which depends on confusion about the scope and effect of the rule—is consistent with Congressional intent or that it is desirable.

DHS also notes that the analysis by the Center for Immigration Studies cited by the commenter is methodologically flawed, which results in inflated and inaccurate estimates of benefit use. The analysis examined benefit use by ''non-citizen-headed households'' rather than by noncitizens themselves.[134] While that analysis showed generally low use of SSI and TANF by such households, even those low rates of use are misleading in the context of a public charge inadmissibility determination. Under both the 2019 Final Rule, favored by the commenter, and this rule, only public benefits received by the noncitizen, where the noncitizen is listed as a beneficiary, are considered in a public charge inadmissibility determination. Given that this analysis cited by the commenter attributes to the noncitizen ''head of household'' any use of benefits by any member of the household, including U.S. citizens, the rates of SSI and TANF use by such households is unrelated to public charge inadmissibility determinations under both the 2019 Final Rule and this rule.

Since Congress sharply limited the eligibility for public benefits for noncitizens in PRWORA (and, as noted, provided exceptions to the public charge ground of inadmissibility for most categories of noncitizens eligible for benefits), the members of the ''non-citizen-headed households'' actually receiving the SSI and TANF in this analysis are most likely not the noncitizen heading the household but rather other members of the family.

The SIPP data used by the analysts at the Center for Immigration Studies does allow for a more accurate assessment of public benefit use by noncitizens themselves, using individuals as the basis for analysis, which was the approach taken by DHS in the 2019 Final Rule and in this rule. However, the Center for Immigration Studies used household as the basis for analysis which resulted in inflated and inaccurate estimates of benefit use.

[133] *See* Steven Camarota and Karen Ziegler, ''63% of Non-Citizen Households Access Welfare Programs,'' Center for Immigration Studies (Nov. 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

[134] *See* Steven Camarota and Karen Ziegler, ''63% of Non-Citizen Households Access Welfare Programs,'' Center for Immigration Studies (Nov. 20, 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

2. Support for Changes to the Public Charge Ground of Inadmissibility

Comment: One commenter stated that immigrants deserve a right to benefits when they migrate because they may come to the United States with nothing and may be migrating out of a need for survival rather than because they feel they are entitled to benefits. This commenter said that it is unjust to assume immigrants will be able to support themselves shortly after leaving dangerous situations and short-term government assistance should be an option for those experiencing traumatic situations in their home countries. Another commenter stated that all noncitizens should have access to public benefits, including housing, Medicaid, food stamps, and other benefits Congress intended. Another commenter stated that many U.S.-born citizens have needed government assistance, so it is reasonable that immigrants starting over in the United States would also need support from the government and should receive that support. Another commenter stated that for whatever reason people become public charges, they are often grateful for the help and do the best they can to contribute back to our society.

Response: To the extent that these commenters suggest that DHS should, through this rulemaking, expand the public benefits available to noncitizens, DHS disagrees. As explained in more detail above, Congress has the authority to legislate which noncitizens are eligible to apply for and receive Federal public benefits and did so when it enacted PRWORA. Neither the statutory public charge ground of inadmissibility nor this final rule govern eligibility for public benefits. This final rule does not intend to decide or impact which categories of noncitizens are, or should be, eligible to receive public benefits, but rather to indicate when a noncitizen is inadmissible under the public charge ground of inadmissibility. DHS therefore declines to make any changes in response to these commenters.

Comment: Many commenters suggested that the public charge inadmissibility determination should be eliminated entirely. Others suggest that while DHS waits for Congress to eliminate the public charge ground of inadmissibility, it should not apply it. One commenter suggested DHS inform Congress of the ''many issues of the Public Charge rules and regulations.'' One commenter stated that the public charge ground of inadmissibility is dehumanizing to immigrants because it punishes them for accessing support for basic human needs in the adjudication

of immigration benefit applications. One commenter opposed the public charge ground of inadmissibility because it is dehumanizing to force individuals to prove their utility to the U.S. economy before permitting them to stay in the country and implies that noncitizens are inherently worth less than U.S. citizens. Another commenter stated that the statute has historically been used to erect barriers to immigrants of color.

Response: To the extent that these commenters suggest that DHS has the authority to eliminate or ignore the public charge ground of inadmissibility, DHS disagrees. DHS recognizes that the public charge ground of inadmissibility could result in the denial of admission or adjustment of status for certain applicants, but DHS notes that the commenters' concerns with respect to the existence and structure of this ground of inadmissibility should be directed to Congress, not to DHS. The public charge ground of inadmissibility was established by Congress in some of the earliest immigration laws [135] and, as discussed in the NPRM,[136] has existed in its current form since 1996.[137] As Congress has determined that all applicants for visas, admission, and adjustment of status are inadmissible if they are determined to be likely at any time to become a public charge, DHS is required to apply the public charge ground of inadmissibility to all noncitizens seeking admission or adjustment of status unless otherwise expressly exempted by Congress.

However, DHS does have the authority to define ''likely at any time to become a public charge,'' [138] as it has in this rule, and in doing so, decide which public benefits are considered for the purposes of this rule.

DHS notes that it did not codify this final rule to discriminate against noncitizens based on their race or color. Rather, as noted in the NPRM,[139] this rule is intended to be a faithful execution of the public charge ground of inadmissibility that is clear and comprehensible, and that would lead to fair and consistent adjudication. DHS believes that this rule accomplishes that goal, avoids unequal treatment, and avoids imposing undue barriers for noncitizens applying for admission or adjustment of status. Indeed, through this rulemaking, DHS is promulgating a clear and concise regulation that implements the public charge ground of inadmissibility by evaluating each noncitizen applying for adjustment of status or admission for public charge inadmissibility in the totality of the circumstances, absent statutory exemptions.

Comment: Another commenter stated that the statute is in conflict with E.O. 14012, ''Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,'' as neither efficient nor a removal of barriers. While several commenters acknowledged that amending or repealing the statute is not within DHS's authority, one commenter stated that the statute compromises the overall goal of DHS to prioritize and incorporate equity into the rule.

Response: As noted above, DHS lacks the authority to make any changes to the statute underlying the public charge ground of inadmissibility; only Congress can do so. To the extent that these commenters are suggesting that this this rule conflicts with the Administration's goals to achieve equality and inclusion, as set forth in E.O. 14012,[140] DHS disagrees. As explained above, this rule is intended to be a faithful execution of the public charge ground of inadmissibility that is clear and comprehensible, and that would lead to fair and consistent adjudication for similarly situated applications. DHS believes that this rule avoids unequal treatment and avoids imposing undue barriers for noncitizens applying for admission or adjustment of status.

3. Other Legal Arguments

a. Comments on Litigation Relating to the 2019 Final Rule

Comment: A commenter representing a State remarked that the changes in this rule are being proposed even though the 2019 Final Rule was still being litigated, and DHS removed the 2019 Final Rule from the **Federal Register** without notice and comment based entirely on the ''unreviewed, nationwide vacatur'' issued by the District Court for the Northern District of Illinois, despite multiple States seeking to intervene. The commenter wrote that ''multiple states (including the undersigned) have sought to intervene in the Northern District of Illinois for the purpose of challenging that vacatur, and that matter is currently pending before the Seventh Circuit. Multiple states (including the undersigned) have also sought to intervene in a similar case in the Ninth Circuit, and that matter is currently pending before the United States Supreme Court. These cases are ongoing and could easily result in a reversal of the Northern District of Illinois's vacatur of the 2019 Rule, which was the sole justification for the immediate removal of the 2019 Rule from the **Federal Register** without notice and comment.'' [141] Another commenter stated that if DHS were to finalize the proposed rule, the commenter would pursue litigation against the rule.

Response: Comments regarding the basis for the vacatur implementation rule are outside the scope of this rulemaking. To the extent that the commenter suggests that DHS should delay issuance of this final rule pending resolution of all litigation regarding the 2019 Final Rule, the vacatur of the 2019 Final Rule, and the implementation of that vacatur, the comment is arguably within the scope of the rulemaking, but DHS respectfully disagrees with the commenter's suggestion. First, as a factual matter, in the time since the commenter submitted the above comments, the Supreme Court dismissed the writ of certiorari in one case as improvidently granted, and the Seventh Circuit upheld the U.S. District Court for the Northern District of Illinois' denial of intervention. Although it is conceivable that these issues will continue to be litigated, DHS sees no reason to delay issuance of this rule pending resolution of all possible litigation.

Second, DHS does not see how delaying issuance of this notice-and-comment rulemaking would meaningfully address concerns about the adequacy of the rulemaking process for the vacatur implementation rule. The expressed concern regarding that rule was the absence of notice and comment, but in this rulemaking, DHS has completed multiple rounds of notice and comment, including an ANPRM and virtual public listening sessions, as well as the notice-and-comment process in which this commenter took advantage of the opportunity to participate. This rulemaking process has provided ample opportunity for public participation. The commenter's suggestion that DHS should delay issuing this rule pending further litigation is therefore unwarranted.

Third, DHS notes that although this rule does not replace the 2019 Final Rule, throughout the rulemaking process, DHS has considered and welcomed comment related to various

[135] Immigration Act of 1882, Public Law 47–376, 22 Stat. 214 (1882).

[136] 87 FR at 10579 (Feb. 24, 2022).

[137] Public Law 104–208, div. C, 110 Stat 3009–546, 3009–674.

[138] *See* Homeland Security Act of 2002, Public Law 107–296, sec. 102, 116 Stat. 2135, 2142 (2002) (codified at 6 U.S.C. 112); INA sec. 103, 8 U.S.C. 1103.

[139] 87 FR at 10599 (Feb. 24, 2022).

[140] *See* ''Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,'' 86 FR 8277 (Feb. 5, 2021).

[141] Internal footnotes omitted.

aspects of the content and effects of that rule. DHS has analyzed the effects of this rule against the 1999 Interim Field Guidance, a Pre-Guidance Baseline, and an alternative similar to the 2019 Final Rule. To whatever extent the commenter expresses concern regarding the availability of notice and comment regarding whether to issue a rule similar to the 2019 Final Rule, this rulemaking process has addressed the matter squarely.

Finally, DHS acknowledges the significant public interest in public charge issues. The 2018 NPRM resulted in over 266,000 comments, vastly more than any other rulemaking in the history of the Department. This rulemaking resulted in a much smaller number of public comments. Although in both rulemaking proceedings the vast majority of comments expressed opposition to the 2019 Final Rule or a return to a similar framework, in this rulemaking proceeding, DHS has carefully considered comments from all quarters and representing all perspectives. Ultimately, following careful consideration of the public comments received in response to the 2021 ANPRM and the 2022 NPRM, and for the reasons expressed throughout this preamble, DHS determined that this rule represented the most appropriate path forward.

DHS understands that some commenters intend to pursue litigation against this rule. Although DHS is confident that this rule is fully consistent with law, DHS notes its intention that the provisions of the rule be treated as severable to the maximum extent possible, such that if any court of competent jurisdiction were to deem any provision of the rule to be invalid or unenforceable in any respect, all other parts of the rule will remain in effect to the maximum extent permitted by law.

b. Allegations That the Proposed Rule Is Arbitrary and Capricious

Comment: Several commenters stated that DHS failed to adequately explain its decision to take a different approach from the previous Administration's rule and appears to simply express its disagreement with the 2019 Final Rule. Commenters stated that, although DHS is within its discretion to take a different approach than DHS did in 2019 as long as that approach is consistent with the law, proposed rules must include justification and reasoning for the approaches taken. Commenters stated that DHS appears to be motivated simply by issuing a rule that is different from the 2019 Final Rule.

Response: DHS disagrees that it failed to adequately explain that it was considering adopting an approach different than the approach set forth in the 2019 Final Rule. In fact, DHS explained at the outset of the NPRM that, rather than simply disagreeing with the approach taken in the 2019 Final Rule, DHS was aiming to implement a rule that provided a more faithful interpretation of the public charge ground of inadmissibility that would also, to the extent possible, minimize the unnecessary paperwork burdens, confusion, and chilling effects associated with the 2019 Final Rule.[142]

Moreover, throughout the NPRM, DHS noted where this rule substantively differed from the 2019 Final Rule and explained why DHS had opted to take a different approach. For example, in the NPRM, in explaining the definition for ''likely at any time to become a public charge,'' DHS explained in detail why the degree of dependence on the government that would give rise to inadmissibility under this rule—primary dependence on the government for subsistence—as compared to the degree of dependence in the 2019 Final Rule—reliance over a specific threshold for duration of receipt—was a more sound interpretation of the public charge ground of inadmissibility and appropriately balanced the policy objectives set forth in PRWORA and section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).[143]

Additionally, DHS explained in detail in the NPRM why, after consulting with Federal benefits-granting agencies like HHS and USDA, it was proposing to consider a narrower list of public benefits than the more extensive list of public benefits that were considered under the 2019 Final Rule.[144] For instance, DHS explained that it proposed not to include SNAP benefits and most Medicaid benefits, as receipt of such was described by the relevant benefits-granting agencies as not being indicative of an individual being or likely to become primarily dependent on the government for subsistence.[145] DHS further explained in the NPRM that its approach to this rule was based on the objective to faithfully execute the public charge ground of inadmissibility while avoiding policies that unduly discourage individuals from availing themselves to the public benefits for which they are eligible.[146] Following consideration of public comments received on the NPRM, DHS continues to believe this to be the case.

Comment: Several commenters stated that DHS fails to provide any reasoned analysis concerning why noncitizens changing or extending their nonimmigrant status in the United States should not be subject to the proposed rule. The commenters reasoned that if these classes of noncitizens may ultimately be able to utilize certain public benefit programs, States have a right to understand why DHS intends to exercise its discretion this way, and saying that certain noncitizens may not presently be eligible for benefits is insufficient and does not provide a meaningful opportunity to comment on the proposed rule. Another commenter acknowledged that DHS has the discretion to decide whether to set conditions on extension of stay and change of status applications, but said DHS is arbitrarily declining to include a public benefits condition in this rule.

Response: DHS disagrees that it failed to explain why this rule does not impose conditions on extension of stay and change of status applications and petitions based on the receipt of public benefits. Although DHS has the authority to set conditions on requests for extension of stay and change of status,[147] as explained in the NPRM,[148] DHS cannot apply the public charge ground of inadmissibility to such requests because the plain language of the statute provides that the ground only applies to applications for a visa, admission, and adjustment of status under the INA.[149] Requests for extension of stay and change of status are not applications for visa, admission, or adjustment of status, and therefore are not subject to the public charge ground of inadmissibility.

Furthermore, as explained in the NPRM,[150] DHS does not believe that it needs to require, as a condition of an application or petition for extension of stay or change of status, that the nonimmigrant not become a public charge or not receive public benefits, because such a condition would be applicable to very few nonimmigrants, if any. This is because nonimmigrants are generally barred from receiving the public benefits considered in this proposed rule, such as SSI, TANF, and Medicaid for long-term institutionalization.[151] Additionally, to

[142] 87 FR at 10571 (Feb. 24, 2022).

[143] 87 FR at 10606 (Feb. 24, 2022).

[144] 87 FR at 10609–10610 (Feb. 24, 2022).

[145] 87 FR at 10610 (Feb. 24, 2022).

[146] 87 FR at 10610 (Feb. 24, 2022).

[147] INA secs. 214 and 248, 8 U.S.C. 1184 and 1258.

[148] 87 FR at 10600–10601 (Feb. 24, 2022).

[149] INA sec. 212(a)(4)(A), 8 U.S.C. 1182(a)(4)(A).

[150] 87 FR at 10600–10601 (Feb. 24, 2022).

[151] Public Law 104–193, sec. 431(b), Public Law 104–208, div. C, sec. 501 (amending Public Law

the extent that commenters are concerned that a nonimmigrant seeking an extension of stay or change of status may not be self-reliant, these concerns are, for many nonimmigrant categories, addressed by both the requirements for obtaining such status in the first instance as well as the requirements applicable to their applications and petitions for extension of stay and change of status.

For example, in some of the employment-based nonimmigrant cases, the petitioning employer is required to comply with certain wage requirements applicable to such classifications. In the temporary agricultural worker (H–2A nonimmigrant) context,[152] the employer must offer the appropriate wage rate [153] and comply with other requirements as set by law and regulations.[154] Other nonimmigrants, such as F and M nonimmigrant students, need to demonstrate that they have sufficient funds to pay tuition and related costs as part of the application for extension of stay or change of status to such nonimmigrant categories.[155] Therefore, DHS believes that it has adequately explained its reasons for not imposing conditions related to the receipt of public benefits on nonimmigrants seeking an extension of stay or change of status and as a result declines to add provisions in this regard to the final rule.

Comment: Several commenters suggested that the proposed rule reflects DHS's intention to ignore its authority with respect to public charge bonds without adequate justification.

Response: DHS disagrees with commenters' assertion that it is ignoring its bond authority without justification. On the contrary, DHS acknowledged its discretionary bond authority in the NPRM,[156] and DHS reiterates, in this rule, that it has authority under section 213 of the INA, 8 U.S.C. 1183, to consider whether to exercise its discretion on a case-by-case basis to admit noncitizens who are inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), upon the submission of a suitable and proper public charge bond.

However, as explained more fully in the bond section below, after careful consideration of public comments and feedback, DHS has revised the bond provisions to reflect DHS's statutory authority to consider offering public charge bonds, in its discretion, to adjustment of status applicants inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1183.[157] These additional provisions will help ensure that DHS adequately addresses how DHS will exercise its discretion to offer public charge bonds in the context of adjustment of status applications and will help ensure that public charge bonds remain operationally feasible in such cases. Under this rule, DHS will consider offering adjustment of status applicants who are inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), the opportunity to submit a bond as a condition of adjustment of status.[158] When USCIS determines, in its discretion, to offer an adjustment of status applicant the opportunity to submit a public charge bond, USCIS will set the bond amount at an amount of no less than $1,000 and provide instructions for the submission of a public charge bond.[159] USCIS will also amend the other regulations pertaining to public charge bonds. USCIS will provide officers with guidance and training to ensure that this discretionary authority is exercised in a fair, efficient, and consistent manner.

c. Allegations That the Proposed Rule Is Inconsistent With the Statute

Comment: Commenters opposed to the rule generally stated that the rule markedly departs from the standards in the 2019 Final Rule and is contrary to law.

Response: Although DHS agrees that this rule is different than the standards set forth in the 2019 Final Rule, DHS disagrees that this rule is contrary to law. DHS noted that neither the statute nor case law require DHS to interpret the statute as was done in the 2019 Final Rule. On the contrary, when Congress enacted the public charge ground of inadmissibility without defining what it meant to be a ''public charge'' or ''likely at any time to become a public charge,'' Congress authorized the agencies administering this ground of inadmissibility to determine and specify what those terms meant and how such inadmissibility determinations would be made.[160] DHS has concluded, consistent with the NPRM,[161] that this rule is a permissible and faithful implementation of the public charge ground of inadmissibility. With this rule, DHS is providing important definitions and guidance to implement the public charge ground of inadmissibility, such as defining ''likely at any time to become a public charge,'' that Congress left for DHS to implement. Also as noted in the NPRM,[162] this rule provides a close connection to the language used in the statute and reflects the forward-looking subjective aspect of the statutory standard. DHS has further determined, consistent with the NPRM,[163] that this rule better balances the overlapping policy objectives established by Congress when it enacted PRWORA [164] in close proximity to enacting the current public charge ground of inadmissibility, without unnecessarily harming separate efforts related to the health and well-being of people whom Congress made eligible for supplemental supports, let alone those eligible for benefits and not subject to the public charge ground of inadmissibility.

Comment: One commenter stated that the rule conflicts with section 101 of the HSA, 6 U.S.C. 111, which requires DHS to protect the economic security of the United States. The commenter said that providing public benefits, even with an approved sponsor, bond or undertaking approved by the Secretary, has the potential to impede the economic security of the United States and its citizens.

104–193 by adding sec. 431(c)), 8 U.S.C. 1641(b) and (c) (defining ''qualified aliens'' for Federal public benefits purposes); Public Law 104–193, sec. 411, 8 U.S.C. 1621 (describing eligibility for State and local public benefits purposes).

[152] *See* INA secs. 101(a)(15)(H)(ii)(a), 218, 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188.

[153] *See* 20 CFR 655.120(l). Employers must pay H–2A workers and workers in corresponding employment, unless otherwise excepted by the regulations, at least the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining wage (if applicable), or the Federal or State minimum wage in effect at the time the work is performed.

[154] *See* 20 CFR 655.100 through 655.185.

[155] *See* 8 CFR 214.1(f)(1)(i)(B) (requiring that the student presents documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID)); 8 CFR 214.2(m)(1)(i)(B) (requiring that student documents financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID)); USCIS, ''Adjudicator's Field Manual (AFM),'' Chapter 30.3(c)(2)(C) (applicants to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States), *https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm30-external.pdf* (last visited Aug. 16, 2022); *see also* 22 CFR 41.61(b)(1)(ii) (requiring that F and M nonimmigrants possess sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses); 22 CFR 41.62(a)(2) (requiring that J–1 visa applicants possess sufficient funds to cover expenses or have made other arrangements to provide for expenses before a DOS consular officer can approve the visa).

[156] 87 FR at 10597 (Feb. 24, 2022).

[157] 8 CFR 213.1.

[158] *See* 8 CFR 213.1(a) and (c).

[159] *See* 8 CFR 213.1(a) and (c).

[160] *See* Public Law 104–208, div. C, sec. 531, 110 Stat. 3009–546, 3009–674 (1996) (amending INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4)).

[161] 87 FR at 10571, 10606–10610 (Feb. 24, 2022).

[162] 87 FR at 10606 (Feb. 24, 2022).

[163] 87 FR at 10610 (Feb. 24, 2022).

[164] *See* Public Law 104–193, sec. 400, 110 Stat. 2105, 2260 (1996) (codified at 8 U.S.C. 1601).

Response: DHS disagrees with this commenter's characterization of 6 U.S.C. 111(b)(1)(F), and further disagrees that this rule conflicts with that provision. 6 U.S.C. 111(b)(1)(F) provides that among other primary missions, DHS should ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland . . . .'' [165] Consistent with this mission set forth in the statute, DHS has determined that this rule properly achieves the policy objective set by Congress in ensuring that those who are likely at any time to become a public charge are not admitted into the United States or permitted to adjust status, without diminishing the overall economic security of the United States.

Moreover, to the extent that this commenter suggests that this rule provides public benefits to noncitizens that will diminish the economic security of the United States, DHS strongly disagrees.

Neither the public charge ground of inadmissibility nor this final rule govern eligibility for public benefits. Rather, the public charge ground of inadmissibility and this final rule pertain to whether an applicant for admission or adjustment of status is likely at any time to become a public charge. This final rule thus does not determine which noncitizens are, or should be, eligible to apply for and receive public benefits. And in any event, DHS disagrees that a contraction of eligibility for public benefits (or a change in incentives for or fear and confusion about their use) would have a positive effect on the economic security of the United States. DHS has determined that using the public charge ground of inadmissibility to deter the use of health and nutrition benefits primarily among people who are not subject to the public charge ground of inadmissibility (such as U.S. citizen children in mixed-status households) would not further the nation's economic security. Accordingly, DHS declines to make any changes in response to the comment.

Comment: One commenter stated an opposition to PRWORA and the restriction for eligibility for federal means-tested benefits within PRWORA.

Response: The comment is outside the scope of the rulemaking. As explained more fully above, this rule does not govern eligibility for public benefits. Rather, this final rule governs the determination of whether an applicant for admission or adjustment of status is likely at any time to become a public charge.

E. Chilling Effects

1. Impacts of Previous Public Charge Policies

Comment: Many commenters opposed the previous public charge policy enacted by the 2019 Final Rule due to the confusion and fear it caused with respect to the immigration consequences of utilizing public benefits, with some remarking that the 2019 Final Rule had a profound chilling effect. One commenter noted that a court decision concerning the 2019 Final Rule, *Cook County* v. *Wolf,* [166] observed that much of the chilling effect was a result of the 2019 Final Rule's complexity.

Several commenters stated generally that the chilling effects caused older adults and their families to forgo benefits, including Medicaid and SNAP, due to the feared immigration consequences, with a disproportionate impact on older adults and people with disabilities. Commenters cited published research and studies that found that the mere announcement of a public charge rule in 2018 led to declines in safety-net participation, with an analysis of State-reported data showing that the announcement of public charge regulations was associated with a decrease in child enrollment in Medicaid of approximately 260,000 from 2017 levels.[167] Commenters submitted studies that found evidence that enrollment by all individuals in Medicaid, SNAP, and CHIP, as well as enrollment in WIC, even though CHIP and WIC were not included in the 2019 Final Rule, declined.[168] A different commenter noted a study that found that 30 percent of adults in low-income immigrant families with children reported that they or a family member had avoided non-cash government programs or other assistance with their basic needs because of concerns about the impact on their immigration status. Another commenter cited research on the impact of the 2019 Final Rule on immigrant families, which they described as showing that 48 percent of immigrant families avoided the SNAP program, 45 percent avoided Medicaid and CHIP, and 35 percent avoided housing subsidies because of the fear of risking their ability to obtain a green card.[169] The commenter also cited a 2020 report by the Center for Law and Social Policy stating that some parents were also reluctant to send their children to school or childcare, although the report did not attribute that claim to a specific study.[170] Another commenter stated that the Asian American, Native Hawaiian, and Pacific Islander population was especially affected by the chilling effects of the 2019 Final Rule, and continues to be affected in Medicaid and CHIP enrollment and renewals. Some commenters said that the 2019 Final Rule also affected U.S. citizen children, whose parents elected to disenroll or not enroll them in CHIP due to fear of immigration consequences.

One commenter cited a study showing that from 2016 to 2019, U.S. citizen children living in low-income households with at least one noncitizen saw:

- An 18 percent drop in Medicaid participation compared to an 8 percent drop in participation for U.S. citizen children living in households with only U.S. citizens;
- a 36 percent drop in SNAP participation compared to a 17 percent drop in participation for U.S. citizen children living in households with only U.S. citizens; and
- A 36 percent drop in TANF, General Assistance, and similar cash assistance programs compared to a 20 percent drop in participation for U.S. citizen children living in households with only U.S. citizens.[171]

[165] Public Law 107–296, sec. 101(b)(1)(F), 6 U.S.C. 111(b)(1)(F).

[166] 962 F.3d 208 (7th Cir. 2020).

[167] Jeremy Barofsky et al., ''Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs,'' Health Affairs (Oct. 2020), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763* (last visited Aug. 16, 2022).

[168] Jeremy Barofsky et al., ''Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs,'' Health Affairs (Oct. 2020), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763* (last visited Aug. 16, 2022),; Jeremy Barofsky et al., ''Putting Out the 'Unwelcome Mat:' The Announced Public Charge Rule Reduced Safety Net Enrollment among Exempt Noncitizens,'' J. of Behav. Pub. Admin. (Oct. 2021), *https://doi.org/10.30636/jbpa.42.200* (last visited Aug. 16, 2022); Hamutal Bernstein et al., ''Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019,'' Urban Institute (May 2020), *https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019* (last visited Aug. 16, 2022).

[169] Hamutal Bernstein et al., ''Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019,'' Urban Institute (May 2020), *https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019* (last visited Aug. 16, 2022).

[170] Rebecca Ullrich, ''The Public Charge Rule & Young Children: Q&A on the New Regulation,'' Center for Law and Social Policy (Feb. 2020), *https://www.clasp.org/sites/default/files/publications/2020/02/2020.02.24%20Public %20Charge%20Young%20Children %20Final%20Rule%20QA_update.pdf* (last visited Aug. 16, 2022).

[171] Randy Capps et al., ''Anticipated 'Chilling Effects' of the Public-Charge Rule Are Real: Census

A commenter cited data suggesting that the local SNAP program in the City and County of San Francisco (known as CalFresh) experienced a 15 percent decline in the caseload associated with households containing at least one noncitizen, and a much smaller decline associated with citizen-only households.

One commenter cited stories from survivors of domestic violence and sexual assault who stated they did not enroll in programs specifically designed for them, including domestic violence transitional housing, food pantry assistance, and sexual assault nurse examination and associated counseling services due to fear of the impact of the public charge ground of inadmissibility, and that they also withdrew from assistance programs that supported their basic needs. The commenter urged DHS to promptly publish a rule that advances victim and public safety and health; encourages victims to seek or utilize safety net benefits that are crucial to their ability to escape or recover from abuse and trauma; does not serve to punish victims for the violence they have experienced; and strengthens their ties to their families, who are essential sources of support in escaping and recovering from abuse.

Commenters wrote about the particularly harmful effects on a number of States, including California, New York, Maryland, and Illinois, stating that a rule similar to the 2019 Final Rule would result in coverage losses, decreased access to care, and worsened health outcomes for entire families, including children, many of whom are U.S. citizens. They also wrote about jeopardized access to health services for legal immigrants across individual States, affecting children, seniors, people with disabilities, and those with chronic conditions, which could exacerbate medical conditions and lead to sicker patients and greater reliance on hospital emergency departments, which would subsequently raise costs for all residents. Several commenters stated that the 2019 Final Rule deterred eligible individuals from accessing health care, particularly preventive care, which harmed the community and forced their county to shoulder the costs of expensive, last-minute emergency-department interventions. This is in agreement with another comment that predicted that failing to guarantee access to health care services for all people, including immigrants, will cause an increased use of emergency rooms and emergency care as a method of primary health care due to delayed treatment.

Several commenters indicated that the 2019 Final Rule had chilling effects on students from households with mixed immigration and citizenship status, with one commenter—a coalition of the nation's largest central city school districts—stating that frequent ''fluctuations in federal immigration policy have resulted in significant upheaval in the lives of many school children and their families, and have manifested in school absenteeism, behavior incidents, mental health issues, and declining academic performance for many affected students.'' The commenter stated that the 2019 Final Rule ''exacerbated disruptions for the families of tens of thousands of school children with such mixed immigration and citizenship status affecting their financial, emotional, and physical well-being.''

Another commenter stated that a rule similar to the 2019 Final Rule could lead to emotional trauma resulting from family separations due to denials of admission or adjustment of status based on public charge inadmissibility.

One commenter indicated that the chilling effects of the 2019 Final Rule will continue despite the publication of a new rule due to fears of reinstatement of the 2019 Final Rule as the result of future election outcomes, with another similarly stating that one aspect contributing to the chilling effect is a concern that a future administration will adopt a new public charge policy that penalizes people for using public benefits that are not included in the current public charge rule.

Response: DHS acknowledges that the 2019 Final Rule caused fear and confusion among U.S. citizens and noncitizens and had a significant chilling effect on the use of public benefits by noncitizens, even among those who were not subject to the rule and with respect to public benefits that were not covered by the rule. DHS is aware of evidence that the 2019 Final Rule, and the rulemaking process that preceded it, resulted in significant disenrollment effects among noncitizens and U.S. citizens in immigrant families. DHS also acknowledges the challenges associated with measuring chilling effects with precision, and notes that different studies use different data, methodologies, and periods and populations of analysis and therefore reach different estimates of chilling effects.[172]

DHS appreciates the commenter's concerns regarding family unity, but notes that the potential for a portion of a family to be deemed inadmissible is inherent in the concept of an individual inadmissibility determination. As compared to the 2019 Final Rule, however, this rule likely strengthens immigrant and mixed-citizenship families by virtue of avoiding certain chilling effects.

In this rule, given the significant evidence of the deleterious collateral effects of the 2019 Final Rule, DHS gives more thorough consideration to the potential chilling effects of promulgating regulations governing the public charge inadmissibility determination. DHS believes that in fashioning this rule, it is appropriate to consider the widespread collateral effects of the 2019 Final Rule, including loss of nutrition and medical assistance by, for instance, U.S. citizen children in mixed-status households. Such effects are not solely the consequence of the policy contained in the 2019 Final Rule, but they are attributable to the 2019 Final Rule at least in part and are potentially very harmful for some people, including U.S. citizen children, and are not an inevitable consequence of public charge policy. In fact, as DHS has noted elsewhere, the public charge ground of inadmissibility identifies a range of relevant considerations, but does not require DHS to consider past or current receipt of any specific public benefits; most noncitizens who are subject to the public charge ground of inadmissibility are not eligible for the public benefits covered by either the 2019 Final Rule or this rule; and the 2019 Final Rule, notwithstanding its broader construction of the term ''public charge'' (which resulted in such chilling effects) and various other policy features (including a heavy paperwork burden), ultimately did not result in any final denials of adjustment of status based on the totality of the circumstances public charge inadmissibility determination under section 212(a)(4)(A) and (B) of the INA, 8 U.S.C. 1182(a)(4)(A) and (B).[173] The 2019 Final Rule thus produced significant adverse collateral effects with no corresponding increase in the number of noncitizens found to be inadmissible on the public charge ground.

Data Reflect Steep Decline in Benefits Use by Immigrant Families,'' Migration Policy Institute (Dec. 2020), *https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real* (last visited Aug. 16, 2022).

[172] At the same time, no commenters submitted studies suggesting that there was no chilling effect.

[173] As noted above, while the 2019 Final Rule was in effect, DHS issued only three denials, which were subsequently reopened and approved.

In considering chilling effects, DHS took into account the former INS's approach to chilling effects in the 1999 Interim Field Guidance and 1999 NPRM, the 2019 Final Rule's discussion of chilling effects, judicial opinions on the role of chilling effects, evidence of chilling effects following the 2019 Final Rule, and public comments on chilling effects following the August 2021 ANPRM and the 2022 NPRM. While DHS cannot predict how future administrations will act and what policies will be put into place, with this rule DHS commits itself to issuing guidance in a manner that will be clear and comprehensible for officers as well as for noncitizens and their families and that will lead to fair and consistent adjudications, thereby mitigating the risk of unequal treatment of similarly situated individuals.

Comment: Commenters said that older adults and people with disabilities, particularly in low-income communities and communities of color, have been disproportionately impacted by the COVID–19 pandemic. A national association of children's hospitals stated that the COVID–19 pandemic created significant pressures on health care providers, which are only made worse by policies that deter eligible individuals from enrolling in coverage, and said that any increase in uncompensated care as a result of increased uninsured rates exacerbates the unprecedented strains faced by children's hospitals nationwide due to the pandemic, the continuing mental health crisis amongst our children and youth, and an ongoing and worsening workforce shortage. This commenter stated that those strains threaten to undermine our pediatric health care system and the health of our children. Two commenters particularly emphasized the adverse health effects that resulted from the 2019 Final Rule during the pandemic when eligible individuals did not access Medicaid due to the chilling effects of the 2019 Final Rule, noting a 2021 Kaiser Family Foundation study that found that 35 percent of immigrants expressed concern that getting the COVID–19 vaccine would negatively impact their immigration status, and that the chilling effects continued even after and despite the fact that DHS issued guidance excluding Medicaid coverage of COVID–19 testing and treatment from the public charge inadmissibility determination.[174] Commenters also cited a 2021 report by Protecting Immigrant Families stating that even after the beginning of the COVID–19 pandemic, research shows that immigrant families avoided non-cash benefits or other assistance because of public charge or other immigration concerns.[175] These commenters stated that these alarming trends have significant implications for the long-term health and well-being of children in immigrant families and threaten our nation's future prosperity and ability to recover from the pandemic. One commenter similarly stated that COVID–19 will be harder to control and eradicate if people are afraid of seeking medical benefits. Commenters said that the impacts of the 2019 Final Rule severely impair their city's overall ability to recover from the COVID–19 pandemic, particularly affecting older adults and people with disabilities, that the chilling effects have put public health at risk during the pandemic, and that the 2019 Final Rule undermined some of the States' most effective tools for protecting the public's health and well-being during a crisis and promoting our nation's recovery. One commenter cited a national survey of adults primarily in families with mixed immigration or citizenship status that found that 46 percent of surveyed families that needed assistance during the COVID–19 pandemic did not apply for it due to concerns over immigration status.[176]

Response: DHS acknowledges that the COVID–19 pandemic began to affect the United States at the same time as DHS began implementing the 2019 Final Rule. As discussed in the NPRM, the pandemic had widespread effects, including on the population that changed its behavior in response to the 2019 Final Rule—and this population was largely not even subject to the 2019 Final Rule. DHS also fully understands that although the COVID–19 pandemic has evolved, the pandemic's effects continue, in a variety of ways, to this day. DHS notes that some noncitizens in the United States may be especially vulnerable to the direct and indirect effects of the pandemic due to higher employment in high-risk occupations, greater fear of seeking care and enrolling in public benefit programs, comparatively limited healthcare and financial assistance options, limited English proficiency, and higher levels of poverty than U.S. citizens.[177]

Although DHS believes that the approach contained in this rule would be warranted, on both legal and policy grounds, regardless of the effects of the COVID–19 pandemic, this current pandemic has shown that pandemics are not a hypothetical concern and illustrates the importance of policy accounting for the possibility of similar occurrences in the future.

Comment: Two commenters pointed out that the 2019 Final Rule resulted in few adverse actions, which suggests that any public charge rule would only very narrowly protect the country's economic security, but a rule like the 2019 Final Rule would create widespread chilling effects extending to individuals not even subject to the public charge ground of inadmissibility.

Response: DHS agrees with these commenters that the 2019 Final Rule was not very consequential, during its period of implementation, in terms of the number of denials of adjustment of status applications. DHS acknowledges that the 2019 Final Rule resulted in widespread fear and confusion of being denied admission or adjustment of status, when in reality, as stated above, during the time that the 2019 Final Rule was in effect, of the 47,555 applications for adjustment of status to which the rule was applied, DHS issued only 3 denials (which were subsequently reopened and approved) and 2 Notices of Intent to Deny (which were ultimately rescinded, and the applications were approved). In promulgating this rule, DHS has given more thorough consideration to the potential chilling effects of promulgating regulations governing the public charge inadmissibility determination. DHS has concluded that this rule is consistent with the nation's economic security and will help ensure that public charge inadmissibility determinations will be fair, consistent with law, and informed by relevant data and evidence.

Comment: One commenter remarked that the 2019 Final Rule dramatically

[174] Liz Hamel et al., ''KFF COVID–19 Vaccine Monitor: COVID–19 Vaccine Access, Information, and Experiences Among Hispanic Adults in the U.S.,'' Kaiser Fam. Found. (May 2021), *https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-access-informationexperiences-hispanic-adults/* (last visited Aug. 16, 2022).

[175] Protecting Immigrant Families, ''Research Documents Harm of Public Charge Policy During the COVID–19 Pandemic,'' (Jan. 2022), *https://protectingimmigrantfamilies.org/wp-content/uploads/2022/01/PIF-Research-Document_Public-Charge_COVID-19_Jan2022.pdf* (last visited Aug. 16, 2022).

[176] No Kid Hungry, ''Public Charge was Reversed—But Not Enough Immigrant Families Know'' (Dec. 2021), *https://www.nokidhungry.org/sites/default/files/2021-12/NKH_Public%20Charge_Micro-Report_English_0.pdf* (last visited Aug. 15, 2022).

[177] DHS Office of Immigration Statistics and DHS Countering Weapons of Mass Destruction Office, ''COVID–19 Vulnerability by Immigration Status'' (May 2021), *https://www.dhs.gov/sites/default/files/publications/immigration-statistics/research_reports/research_paper_covid-19_vulnerability_by_immigration_status_may_2021.pdf* (last visited Aug. 15, 2022).

increased the burden placed on adjustment of status or admission applicants. Other commenters, including a trade association of home builders and a nonprofit organization serving farmworkers, similarly opposed the 2019 Final Rule as significantly discouraging lawful immigration by requiring Form I–944, Declaration of Self-Sufficiency, which created an impediment for employers, particularly small businesses, and negatively affected industries that required immigrant workers. Another commenter remarked that the public charge formula in the 2019 Final Rule was so complex and layered that it was extraordinarily difficult even for service providers to understand whether and how it applied.

Response: The 2019 Final Rule imposed a range of burdens separate and apart from the chilling effects that many commenters expressed their concern about. DHS agrees with the commenters who stated that the 2019 Final Rule was too burdensome on applicants by requiring additional information collection and evidence and its complex requirements. For example, Form I–944, together with its instructions, spanned 30 pages and requested a wide range of information on the statutory minimum factors, some of which was duplicative of other filings.

DHS believes that, in contrast to the 2019 Final Rule, this rule will avoid unnecessary burdens on applicants, officers, and benefits-granting agencies. In the 2019 Final Rule, DHS responded to multiple comments on the then-proposed Form I–944. In response to those comments, DHS revised certain fields to eliminate some redundancies or provide greater flexibility or clarity, and acknowledged that the time necessary to complete Form I–944 would vary by applicant (such that, for instance, a child without assets would not pose the same paperwork burden as an adult with assets).[178] DHS also emphasized that it was required to collect much of the information on the form in order to consider the statutory minimum factors. In the end, DHS finalized a lengthy and complex form that, according to the vast majority of comments that addressed the issue in that rulemaking and in this rulemaking, took many hours to complete.

This rule also ensures that DHS collects information regarding each of the statutory minimum factors, but does not require any additional forms and imposes a comparatively smaller paperwork burden. DHS has determined that the Form I–485, with some amendments, will sufficiently collect information regarding the factors that will be considered in a public charge inadmissibility determination. DHS reviewed the current form and proposed several additional questions regarding the factors used to make a public charge inadmissibility determination that were not already included in the form's information collection, including information about an applicant's household size, income, assets, liabilities, an applicant's education or skills, an applicant's use of public cash assistance for income maintenance, and any long-term institutionalization of the applicant at government expense. The form also informs applicants that additional space is available if applicants need to provide more information. DHS did not include additional questions or request additional evidence from applicants that is not related to a public charge inadmissibility determination. In order to reduce the burden on applicants not subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), DHS also included a question asking applicants if they are subject to the public charge ground of inadmissibility and, if not, instructing that they may skip the subsequent related questions. DHS believes that these updated questions to the Form I–485 are necessary for DHS to make an accurate inadmissibility determination under the statutory public charge ground and will not impose undue burdens on applicants.

Comment: Consistent with many comments stating the 2019 Final Rule was discriminatory, one commenter remarked that the 2019 Final Rule contained no clear justifications beyond discriminating against immigrants and satisfying voters who expressed anti-immigrant sentiments, with other commenters calling it a direct assault on the health and well-being of low-income immigrant households. One commenter stated that the 2019 Final Rule stood as a direct refutation of generations of immigrants who built this nation by dramatically broadening the classes of public benefits that could trigger a finding of public charge inadmissibility; instituting a durational test for measuring dependence on the unprecedented, expanded set of benefits; penalizing the mere application for benefits, even for those not subject to the public charge ground of inadmissibility; and replacing the totality of circumstances test with a rigid formula. One commenter stated that the 2019 Final Rule precluded immigrants with disabilities from applying for adjustment of status; put immigrant children with disabilities, such as those with diagnoses of autism spectrum disorder or failure to thrive, substantially at risk of worse outcomes due to limits in access to care; and contributed to creating and exacerbating life barriers, including timely medical attention. One commenter stated that the definition of ''public charge'' in the 2019 Final Rule resulted in almost all immigrants becoming ineligible for U.S. citizenship, and that people in America should not be deterred from help due to fear of deportation.

Response: DHS appreciates the commenters' concerns about the 2019 Final Rule and notes that comments about the intention of the 2019 Final Rule fall outside the scope of this rulemaking. However, to the extent these commenters intended to express concern about this final rule discriminating against low-income immigrants, DHS notes that section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), requires DHS to consider how a noncitizen's age; health; family status; assets, resources, and financial status; and education and skills impact whether the noncitizen is likely at any time to become a public charge. Under the statute, DHS may also consider an applicant's Affidavit of Support Under Section 213A of the INA, if applicable.

Furthermore, to the extent that commenters are suggesting that this rule will make most noncitizens ineligible for naturalization, DHS disagrees. This rule addresses how DHS determines inadmissibility based on the public charge ground and does not apply to individuals applying for naturalization.[179]

Comment: Commenters stated that the 2019 Final Rule did not take into account the contributions of immigrants to the economy and that the cost of issuing a rule similar to the 2019 Final Rule would outweigh the potential benefit to taxpayers because immigrants are less likely to use government benefits compared to people born in the United States. The commenters stated that the argument that taxpayers will be supporting immigrants is unfair, as

[178] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41483–41484 (Aug. 14, 2019).

[179] *See* INA sec. 318, 8 U.S.C. 1429. DHS notes, however, that USCIS assesses as part of the naturalization whether the applicant was properly admitted as a lawful permanent resident and therefore was eligible for adjustment based upon the public charge ground of inadmissibility at the time of the adjustment of status. Additionally, an individual may become removable on account of public charge while in lawful permanent resident status, which is a consideration which may be assessed at the time of naturalization. *See* INA sec. 237(a)(5), 8 U.S.C. 1227(a)(5). However, the assessment of removability for public charge is different from the assessment of public charge inadmissibility and is not a part of this rule.

millions of citizens born in the United States access public benefits and the effect on individual taxpayers is minimal. One commenter also stated that portraying any group of people solely as assets to the U.S. economy is dehumanizing and that it is important to consider human lives and basic human needs.

One commenter quoted a report from the National Immigration Law Center stating that the 2019 Final Rule made it harder for service providers to do their jobs due to the need for service providers and outreach workers to research the rule, understand its implications, and explain it to the clients as well as overcome misinformation from the media, social networks, and immigration attorneys.[180]

Another commenter stated that the 2019 Final Rule was an unreasonable and arbitrary interpretation of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and has burdened the States with additional healthcare costs and harmed the public health and economic well-being of residents, disproportionately impacting communities of color and people with disabilities, which only intensified during the COVID–19 pandemic.

Response: Many commenters opposed the 2019 Final Rule for economic reasons. While the stated intent of the 2019 Final Rule was to ensure that noncitizens subject to the public charge inadmissibility ground are self-sufficient, the 2019 Final Rule had many additional consequences that DHS acknowledges in promulgating this rule. DHS recognizes the burden on applicants and the time spent by service providers helping the public understand the nuances of the 2019 Final Rule. Furthermore, the burden on States and the harm to public health and the well-being of residents has been well-documented.[181] In drafting this rule, DHS has determined that it is issuing a policy that is fully consistent with the law; that reflects empirical evidence to the extent relevant and available; that is clear and comprehensible for officers as well as for noncitizens and their families; that will lead to fair and consistent adjudications and, thus, avoid unequal treatment of similarly situated individuals; and that will not otherwise impose undue barriers for noncitizens seeking admission or adjustment of status in the United States.

Comment: A commenter stated that noncitizens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates, and in many cases more often than U.S. citizens, since the 1960s. The commenter stated that current eligibility rules for public assistance and unenforceable financial support agreements have not lived up to the intent of the laws to prevent individual noncitizens burdening the public benefits system. The commenter—a nationwide network of attorneys, law students, and paralegals who ''support strong enforcement of federal immigration law and protecting the United States' sovereignty''—stated that several of its members were themselves immigrants, and that at the time of their arrival, ''it was both written and understood that 'self-reliance' was required with the promise of expulsion should an immigrant apply and/or receive public benefits.'' The commenter supported the approach taken in the 2019 Final Rule, which allowed immigration officials to consider noncash benefits such as housing vouchers in a public charge inadmissibility determination, stating that previous guidelines only resulted in a few hundred applicants being found inadmissible and increased financial burdens upon States and their residents. This commenter went on to express its support for the 2019 Final Rule as aligning more closely with the intent of Congress and policies of self-sufficiency.

Response: DHS respectfully disagrees with the commenter's assertions. The commenter did not cite any sources to support its claims regarding the insufficiency of eligibility restrictions, the insufficiency of the affidavit of support, past increases in public benefits use by noncitizens, or written policies regarding the use of different types of public benefits by noncitizens. DHS notes that most noncitizens who are eligible for public benefits are not subject to the public charge ground of inadmissibility.

2. Impacts of the 2022 Proposed Rule

Comment: Many commenters supported the proposed rule as a means to mitigate the chilling effects of prior public charge policies. Commenters stated that the rule will avoid unnecessary burdens on applicants, officers, and benefits-granting agencies while mitigating the possibility of widespread chilling effects with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible. Commenters also stated that the rule will allow immigrants better access to nutritional services and healthcare and in turn lower mortality rates among immigrant communities and improve the overall U.S. economy. One commenter also remarked that the rule would limit negative impacts by reducing the number of individuals who disenroll or elect to not enroll in healthcare programs and, due to the reduction of disenrollment from these programs, no longer shift the cost of care from less costly preventive care to the more costly emergency care.

Response: DHS agrees that this rule will avoid some of the chilling effects of prior public charge policies by ensuring that the rules governing the application of the public charge ground of inadmissibility are clear and that public charge inadmissibility determinations will be fair, consistent with law, and informed by relevant data and evidence. DHS also agrees that the rule will avoid unnecessary burdens on applicants, officers, and benefits-granting agencies while mitigating the possibility of widespread chilling effects with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible. In this rulemaking effort, DHS considered the former INS's approach to chilling effects in the 1999 Interim Field Guidance and 1999 NPRM, the 2019 Final Rule's discussion of chilling effects, judicial opinions on the role of chilling effects, evidence of chilling effects following the 2019 Final Rule, and public comments on chilling effects received in response to the ANPRM and the NPRM.

Comment: Many commenters stated that this rule will discourage noncitizens from seeking needed public assistance, with one commenter stating that non-enrollment persists despite those noncitizens helping to fund those programs through income taxes. Commenters who opposed the proposed rule stated that regardless of the actual definitions and text, it will only exacerbate mass homelessness, poverty, unemployment, hunger, and deteriorating mental and economic health, and lead to more of the chilling effects that resulted from the 2019 Final Rule, negatively impacting the health, safety, and well-being of immigrants. Another commenter stated that to enforce a rule that prevents those in need from obtaining necessary medical and nutritional assistance is immoral, particularly while in the midst of a pandemic. One commenter feared that this rule will disproportionately cause

[180] *See* Holly Straut-Eppsteiner, ''Documenting Harm through Service Provider Accounts Harm Caused by the Department of Homeland Security's Public Charge Rule'' (Feb. 2020), *https://www.nilc.org/wp-content/uploads/2020/02/dhs-public-charge-rule-harm-documented-2020-02.pdf* (last visited Aug. 16, 2022).

[181] *See* 87 FR at 10589–10593 (Feb. 24, 2022).

chilling affects among noncitizens with disabilities, because people may not apply for the services they need and to which they are legally entitled because they are afraid of the immigration consequences. Another commenter also said the chilling effect makes it more difficult for community-based providers to reach older adults and people with disabilities most in need of support.

Some commenters generally supported the approach taken in the proposed rule as compared to the 2019 Final Rule, but expressed concern that adding clarity to the public charge definition will do little to eliminate chilling effects and that the chilling effects not only have an impact on immigrants, but on communities as a whole. They wrote that including State and local benefits, current and past use of public benefits, as well as Medicaid for long-term institutionalization, still increases fear and confusion, and the chilling effects caused by the 2019 Final Rule will not be alleviated and mixed-status families will suffer.

Several commenters stated that the best way to reduce the chilling effect is to remove any consideration of public benefits from the public charge inadmissibility determination and to conduct robust outreach and education to explain the elimination of the 2019 Final Rule. One of those commenters stated that the consideration of public benefits creates an administrative burden to local government to keep immigrants informed and contributes to the harmful misperception that immigrants are present in the United States only to take and receive, which results in immigrants experiencing mistreatment and even violence, and harms overall public health and the economy.

Response: DHS disagrees that this rule will perpetuate the chilling effects of prior rulemaking efforts. While DHS acknowledges that that 2019 Final Rule caused fear and confusion among U.S. citizens and noncitizens, even among those who were not subject to the rule and with respect to public benefits that were not covered by the rule, with this rule DHS is working to mitigate the effects of that prior rulemaking. In drafting this rule, DHS endeavored to give more thorough consideration to the potential chilling effects of promulgating regulations governing the public charge ground of inadmissibility. In considering such effects, DHS took into account the former INS's approach to chilling effects in the 1999 Interim Field Guidance and 1999 NPRM, the 2019 Final Rule's discussion of chilling effects, judicial opinions on the role of chilling effects, evidence of chilling effects following the 2019 Final Rule, and public comments on chilling effects submitted in response to the ANPRM and NPRM.

DHS appreciates that the consideration of the past and current receipt of certain benefits in public charge inadmissibility determinations has resulted and may continue to result in chilling effects, notwithstanding that few categories of noncitizens are subject to the public charge ground of inadmissibility and eligible for such public benefits. However, DHS nonetheless believes that it is important to consider a noncitizen's past or current receipt of certain benefits, to the extent that such receipt occurs, as part of the public charge inadmissibility determination, as such receipt can be indicative of future primary dependence on the government for subsistence. DHS notes that Congress appears to have recognized that past receipt of at least some public benefits may be properly considered in determining the likelihood of someone becoming a public charge, as evidenced by its prohibition against considering the receipt of public benefits that were authorized under 8 U.S.C. 1641(c) for certain battered noncitizens.[182] As DHS wrote in the 2019 Final Rule, DHS believes that Congress' prohibition of consideration of prior receipt of public benefits by a specific class of noncitizens indicates that Congress understood and accepted consideration of past receipt of public benefits in other circumstances. However, DHS has never believed that this requires DHS to consider receipt of all such benefits.

Comment: One commenter stated that the proposed rule should be revoked, as it is very similar to the 2019 Final Rule, which was deemed unlawful and is dangerous for the public at large, and had harmful consequences for the U.S. economy in the midst of a pandemic.

Response: DHS disagrees that this rule is unlawful, dangerous to the public, or harmful to the U.S. economy. DHS has determined that, in contrast to the 2019 Final Rule, this rule would effectuate a more faithful interpretation of the statutory phrase ''likely at any time to become a public charge''; avoid unnecessary burdens on applicants, officers, and benefits-granting agencies; and mitigate the possibility of widespread ''chilling effects'' with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially with respect to individuals who are not subject to the public charge ground of inadmissibility.

Comment: One commenter stated that the proposed rule has a chilling effect on parents with children in U.S. schools, and that school districts should not forward household income information used to determine eligibility for critical school services that can be later used to deport a parent or caregiver based on current or past financial status.

Response: As indicated elsewhere in this rule, in making public charge inadmissibility determinations, DHS would consider the statutory minimum factors, the affidavit of support (if required), and receipt of cash assistance for income maintenance and long-term institutionalization at government expense. DHS did not propose to collect any information from schools and has not imposed such a requirement here. The specific suggestion, as it relates to the actions of school districts, is outside the scope of the rulemaking, particularly because this rule does not apply to any determinations regarding deportability.

3. General Suggestions for Addressing or Limiting Chilling Effects

Comment: Commenters stated that DHS should be aware that clear and simple rules are the least likely to have chilling effects and will benefit officers and organizations. One commenter wrote that while the 1999 Interim Field Guidance was ''indisputably superior'' to the 2019 Final Rule, even the 1999 Interim Field Guidance ''created confusion and an unnecessary chilling effect.'' [183] They suggested DHS begin the final rule with a simply worded executive summary or prominently displayed simple and clear description of the limited circumstances in which noncitizens already in the United States are and are not subject to a public charge inadmissibility assessment, and the effective date of the new regulations and proposed public charge inadmissibility determination process. Two commenters also recommended that multiple government agencies that administer public benefits issue public letters annually clarifying which programs that they administer are considered in public charge inadmissibility determinations and which are not. Commenters stated that the incorporation of clear language will help service providers respond to immigrant families' concerns that they will be penalized under some future rule for receiving benefits that the proposed rule does not take into consideration because immigrants and their families receive critical support from a variety of programs funded by

[182] *See* INA sec. 212(s), 8 U.S.C. 1182(s).

various entities. One commenter emphasized the importance of clear guidance for how to apply the rule and prioritizing communication given that any changes to public charge policy will lead to misinformation about which benefits will impact a noncitizen's ability to enter the United States or adjust their immigration status. One commenter stated that any lack of clarity regarding the implementation of the various elements of the rule permits reviewing officers to exercise discretion in a way that invites personal bias against applicants.

Another commenter similarly suggested that to mitigate the chilling effects of the 2019 Final Rule and this rule, DHS should expressly clarify in this final rule that utilization of Medicaid for healthcare, SNAP, and public housing, whether past or current, should never be considered in a public charge inadmissibility determination.

Response: DHS appreciates and understands commenters' concerns about using clear and clarifying language in this rule. In drafting this rule, DHS believes it provided clarification in its definitions as well as to which public benefits will be considered in a public charge inadmissibility determination. For example, as noted in the NPRM, defining ''likely at any time to become a public charge'' as likely at any time to become primarily dependent on the government for subsistence provides a clear connection between the exact language used in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and the regulatory definition.[184] Additionally, this rule establishes key regulatory definitions for ''public cash assistance for income maintenance,'' ''long-term institutionalization at government expense,'' ''receipt (of public benefits),'' ''government,'' and ''household.''

DHS appreciates the suggestion that chilling effects could be ameliorated by public communications efforts, including annual letters, by benefits-granting agencies which clarify how the programs that they administer interact with this rule, if at all. Although such communications materials are not part of the rulemaking, DHS is planning a robust communication effort in conjunction with and immediately following the publication of this rule and notes the helpful suggestions of commenters that such efforts involve collaboration with agencies that administer public benefits.

Some commenters suggested DHS begin this rule with a simply worded executive summary and DHS has obliged (see above Executive Summary section). As for the comment suggesting that DHS expressly clarify in the rule that DHS will not consider the receipt of SNAP, public housing, or Medicaid for anything other than long-term institutionalization in a public charge inadmissibility determination, DHS has added language to 8 CFR 212.22(a)(3) stating that DHS will not consider receipt of, or certification or approval for future receipt of, public benefits not referenced in 8 CFR 212.21(b) or (c), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, any benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits. As for the suggestion that using clear language about which benefits are, and are not, considered under this rule may help service providers respond to immigrant families' concerns that they will be penalized under some future rule for receiving such benefits, DHS notes that it cannot affect the policy decisions in future rules by the use of such language but changes to the clarifying regulatory text discussed above would require an amendment to the regulations.

As with any new regulation, the regulated public may need to read and become familiar with the regulation to understand how it applies. DHS will also issue guidance and may further revise such guidance as necessary after it has gained experience with the new regulatory regime.

Comment: Commenters expressed appreciation for DHS's acknowledgment of chilling effects and the attempts to lessen their harm through this rulemaking but expressed fear that the chilling effects would continue unless DHS engaged in a comprehensive information campaign. Many commenters suggested that DHS clearly communicate to the public that the 2019 Final Rule is no longer in effect so that the health and care of people in need will be better sustained.

Commenters stated that DHS should clearly and prominently list in all communications about the final rule and in the executive summary of the final rule all the benefits that will be considered as part of the public charge inadmissibility determination and emphasize that no other benefits will be taken into account. One commenter pointed out that a list, rather than a technical definition, is more useful and comprehensible for those seeking to understand the scope of the public charge assessment. The commenter cited a 2021 study by No Kid Hungry that found that in a survey of adults with family or friends who are noncitizens, 50 percent of respondents said that knowledge about changes to public charge regulations would make them more likely to use safety net programs when necessary.[185] One commenter suggested DHS maintain a streamlined mechanism for submitting questions about benefits that may be considered in a public charge inadmissibility determination, which will allow noncitizens to be more confident and certain they can access listed programs without endangering their immigration status, result in fewer calls to a State program, and make it easier for the State to serve the community by allowing them to streamline training and communications.

Several commenters recommended that multiple government agencies draft letters that distinguish SSI and TANF from other ''cash-related'' programs that their agencies oversee, to be posted on DHS's public charge resource page and updated annually to include new programs in order to reduce the chilling effect of this rule and the previous 2019 Final Rule. Many commenters stated that communication and outreach efforts must be available in multiple languages and have clear links to translated versions on the web page. Commenters suggested a variety of communication strategies and materials, emphasizing the importance of multilingual outreach and diverse methods of performing this outreach. Commenters stated that immigration policies should not discourage immigrants and their family members from seeking physical or mental health care, nutrition, or housing benefits for which they are eligible, and recommended DHS make a concerted effort to educate and affirm that an individual's temporary use of assistance will not negatively impact their immigration status.

Some commenters recommended that in furtherance of the Biden administration's commitment to promote equity and restore faith in our immigration systems, DHS partner with Federal and State agencies that operate public health programs to implement a nationwide outreach and education

[184] 87 FR at 10607 (Feb. 24, 2022).

[185] No Kid Hungry, ''Public Charge was Reversed—But Not Enough Immigrant Families Know'' (Dec. 2021). *https://www.nokidhungry.org/sites/default/files/2021-12/NKH_Public%20charge_Micro-Report_English_0.pdf* (last visited Aug 15, 2022).

effort to combat fear of utilization of public assistance programs and restore trust among immigrant families. Commenters said that DHS should also clearly communicate to parents of all children, both noncitizen children and U.S. citizen children, to reinforce that benefits received by children are not considered as part of any public charge inadmissibility determination, because both U.S. citizen children and noncitizen children have been detrimentally impacted by the false belief that a child's use of benefits would have immigration consequences for their parents or family members and it is important that families understand a child's use of benefits will not have immigration consequences. One commenter recommended that DHS clearly communicate to parents and caregivers that their own use of benefits, other than TANF and SSI, will not be considered in a public charge inadmissibility determination. For example, they recommended that DHS clarify that SNAP benefits and housing benefits supporting the whole family will not be taken into account so that parents and caregivers can access these programs without fear of immigration consequences and children's access to critical benefits will not be impacted. Commenters suggested DHS provide sample language to or coordinate with States and benefit granting agencies to create easy-to-understand materials with government agency logos to include on forms and public-facing websites.

Response: DHS remains interested in public input regarding ways to shape public communications around the final rule to mitigate chilling effects among U.S. citizens and noncitizens, including the great majority of noncitizens who are either ineligible for the public benefits covered by this rule prior to admission or adjustment of status or are exempt from the public charge ground of inadmissibility. Although such communications materials are not part of the rulemaking, DHS is keenly aware of the established effects of its actions in this policy area and wishes to ensure that the final rule faithfully applies the public charge ground of inadmissibility without causing undue confusion among the public. To further this, DHS is planning a robust communication effort in conjunction with and immediately following the publication of this rule.

Comment: Many commenters recommended that DHS provide funding to trusted community organizations, including health and social services organizations, that will provide outreach and education to noncitizens and their families related to this rule such as ''know your rights'' presentations, hotline services, phone banks, social media engagement, and train the trainer presentations to community leaders, because community organizations are trusted by noncitizens.

Response: DHS appreciates the recommendations made by commenters to provide funding to community organizations that provide outreach and education related to this rule. As discussed elsewhere in this preamble, USCIS intends to conduct its own robust outreach in advance of implementing this final rule. Although recommendations for new grant programs are outside the scope of the rulemaking, DHS will take them under advisement as it implements and monitors the effects of this rule.

Comment: Commenters indicated that DHS should invest significantly in training and retraining immigration officers and case workers.

Response: USCIS plans to provide its officers with a solid foundation on and knowledge of public charge inadmissibility determinations by conducting training for officers to ensure consistency in adjudications. Additionally, USCIS plans to issue policy guidance in its USCIS Policy Manual (*https://www.uscis.gov/policy-manual*), which will include information from the NPRM, and this final rule and can be accessed by potential applicants, officers, and the public.

Comment: Commenters stated that despite previous alert boxes and updates on the USCIS web page seeking to clarify that testing, treatment, and vaccination related to COVID–19 would not be considered as part of a public charge inadmissibility determination, there remained widespread fear that prevented many immigrants and their family members from seeking medical care, and the best way to ensure that people are not afraid to access health care is to provide a clear, concise statement that receiving government-funded health care or insurance will never have negative immigration consequences for immigrants or their family members. Another commenter similarly stated that the rule and outreach materials should also state that public health assistance for immunizations for any vaccine-preventable diseases and testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease are not included in a public charge inadmissibility determination.

Response: With respect to the comment that the rule should state that public health assistance for immunizations for any vaccine-preventable diseases and testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease are not considered in a public charge inadmissibility determination, DHS notes that it has made clear in the regulatory text that DHS will not consider the receipt of, or certification or approval for future receipt of, public benefits not referenced in 8 CFR 212.21(b) or (c), such as SNAP, CHIP, Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits.[186]

Regarding providing information about immunizations for any vaccine-preventable diseases and testing and treatment of symptoms of communicable diseases that are not considered under this rule in outreach materials, DHS notes that although such communications materials are not part of the rulemaking, DHS is keenly aware of the established effects of its actions in this policy area and wishes to ensure that the final rule faithfully applies the public charge ground of inadmissibility without causing undue confusion among the public. DHS previously indicated in the NPRM, is reiterating here, and will reiterate again in follow-on guidance, that it will not consider receipt of treatments or preventative services related to COVID–19, including vaccinations, in a public charge inadmissibility determination.

F. Applicability of the Public Charge Ground of Inadmissibility

Comment: Some commenters agreed that DHS should not consider the receipt of public benefits when adjudicating extension of stay and change of status requests. However, some commenters requested that DHS amend the rule to include a requirement that noncitizens seeking an extension of stay or change of status demonstrate that they have not, since obtaining their existing status, become a public charge or received public benefits sufficient to be determined to be a public charge. A commenter remarked that DHS has the authority to impose conditions on extension of stay and change of status and that doing so ensures noncitizens present in the United States are self-sufficient. The commenter suggested

[186] 8 CFR 212.22(a)(1)(3).

that DHS should require disclosure of any public benefit on extension of stay and change of status applications as well as the submission of a Declaration of Self Sufficiency by any noncitizen who discloses the use of a public benefit.

Response: Although DHS agrees that it has the authority to set conditions on requests for extension of stay and change of status,[187] as explained in more detail in the Other Legal Arguments section of this rule, consistent with the NPRM,[188] DHS has concluded that it will not require, as a condition of an application or petition for extension of stay or change of status, that a nonimmigrant disclose the use, if any, of public benefits since obtaining the nonimmigrant status that they wish to extend or change. Because such conditions would apply to very few, if any nonimmigrants, DHS finds that the burden of this inquiry outweighs any possible benefit that could result. This is, in part, because nonimmigrants are generally barred from receiving many of the public benefits considered in this rule, such as SSI, TANF, and Medicaid for long-term institutionalization.[189]

Additionally, to the extent that commenters are concerned that a nonimmigrant seeking an extension of stay or change of status may not be self-reliant, these concerns are, for many nonimmigrant categories, addressed both by the requirements for obtaining such status in the first instance [190] as well as the requirements applicable to their applications and petitions for extension of stay and change of status.[191] In sum, DHS believes that it has adequately explained its reasons for not imposing conditions related to the receipt of public benefits on nonimmigrants seeking an extension of stay or change of status and, as a result, declines to add provisions in this regard to the rule.

G. Exemptions, Limited Exemption, and Waivers

Comment: Some commenters recommended excluding children and teenagers from the public charge ground of inadmissibility because of the difficulty in accurately predicting a child or teenager's future likelihood of becoming primarily dependent on the government for subsistence.

Response: DHS disagrees that it should not apply the public charge ground of inadmissibility to children because it is difficult to predict a child's likelihood of becoming primarily dependent on the government for subsistence. While DHS acknowledges that the public charge inadmissibility determination is a complex assessment, the language of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), requires that this be a predictive assessment. This is evidenced by Congress' use of the terms ''likely at any time'' and ''become,'' which clearly indicate that the assessment should be a prediction based on the factors that Congress said must be considered when determining the likelihood of becoming a public charge. These statutory mandatory factors include considering an applicant's age when determining whether a noncitizen is likely to become a public charge at any time in the future.

While DHS understands that there are many circumstances that may affect whether a child ultimately is likely to become primarily dependent on the government for subsistence, DHS is required to make this predictive assessment when a child is applying for admission or adjustment of status unless the child is within one of the categories expressly exempted by Congress. DHS notes that Congress did not exclude children from the public charge ground of inadmissibility, and, therefore, DHS must apply the ground to applications for admission or adjustment of status by a child unless the child is seeking admission or adjustment of status in a classification exempted from the public charge ground of inadmissibility, for example adjustment of status as a special immigrant juvenile.[192]

Comment: Some commenters recommended that DHS include in the rule a presumption that children cannot be a public charge, barring compelling evidence to the contrary. One commenter wrote that children are far more likely than adults to be enrolled in TANF (77 percent of total TANF enrollees were children in FY 2021),[193] that use of benefits by a child does not indicate their likelihood to be a public charge as an adult, and that children are not accountable for their presence in the United States nor any application for public benefits on their behalf.

Response: DHS disagrees with the suggestion that there should be a presumption that children are not likely at any time to become public charges absent compelling evidence to the contrary. Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), neither permits DHS to focus the public charge inadmissibility determination solely on the applicant's age (specifically, the fact that the applicant is a child), nor supports a presumption that an applicant who is a child is not likely at any time to become a public charge. On the contrary, an applicant's age is but one of the statutory minimum factors that DHS must consider as part of a public charge inadmissibility determination.[194] Regardless of an applicant's age, Congress mandated that DHS, in every case except where there is an insufficient Affidavit of Support Under Section 213A of the INA when required, consider all of the statutory minimum factors in assessing whether an applicant is likely at any time to become a public charge.[195]

While DHS acknowledges that children are far more likely than adults to be enrolled in TANF, the HHS data provided by the commenter does not distinguish between TANF recipients based on immigration or citizenship status.[196] DHS notes that the great majority of noncitizens (including children) are either ineligible for TANF prior to admission or adjustment of status or are exempt from the public charge ground of inadmissibility. It is unlikely that the children receiving TANF are both noncitizens who are not yet lawful permanent residents and subject to the public charge ground of inadmissibility. DHS understands that according to the commenter, the study and book cited by the commenter state

[187] INA secs. 214 and 248, 8 U.S.C. 1184 and 1258.

[188] 87 FR at 10600–10601 (Feb. 24, 2022).

[189] 8 U.S.C. 1641(b) and (c) (defining ''qualified aliens'' for Federal public benefits purposes); 8 U.S.C. 1621 (describing eligibility for State and local public benefits purposes).

[190] *See, e.g.,* 8 CFR 214.1(f)(1)(B) (requiring that the student presents documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID)); 8 CFR 214.1(m)(1)(B) (requiring that student documents financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID).

[191] *See* USCIS, ''Adjudicator's Field Manual,'' Chapter 30.3(c)(2)(C) (applicants to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States) *https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm30-external.pdf* (last visited Aug. 16, 2022); USCIS, ''Adjudicator's Field Manual,'' Chapter 30.2(c)(3)(D) (DHS will consider an applicant's ''financial ability to maintain the status sought'' when determining whether to grant change of status in the exercise of discretion) *https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm30-external.pdf* (last visited Aug. 16, 2022).

[192] INA sec. 245(h)(2)(A), 8 U.S.C. 1255(h)(2)(A).

[193] Administration for Children and Families, ''Temporary Assistance for Needy Families (TANF) Caseload Data—Fiscal Year (FY) 2021'' (Dec. 20, 2021), *https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2021_tanf_caseload.pdf.*

[194] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[195] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[196] Administration for Children and Families, ''Temporary Assistance for Needy Families (TANF) Caseload Data—Fiscal Year (FY) 2021'' (Dec. 20, 2021), *https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2021_tanf_caseload.pdf.*

that public benefit use by children may lead to increased income throughout their lifetimes.[197] However, under section 212(a)(4)(A) of the INA, 8 U.S.C. 1182(a)(4)(A), DHS must determine if a noncitizen ''is likely *at any time* to become a public charge'' (emphasis added). ''At any time,'' certainly includes the period soon after a noncitizen's potential admission or adjustment of status. The questions that DHS must consider, therefore, are not only whether a child applicant is likely to become a public charge at some point during adulthood but, whether the child applicant is likely to become a public charge immediately after admission or adjustment of status, while still a child. Finally, Congress has provided exemptions from the public charge ground of inadmissibility for certain groups, including groups to which children belong, for example applicants for adjustment of status based on special immigrant juvenile classification.[198] However, Congress has not created a general exemption for children from the public charge ground of inadmissibility, nor has Congress indicated that this ground of inadmissibility only applies to noncitizens who are ''accountable'' for being in the United States or who intended to immigrate. Similarly, the statute does not suggest that Congress intended DHS to consider whether an applicant received public benefits because someone applied for such benefits on their behalf or whether the applicant had any choice in someone applying for a benefit on their behalf as part of a public charge inadmissibility determination.

Therefore, DHS declines to add a provision to this rule that would direct officers to treat an applicant's age, specifically the fact that an applicant is a child, as either outcome-determinative or as creating a presumption that the applicant is not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). Instead, under this rule and as noted in the NPRM, in making public charge inadmissibility determinations, DHS will consider the statutory minimum factors as set forth in the rule and the applicant's current and past receipt of public benefits in the totality of the circumstances [199] as well as favorably consider a sufficient Affidavit of Support Under Section 213A of the INA (*i.e.,* a positive factor that makes an applicant less likely at any time to become a public charge in the totality of the circumstances). Finally, DHS acknowledges the unique position of children and will provide guidance to officers on how to faithfully apply the statute and this final rule given the circumstances particular to children.

Comment: Many commenters expressed support for the proposed rule's listing of exemptions, limited exemptions, and waivers, with some requesting that DHS update public-facing guidance quickly and regularly to reflect this list and reduce the chilling effect on the legitimate use of benefits for those individuals who are exempt from the public charge ground of inadmissibility.

Response: In addition to including a comprehensive list of exemptions from the public charge ground of inadmissibility, which includes a ''catch-all'' exemption in the event that Congress adds other exemptions by legislation,[200] USCIS plans to issue policy guidance in its Policy Manual (*https://www.uscis.gov/policy-manual*), which will include information from the NPRM and this final rule regarding the exemptions from the public charge ground of inadmissibility and can be accessed by potential applicants. USCIS will update its Policy Manual as appropriate to reflect any changes made by Congress, if any, to the exemptions from the public charge ground of inadmissibility.

Comment: Several commenters also recommended DHS add certain categories to the list of exempt categories, including withholding of removal, parole, suspension of deportation, Deferred Enforced Departure, Deferred Action for Childhood Arrivals, and deferred action. These commenters recommended that DHS clarify that the ''catch all'' exemption in proposed 8 CFR 212.23(a)(29) includes these categories as well as all ''categories of lawfully present immigrants,'' which are not subject to the public charge ground of inadmissibility but may qualify for certain cash assistance programs. One commenter noted that this recommendation is aimed at helping to prevent chilling effects and provide ''protection against adverse consideration of such benefits for as many applicable categories of immigrants as possible.'' In the alternative to adding these categories of noncitizens to the exempt categories listed in 8 CFR 212.23(a), some commenters recommended that DHS add provisions to 8 CFR 212.22 stating that even though such noncitizens are not exempt from the public charge ground of inadmissibility, DHS would not consider public benefits received by such noncitizens while they were present in the United States in such immigration categories.

Response: The public charge ground of inadmissibility applies to all applicants for visas, admission, and adjustment of status unless exempted from the ground by Congress.[201] The exemptions that are listed in 8 CFR 212.23 reflect the classes of noncitizens who are applicants for admission or adjustment of status but who, as the commenters acknowledged, Congress has designated are exempt from the public charge ground of inadmissibility. DHS notes, however, that requests for withholding of removal, parole, Deferred Enforced Departure, Deferred Action for Childhood Arrivals, and deferred action are not applications for visas, admission, or adjustment of status, and, therefore, are not subject to the public charge ground of inadmissibility. Additionally, DHS notes that it does not need to include suspension of deportation under sections 202(a) and 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) [202] in the list of exemptions in 8 CFR 212.23(a) because they are already included in this rule, in 8 CFR 212.23(a)(7).

Furthermore, to the extent that these commenters believe that DHS should not consider in a public charge inadmissibility determination any benefits received during a period in which the noncitizen was present in the United States while benefiting from withholding of removal, parole, Deferred Enforced Departure, Deferred Action for Childhood Arrivals, deferred action generally, or in any of the ''categories of lawfully present immigrants to whom public charge inadmissibility grounds are inapplicable,'' DHS notes that Congress has not prohibited DHS from considering any public benefits received by such noncitizens. In the absence of such instruction, DHS believes that to not consider all benefit use by noncitizens in such categories, which would encompass all the categories of noncitizens eligible for SSI, TANF, or

[197] The commenter cites to Edwin Park, et al., ''Jeopardizing a Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm'' (Dec. 2020), *https://www.commonwealthfund.org/sites/default/files/2020-12/Park_Medicaid_short_term_cuts_long-term-effects_ib_v2.pdf* and National Academies of Sciences, Engineering, and Medicine, ''A Roadmap to Reducing Child Poverty'' (2019), *https://nap.nationalacademies.org/download/25246* (last visited Aug. 16, 2022).

[198] INA sec. 245(h)(2)(A), 8 U.S.C. 1255(h)(2)(A).

[199] 8 CFR 212.22(a)(2), (b).

[200] 8 CFR 212.23.

[201] *See* INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4).

[202] *See* Public Law 105–100, 111 Stat. 2193 (1997), as amended, 8 U.S.C. 1255 note.

Medicaid for long-term institutionalization whose past or current benefit use may be considered in a public charge inadmissibility determination, would be inconsistent with Congressional intent.

Congress, in enacting PRWORA and IIRIRA very close in time, made certain public benefits available to a small number of noncitizens who are also subject to the public charge ground of inadmissibility, even though receipt of some such benefits could influence a determination of whether the noncitizen is inadmissible as likely at any time to become a public charge.

Under the statute crafted by Congress, noncitizens generally will not be issued visas, admitted to the United States, or permitted to adjust status if they are likely at any time to become a public charge. Congress nonetheless recognized that certain noncitizens present in the United States who are subject to the public charge ground of inadmissibility might reasonably find themselves in need of public benefits that, if obtained, could influence a determination of whether they are inadmissible as likely at any time to become a public charge. Consequently, in PRWORA, Congress allowed certain noncitizens to be eligible for some public benefits even though they may later seek a visa, admission, or adjustment of status and thereby be subject to the public charge ground of inadmissibility. However, Congress, except in very limited circumstances,[203] did not prohibit DHS from considering the receipt of such benefits in a public charge inadmissibility determination under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). In other words, although a noncitizen may obtain public benefits for which they are eligible, DHS may consider the receipt of those benefits for the purposes of a public charge inadmissibility determination.

It is consistent with Congressional intent for DHS to not consider public benefits received by noncitizens during periods in which they were (1) present in an immigration category that is exempt from the public charge ground of inadmissibility or (2) eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the INA, 8 U.S.C. 1157 as described in this rule. The categories comprise a long list of vulnerable populations or groups of noncitizens of particular policy significance for the United States. Congress expressed a policy preference that individuals in these categories should be able to receive public benefits without risking adverse immigration consequences. DHS believes that Congress did not intend to later penalize such noncitizens for using benefits while in these categories because such consideration would undermine the intent of their exemption. Given the nature of these populations and the fact that, consistent with specific statutory authority, they would be exempt from the public charge ground of inadmissibility if applying for admission or, as permitted, adjustment of status under those categories, it is reasonable for DHS to exclude from consideration those benefits that an applicant received while in a status that is exempt from the public charge ground of inadmissibility. However, the same Congressional intention has not been expressed for other categories of noncitizens. DHS therefore will consider current and/or past benefit receipt by these other categories of noncitizens (*i.e.,* parolees, granted withholding of removal, or any other categories of lawfully present immigrants) who received those benefits when they apply for admission or adjustment in a category that is subject to a public charge inadmissibility determination. We note, however, that many of those categories of noncitizens would not be eligible for most public benefits to begin with. For these reasons, DHS declines to add the suggested changes to 8 CFR 212.23.

Comment: Many commenters recommended DHS strengthen the scope of protection provisions for vulnerable immigrants in certain categories by adding clauses recognizing that the exemption from the public charge ground of inadmissibility attaches regardless of their pathway to adjustment of status. Specifically, they recommended that DHS add such provisions for Violence Against Women Act (VAWA) self-petitioners and ''qualified aliens'' under 8 U.S.C. 1641(c), similar to provisions in the NPRM for T-nonimmigrant and U-nonimmigrant exemptions. The commenters suggested that such additions would remove unnecessary barriers for adjustment of status of noncitizens in these categories.

Response: Under section 212(a)(4)(E) of the INA, 8 U.S.C. 1182(a)(4)(E), certain ''qualified alien'' victims are exempt from the public charge ground of inadmissibility. This includes, as the commenters note, a noncitizen who ''is a qualified alien described in'' 8 U.S.C. 1641(c) and who is ''a VAWA self-petitioner,'' or an applicant for or recipient of U nonimmigrant status under section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U).

The commenters were under the impression that because proposed 8 CFR 212.23(a)(18) and (19) specifically mention ''seeking an immigration benefit for which admissibility is required, including, but not limited to, adjustment of status under section 245(a) of the Act,'' that the absence of such language in proposed 8 CFR 212.23(a)(20) and (21) suggested that the statutory exemptions from the public charge ground of inadmissibility for VAWA self-petitioners and ''qualified aliens'' described in 8 U.S.C. 1641(c) were dependent upon the particular pathway to LPR status being sought by the noncitizen. However, DHS notes that these commenters are mistaken in their interpretation of the proposed regulatory text. As they correctly stated, a noncitizen who ''is a VAWA self-petitioner'' or who ''is a qualified alien described in'' 8 U.S.C. 1641(c) is exempt from INA sec. 212(a)(4)(A)–(C), 8 U.S.C. 1182(a)(4)(A)–(C), and this exemption does not depend on the particular pathway to LPR status being sought by the noncitizen.

The language that the commenters praised in proposed 8 CFR 212.23(a)(18) and (19) and recommended including in 8 CFR 212.23(a)(20) and (21) is present due to statutory ambiguities unique to the adjustment of status of T and U nonimmigrants. Specifically, there is an inconsistency between INA sec. 212(a)(4)(E)(iii), 8 U.S.C. 212(a)(4)(E)(iii), and INA sec. 245(l)(2), 8 U.S.C. 1255(l)(2), as the former provides an exemption from INA sec. 212(a)(4)(A)–(C), 8 U.S.C. 1182(a)(4)(A)–(C), while the latter states that the public charge inadmissibility ground applies to T nonimmigrants but a waiver is available. This inconsistency is due to Congress' failure to amend INA sec. 245(l)(2), 8 U.S.C. 1255(l)(2), when it created INA sec. 212(a)(4)(E), 8 U.S.C. 1182(a)(4)(E), in its current form. Because the amendments to INA sec. 212(a)(4)(E), 8 U.S.C. 1182(a)(4)(E),[204] occurred later in time than the creation of INA sec. 245(l), 8 U.S.C. 1255(l),[205] DHS considers the text and exemption in INA sec. 212(a)(4)(E)(iii), 8 U.S.C. 1182(a)(4)(E)(iii), controlling. Given the conflicting statutory provisions, it is important for DHS to clarify in the regulatory text of 8 CFR 212.23(a)(18) that despite INA sec. 245(l), 8 U.S.C. 1255(l), the exemption applies in the adjustment of status context.

[203] *See* INA sec. 212(s), 8 U.S.C. 1182(s).

[204] *See,* Sec. 803, Violence Against Women Reauthorization Act of 2013, Public Law 113–4, 127 Stat. 54 (Mar. 7, 2013).

[205] *See,* Sec. 107(f) of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (Oct. 8, 2000).

While U nonimmigrants do not have conflicting statutory provisions as just described for T nonimmigrants, one could read the exemption language in INA sec. 212(a)(4)(E)(ii), 8 U.S.C. 1182(a)(4)(E)(ii), as limited to applying for and being granted U nonimmigrant status rather than being inclusive of adjustment of status and any other immigration benefit for which admissibility is required. Due to this potential ambiguity, DHS in this rule (and in the 2019 Final Rule) clarified in 8 CFR 212.23(a)(19) that the exemption applies to all immigration benefits for which admissibility is required, including, but not limited to, adjustment of status.

Unlike the T and U nonimmigrants, the statutory language relating to the exemptions from INA sec. 212(a)(4)(A)–(C), 8 U.S.C. 1182(a)(4)(A)–(C), for VAWA self-petitioners and ''qualified aliens'' described in 8 U.S.C. 1641(c) (apart from the T nonimmigrants) is straightforward and clear. If the noncitizen ''is'' in one of those two categories, INA sec. 212(a)(4)(A)–(C), 8 U.S.C. 1182(a)(4)(A)–(C), shall not apply to them. There is no ambiguity in the statutory language or a conflicting statutory provision that requires DHS to clarify the issue within the regulatory text. For this reason, DHS declines to make the proposed changes to the rule.

While not raised by the commenters, DHS points out that the exemptions found in INA sec. 212(a)(4)(E), 8 U.S.C. 1182(a)(4)(E), do not apply to INA sec. 212(a)(4)(D), 8 U.S.C. 1182(a)(4)(D). Congress did not include paragraph (D) among the exemptions in section 212(a)(4)(E) of the INA, 8 U.S.C. 1182(a)(4)(E). DHS must presume that Congress acted intentionally in requiring all noncitizens described in paragraph (D) to file the requisite Affidavit of Support Under Section 213A of the INA, even if they are described in paragraph (E).[206] Accordingly, in the unlikely event that a noncitizen described in paragraph (E) seeks admission or adjustment of status based on an immigrant visa issued under section 203(b) of the INA, 8 U.S.C. 1153(b), that individual must comply with the affidavit of support requirement in section 213A of the INA, 8 U.S.C. 1183a. Such individuals, however, would not need to demonstrate, as set forth in paragraphs 212(a)(4)(A) and (B), 8 U.S.C. 1182(A) and (B), that they are not likely at any time to become a public charge.

Comment: One commenter suggested that DHS clearly provide waivers for individuals who would otherwise qualify for protections provided for victims of domestic violence, sexual assault, and human trafficking afforded under VAWA, the Trafficking Victims Protection Act (TVPA), and other humanitarian immigration provisions, but who have not sought such protections or benefits and are seeking admission or adjustment of status under another provision in the INA, such as through family or employment sponsorship, the diversity visa program, or other programs. The commenter explained that this waiver would provide increased protection for survivors and reduce burden on the immigration system by decreasing additional processing of immigration applications and reducing pressure on immigration court dockets.

Response: The waivers that are listed in 8 CFR 212.23(c) reflect the classes of noncitizens who are applicants for admission or adjustment of status, and therefore subject to the public charge ground of inadmissibility, but who Congress has designated as eligible to seek a waiver of inadmissibility. DHS notes that only Congress can establish a waiver for this ground of inadmissibility. Accordingly, to the extent that this commenter believes that DHS should expand the waivers of the public charge ground of inadmissibility to include victims of domestic violence, sexual assault, and human trafficking who might be eligible for certain benefits under VAWA, the TVPA, and other humanitarian immigration provisions, but who have not sought such benefits and who are seeking admission or adjustment of status under a category to which the public charge ground of inadmissibility applies, DHS disagrees.

Congress, through legislation, decides to whom the public charge ground of inadmissibility applies, which classes of noncitizens are exempt from the ground, and which can obtain a waiver of the ground. Although DHS understands the desire to expand waivers to be available to victims of domestic violence, sexual assault, and human trafficking, the only waivers presently available are for applicants for admission as nonimmigrants under section 101(a)(15)(S) of the INA, 8 U.S.C. 1101(a)(15)(S), nonimmigrants admitted under that provision who are applying for adjustment of status under section 245(j) of the INA, 8 U.S.C. 1255(j), and the waiver under INA sec. 212(d)(3), 8 U.S.C. 1182(d)(3), for noncitizens applying for a nonimmigrant visa or admission as a nonimmigrant. DHS is not authorized to expand the waivers beyond those decided by Congress and as a result, DHS declines to adopt this commenter's recommendation.

Comment: Several commenters recommended removing the requirement that T and U nonimmigrants must be in valid T or U visa status at the time of filing the application for adjustment of status as well as at the time of adjudication of the adjustment of status application in order to adjust under section 245(a) of the INA, 8 U.S.C. 1255(a), or to seek another immigration benefit for which admissibility is required, as this limitation is unnecessary and could undermine the effectiveness of the exemptions at protecting these immigrants.

Response: As noted above, section 804 of VAWA 2013, which added section 212(a)(4)(E)(iii) of the INA, 8 U.S.C. 1182(a)(4)(E)(iii), specifically excludes noncitizens, such as ''qualified aliens'' described in 8 U.S.C. 1641(c) (including those granted T nonimmigrant status and those with a pending prima facie application for T nonimmigrant status) and noncitizens who are applicants for or have been granted U nonimmigrant status, from section 212(a)(4)(A), (B), and (C) of the INA, 8 U.S.C. 1182(a)(4)(A), (B), and (C). Additionally, T nonimmigrants seeking to adjust status under section 245(a) of the INA, 8 U.S.C. 1255(a) (with a limited exception), and section 245(l) of the INA, 8 U.S.C. 1255(l), are not subject to the public charge ground of inadmissibility for purposes of establishing eligibility for adjustment of status provided that the T nonimmigrants are in valid T nonimmigrant status at the time the Form I–485 is properly filed in compliance with 8 CFR 103.2(a)(7) and throughout the pendency of an application.[207] As with the U

[206] *See, e.g., Lamie* v. *U.S. Tr.,* 540 U.S. 526, 538 (2004) (counseling against interpretative methodologies that yield ''not . . . a construction of [a] statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope''); *Yith* v. *Nielsen,* 881 F.3d 1155, 1164 (9th Cir. 2018) (''It is never our job to rewrite a constitutionally valid statutory text. Indeed, it is quite mistaken to assume that whatever might appear to further the statute's primary objective must be the law.'' (citations, quotation marks, and alterations omitted)).

[207] *See* 8 CFR 103.2(b)(1) (an applicant or petitioner must establish that they are eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication); *see also Matter of Alarcon,* 20 I&N Dec. 557, 562 (BIA 1992) (''an application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered''). DHS notes that although VAWA 2013 did not amend section 245(l)(2) of the INA, 8 U.S.C. 1255(l)(2), which provides that DHS may waive the application of the

Continued

nonimmigrants discussed below, DHS points out that Congress used present tense language ''is a qualified alien described in'' 8 U.S.C. 1641(c) in describing the exemption for T nonimmigrants. If a noncitizen was in the past ''a qualified alien described in'' 8 U.S.C. 1641(c) but no longer is such a ''qualified alien'' at the time that their benefit request is filed with USCIS or at the time that the benefit request is adjudicated, the noncitizen no longer meets the requirements of INA sec. 212(a)(4)(E)(iii), 8 U.S.C. 1182(a)(4)(E)(iii), and INA sec. 212(a)(4)(A)–(C), 8 U.S.C. 1182(a)(4)(A)–(C), would apply to the noncitizen.

Furthermore, consistent with section 804 of VAWA 2013,[208] which, as noted above, added new section 212(a)(4)(E) of the INA, 8 U.S.C. 1182(a)(4)(E), an individual who is an applicant for, or is granted, U nonimmigrant status is exempt from the public charge ground of inadmissibility. However, DHS believes that for this exemption from the public charge ground of inadmissibility to apply, the U nonimmigrant must hold and be in valid U nonimmigrant status at the time the Form I–485 is properly filed in compliance with 8 CFR 103.2(a)(7) and throughout the pendency of an application.[209] U nonimmigrant status is not indefinite but rather is granted for a finite period of time, generally not to exceed 4 years in the aggregate.[210] In addition, U nonimmigrant status can be revoked.[211] DHS believes that the most reasonable interpretation of ''or is granted, nonimmigrant status under'' INA sec. 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U), is that the exemption only applies while the noncitizen has an active grant of U nonimmigrant status given the present tense of ''is granted.'' If Congress had intended for the exemption to persist even after the noncitizen was no longer in U nonimmigrant status, they could have indicated this in the statutory text by choosing a different verb tense. The law does not permit DHS to add language to the statute.

H. Definitions

Comment: One commenter stated that the lack of enrollment in public benefits due to ongoing fear and confusion in the immigrant community will not improve without clear definitions of ''public charge,'' ''primarily,'' ''public cash assistance,'' and ''long-term institutionalization.''

Response: Rather than defining the term ''public charge'' separately, DHS believes that defining ''likely at any time to become a public charge'' to mean ''likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense,'' [212] as well as defining the phrases ''public cash assistance for income maintenance'' [213] and ''long-term institutionalization at government expense,'' [214] achieves the necessary clarity. Officers have been applying a similar standard for over 20 years before and after the 2019 Final Rule was in effect, and DHS does not believe that further clarification is necessary.

DHS again emphasizes that the intent of this rule is to ensure fair public charge inadmissibility determinations consistent with section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). DHS also anticipates that this rule will help alleviate the chilling effects caused by the 2019 Final Rule.

1. Likely at Any Time To Become a Public Charge

Comment: Several commenters supported the definition of ''likely at any time to become a public charge'' proposed by DHS in its entirety. One of those commenters noted that case law reflects that from the time the term ''public charge'' was first used by Congress in 1882 until the 2019 Final Rule, ''public charge'' was broadly understood to mean a person primarily or entirely dependent on the government for subsistence.[215]

Response: DHS agrees that the definition for ''likely at any time to become a public charge'' in this rule is consistent with the historical understanding of the public charge inadmissibility ground. This position is reinforced by the cases cited by the commenter, which highlight that the historical understanding of ''public charge'' has been one of ''dependence on public assistance for survival'' [216] and a reliance ''on the government for subsistence.'' [217]

Comment: One commenter opposed allowing officers to make a prospective assessment in a public charge inadmissibility determination, as it invites officers' subjective biases into the determination.

Response: The public charge inadmissibility determination is necessarily prospective in nature based on the language of the statute. Indeed, through this rulemaking, DHS is implementing the congressional mandate to assess an applicant's likelihood at any time of becoming a public charge based on, at a minimum, the factors that Congress put into place.[218] As DHS noted in the NPRM,[219] this rule is consistent with the statutory wording, in that the statute uses the phrase ''likely at any time,'' which suggests that the public charge inadmissibility determination is a forward-looking, prospective determination that is made at the time of the application for a visa, admission, or adjustment of status.

DHS also agrees, as noted in the NPRM,[220] that the public charge inadmissibility determination is inherently subjective in nature given the express wording of section 212(a)(4)(A) of the INA, 8 U.S.C. 1182(a)(4)(A), which states that the public charge inadmissibility determination is ''in the opinion of'' DHS.[221] Insofar as this rule reflects the prospective nature of this ground of inadmissibility and the subjective nature of the determination as set by Congress, DHS declines to eliminate the prospective determination.

Comment: One commenter recommended DHS clarify the word ''likely,'' as the lack of specificity in the definition creates an opportunity for confusion or over-reach.

Response: To the extent that this commenter suggests that DHS should define the term ''likely'' to avoid officers

public charge ground of inadmissibility if it is in the national interest to do so for a T nonimmigrant seeking to adjust status to lawful permanent residence under section 245(l) of the INA, 8 U.S.C. 1255(l), DHS concludes, however, that the VAWA 2013 amendments, which postdated the enactment of section 245(l)(2) of the Act, 8 U.S.C. 1255(l)(2), are controlling.

[208] *See* Public Law 113–4, 127 Stat. 54 (2013).

[209] *See* 8 CFR 212.23(a)(19)(ii).

[210] *See* 8 CFR 214.14(g)(1).

[211] *See* 8 CFR 214.14(h).

[212] *See* 8 CFR 212.21(a).

[213] *See* 8 CFR 212.21(b).

[214] *See* 8 CFR 212.21(c).

[215] The commenter cited to *City and County of San Francisco* v. *USCIS,* 981 F.3d 756 (9th Cir. 2020) and *New York* v. *DHS,* 969 F.3d 42, 74 (2d Cir. 2020).

[216] *City and County of San Francisco* v. *USCIS,* 981 F.3d 756 (9th Cir. 2020).

[217] *New York* v. *DHS,* 969 F.3d 42, 74 (2d Cir. 2020).

[218] *See* INA sec. 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

[219] 87 FR at 10606–10607 (Feb. 24, 2022).

[220] 87 FR at 10579 (Feb. 24, 2022).

[221] *See Matter of Harutunian,* 14 I&N Dec. 583, 588 (Reg'l Cmm'r 1974) (''[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words 'in the opinion of' (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review.'' (citation omitted)); *see also Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421 (Att'y Gen. 1962) (''[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.'').

applying the statute inconsistently or abusing their discretion, DHS disagrees that a separate definition is needed. DHS has been applying the ''likely to become primarily dependent on the government for subsistence'' standard for public charge inadmissibility determinations for over 20 years (with the exception of the period during which the 2019 Final Rule was in effect) and believes that the definitions in the rule sufficiently explain to officers that the focus of the inquiry is on whether an applicant is likely to become primarily dependent on the government for subsistence. As explained in the NPRM, DHS defined the term ''likely'' as ''more likely than not'' in the 2019 Final Rule.[222] DHS continues to believe that this interpretation is appropriate. Therefore, DHS does not believe that it needs to further define the term ''likely'' to ensure that officers properly exercise the fact-specific, discretionary determination required by Congress in the statute,[223] and declines to make changes to the rule in this regard.

Comment: One commenter recommended DHS adjust the definition for ''likely at any time to become a public charge'' to clearly indicate that public charge inadmissibility determinations are prospective, and to include the relevant time for likelihood of becoming a public charge is ''at any time *in the future.*'' Another commenter recommended that DHS clarify the phrase ''at any time'' to avoid confusion.

Response: As noted above, section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), uses the term ''at any time,'' which indicates that the public charge inadmissibility determination is a forward-looking, prospective determination that is made at the time of the application for a visa, admission, or adjustment of status. Consistent with the wording Congress used in enacting the public charge ground of inadmissibility, DHS has included a provision in this final rule that makes it clear that the public charge inadmissibility determination is a determination of a noncitizen's likelihood of becoming a public charge at any time in the future, based on the totality of the circumstances.[224] Insofar as DHS has already clarified that the public charge inadmissibility determination is forward-looking, DHS does not believe it is necessary to add ''in the future'' to the definition of ''likely at any time to become a public charge'' and declines this commenter's suggestion.

Comment: One commenter suggested that the final rule could be strengthened by including a time limit for the prospective test to create a clearer standard for officers, which would lead to more consistent adjudication. For instance, DHS could limit the forward-looking part of the test to 5 years, which is the length of time it generally takes for an LPR to be eligible to apply for naturalization. The same commenter suggested 3 years as an alternative, based on the length of time it generally takes for an LPR married to a U.S. citizen to be eligible to apply for naturalization, or to limit the forward-looking period to any time prior to naturalization. The commenter justified the recommendation of a fixed time limit to provide a clearer standard for USCIS officers and increase the likelihood that the standard would be implemented consistently. The commenter also noted that given an indefinite window, almost anyone is at risk of experiencing financial distress that could lead to public benefit use.

Response: DHS disagrees with limiting the forward-looking aspect of the public charge ground of inadmissibility to any specific period of time, including five years or three years as the commenter suggests. While commenters are correct that lawful permanent residents generally are eligible to naturalize after five years,[225] the public charge ground of inadmissibility does not have such specific temporal limits. Indeed, Congress directed the agencies administering the public charge ground of inadmissibility to determine whether the applicant is likely, *at any time,* to become a public charge, without explicit mention of the fact that the applicant may ultimately naturalize. While DHS appreciates the commenter's proposal and acknowledges that a fixed time limit for the prospective determination might be easier for DHS to implement, DHS declines to adopt this suggestion because Congress has not authorized DHS to set specific temporal limits on the prospective public charge inadmissibility determination.

a. Comments on ''Primarily Dependent''

Comment: Many commenters supported the standard of primary dependence, with some emphasizing the supplementary nature of some public benefits and stating that the definition allows for the possibility of an applicant having and maintaining their main source of income and being assisted by non-cash benefits if needed, without being primarily dependent on the government. Commenters remarked that the primarily dependent language strikes an appropriate balance between providing a definition in line with the statutory intent without overly confining definitions; and appropriately avoids any numerical analysis or threshold that is likely to be over-inclusive.

Response: As explained in the NPRM and throughout this final rule, DHS believes that this rule's ''primarily dependent on the government for subsistence'' standard, which is evidenced by the receipt of public cash assistance for income maintenance or by long-term institutionalization at government expense, is more consistent with Congressional intent, as well as the historical meaning of the term ''public charge,'' than the definition contained in the 2019 Final Rule.

Comment: One commenter recommends that DHS define ''likely at any time to become a public charge'' as likely to become primarily dependent on the government for subsistence, as demonstrated by the long-term receipt of Federal cash assistance for income maintenance. This commenter indicated that these modifications to the definition would clarify that dependence must be prolonged and would limit the public benefits considered to Federal cash assistance for income maintenance. The commenter stated that federal courts have recognized that these definitions and clarifications align with well-established legal and historical understandings of ''public charge.'' [226]

Response: DHS does not believe that these modifications to the definition are warranted. As explained elsewhere in this preamble, DHS believes that the standard in this rule is clear and familiar to both the public and DHS officers, as it was the standard that DHS used for over 20 years before and after the 2019 Final Rule was in effect. The ''primary dependence'' standard identifies individuals who are dependent on the government without other sufficient means of support. DHS

[222] 87 FR at 10607–10608 (Feb. 24, 2022).

[223] *See* INA sec. 212(a)(4)(A), 8 U.S.C. 1182(a)(4)(A) (''Any alien, who in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of the application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.'').

[224] *See* 8 CFR 212.22(b).

[225] *See* INA sec. 316(a), 8 U.S.C. 1427(a).

[226] Citing *City and County of San Francisco* v. *USCIS,* 981 F. 3d 742, 756 (9th Cir. 2020). *New York* v. *DHS,* 969 F.3d 42, 74 (2d Cir. 2020), cert dismissed, 141 S. Ct. 1292 (2021). *Cook County* v. *Wolf,* 962 F.3d 208, 216 (7th Cir. 2020) (quoting ''Inadmissibility and Deportability on Public Charge Grounds,'' 64 FR 28676, 28677 (May 26, 1999)). *See also New York,* 969 F.3d at 71 (determining meaning of public charge based on ''historical administrative and judicial interpretations'').

believes that receipt of public cash assistance for income maintenance, even for a short period of time, may reasonably be considered as part of the totality of the circumstances analysis. As the 1999 Interim Field Guidance stated, the longer ago a noncitizen received such cash benefits (or was institutionalized on a long-term basis at government expense), the less weight these factors will have as a predictor of future receipt. In addition, the longer a noncitizen has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the noncitizen is likely to become a public charge. Positive factors in the noncitizen's case demonstrating an ability to be self-supporting may overcome the negative implication of past receipt of such benefits or past institutionalization.[227]

Ultimately, DHS believes that the ''primary dependence'' standard identifies individuals who are dependent on the government without other sufficient means of support, as opposed to individuals whose dependence on the government for income or institutionalization is transient or merely supplementary. So, for example, institutionalization for a short period of rehabilitation would not constitute primary dependence. However, dependence on public cash assistance for income maintenance need not be ''prolonged'' to constitute primary dependence.

As DHS discusses in more detail below, DHS does not believe that it is reasonable to focus exclusively on the receipt of Federal cash assistance for income maintenance given that receipt of State, Tribal, territorial, or local cash assistance generally serves the same purpose and can be similarly indicative of future primary dependence on the government for subsistence, depending on the recency, amount, and duration of receipt.

Comment: Commenters suggested that receipt of public benefits to address temporary situations, such as pregnancy, should not be considered primary dependence. The commenters reasoned that accessing safety-net programs when pregnant is important for ensuring prenatal health, which can prevent long-term health needs. Commenters also stated that the receipt of benefits during natural disasters or other extraordinary circumstances, such as the COVID–19 pandemic or in the aftermath of hurricanes and wildfires, is due entirely to external events and does not provide any information on the recipient's likelihood of becoming primarily reliant on government assistance at a future date.

One commenter additionally recommended advertising that participation in basic nutrition programs does not demonstrate primary dependence on the government, because school nutrition professionals serving communities with large immigrant populations have stated that families are increasingly hesitant to apply for critical nutrition benefits due to confusion on the interpretation of public charge.

Response: Under this rule, DHS will not consider receipt of non-cash benefits, with the exception of long-term institutionalization at government expense (including Medicaid when used for that purpose).[228] Therefore, DHS will not consider most Medicaid benefits, as well as SNAP, CHIP, WIC, or other non-cash, supplemental, or special-purpose benefit programs. These programs assist many low-income individuals in remaining employed and self-sufficient. As indicated in the NPRM, DHS, and the INS before it, have never considered free or subsidized school lunches, home energy assistance, childcare assistance, or special nutritional benefits for children and pregnant individuals to be the types of public benefits that should be considered in a public charge inadmissibility determination, notwithstanding that each could conceivably have some nexus to future primary dependence on the government (or, in the case of the 2019 Final Rule, some nexus to future receipt of designated benefits above that rule's durational threshold).[229]

As indicated previously, DHS will consider the recency, amount, and duration of receipt of any cash assistance for income maintenance, as well as any long-term institutionalization at government expense, when determining whether a noncitizen is likely to become primarily dependent on the government for subsistence. Given the list of public benefits considered, and that most noncitizens are not eligible for these programs, however, these considerations will not often be present. As a result, DHS does not think that it should exclude from consideration all public benefits received by pregnant persons during pregnancy and after, although if a covered benefit was received during pregnancy, DHS could take the surrounding circumstances into account in the totality of the circumstances.

In addition, DHS will not consider disaster or pandemic assistance as those benefits are for a specific purpose—dealing with the natural disasters (including hurricanes or wildfires) or pandemics and their aftermath.

Comment: Several commenters disagreed with the ''primarily dependent'' definition as the standard of determining whether a noncitizen is likely at any time to become a public charge. One commenter stated that Congressional policy objectives are reflected in more than a century of statutes aimed at ensuring that noncitizens do not rely on public benefits, and the policies behind those statutes are summed up in PRWORA. Several commenters stated that the proposed rule uses the guise of long-standing precedent to narrowly define critical concepts, including public charge and the types of public benefits that could lead to such a determination. Another commenter stated that the narrow definitions distort the actual cost of immigrants' participation in public assistance programs and ignore the harm that such costs inflict on the States. Several commenters stated that Congress explicitly did not want noncitizens drawn to the United States by the promise of reliance on public benefits at taxpayer expense. These commenters stated that limiting the determination of a public charge to a noncitizen who is primarily dependent on public benefits ignores the fact that the noncitizen may still rely heavily on public benefits, even if they do not rely primarily on a benefit for subsistence, would allow many noncitizens to receive substantial public benefits without being determined to be a public charge. One of these commenters stated that this will encourage the use of public benefits while simultaneously rendering useless the public charge ground of inadmissibility.

Commenters disagreed with DHS's statement that the definition should not include a person who receives benefits from the government to help meet some needs but is not primarily depending on the government because the person also has one or more sources of independent income or resources upon which the individual primarily relies. These commenters stated that Congress' express policy is to avoid reliance on the government for support and contended that it is unclear why a noncitizen who relies on support, regardless of the type or purpose,

[227] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28690 (May 26, 1999).

[228] *See* 8 CFR 212.22(a)(3).

[229] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28692–28693 (May 26, 1999).

should not be determined to be a public charge.

Response: DHS disagrees with these commenters. As discussed in the section dealing with Congressional intent, DHS believes that the rule's definition of public charge is consistent with Congressional intent. While DHS agrees that Congress has stated that the availability of public benefits should not form an incentive for immigration, DHS does not believe that Congress intended the exclusion of individuals who merely receive special-purpose benefits to supplement existing income or bridge temporary circumstances. In addition, DHS believes that the policy contained in this rule appropriately accounts for other important congressional policy objectives, such as protecting public health, the wellbeing of U.S. citizen children, and the stability of families and communities.

For instance, under the 2019 Final Rule, which the above commenters favored, a noncitizen could be deemed inadmissible if DHS found the noncitizen likely to receive as little as $20 a month in SNAP benefits for a year. DHS does not believe that the term ''public charge'' necessarily encompasses such a circumstance. In addition, the past or current existence of such a circumstance is of limited value in determining whether a person is likely at any time to become primarily dependent on the government for subsistence.[230]

In the 2019 Final Rule, DHS acknowledged that some people might receive the designated public benefits in small amounts but noted that (at the *household* level) this happened rarely relative to circumstances in which the household received over $150 a month. DHS reasoned that the 2019 Final Rule's adverse treatment of low-level benefit receipt was ''to some extent a consequence of having a bright-line rule that (1) provides meaningful guidance to aliens and officers, (2) accommodates meaningful short-term and intermittent access to public benefits, and (3) does not excuse continuous or consistent public benefit receipt that denotes a lack of self-sufficiency during a 36-month period.'' [231] DHS ultimately concluded that the standard in that rule ''appropriately balance[d] the relevant considerations, and that even an alien who receives a small dollar value in benefits over an extended period of time can reasonably be deemed a public charge, because of the nature of the benefits designated by [that] rule.'' [232]

DHS has reconsidered its position on this matter and does not believe that the approach taken in the 2019 Final Rule was necessary to achieve an administrable rule or to effectuate a policy consistent with the principle of immigrant self-sufficiency. Moreover, with respect to the specific point made by the commenter, DHS observes that this rule is far more consistent with historical approaches to the public charge ground of inadmissibility than a rule that takes into consideration all or nearly all use of formerly designated public benefits, let alone a rule that would define a person as a public charge for having received benefits of such little monetary value.

DHS also disagrees with the comments stating that the definitions in this rule distort the cost of immigrants' participation in public benefit programs. While the commenters wrote that the 2019 Final Rule ''saved states money,'' they did not adequately explain this claim or provide evidence to support it. Instead, they assert generally that the disenrollment effects of the 2019 Final Rule reduced both the costs for States to administer the programs as well as the States' portion of the benefits themselves, and alleged that the proposed rule would increase those costs. DHS notes that most applicants for admission and adjustment of status are not eligible for public benefits, and most categories of noncitizens who are eligible for such benefits are also exempt, by statute, from the public charge ground of inadmissibility.[233] Reducing costs by causing confusion among those who are not covered by the rule, leading them to forgo benefits for which they are eligible, would not be a desirable effect even if the rule were found to have that effect. This comment is addressed in more detail in the Costs and Impacts, Economic Analysis Comments & Responses section.

Comment: Some commenters suggested that DHS should modify the ''primarily dependent'' standard. One commenter suggested an alternative definition of ''likely at any time to become a public charge'' by replacing the word ''primarily'' with the words ''exclusively and persistently.'' This commenter stated that ''primarily'' is a vague formulation that lacks clear standards to evaluate benefits received and provides no guidance on concrete time periods or objective elements to assess the reasons why a person obtained benefits. The commenter further stated that the ''primarily dependent'' standard invites arbitrary and inconsistent public charge adjudications. The commenter stated that reliance on government benefits should count negatively only in those narrow situations where there is no probability that the applicant would ever be capable of self-support under any scenario, independent of government benefits, in a totality of circumstances review. The commenter stated that this approach would align with the Second Circuit's view that the term public charge has a settled meaning reflecting a persistent dependence that goes beyond mere receipt of public benefits.[234] The commenter further stated that DHS should not penalize individuals for obtaining benefits designed to help people make ends meet when wages are insufficient or nonexistent or to secure adequate housing, nutrition, health services, or even training and education and that people should be able to receive benefits for periods of time to cover periods of illness, dislocation, etc. until they are able to provide for themselves.

One commenter said that using ''exclusively'' would accurately capture DHS's stated intention that a public charge is a person who relies on government support without other means, while ''primarily'' is ambiguous, invites discretion, is overly broad, and is inconsistent with the stated intent. Several other commenters recommended the definition require that reliance on the government be necessary to avoid destitution. Another commenter supported the longstanding ''primary dependence'' standard but recommended that DHS further refine the definition to require that dependence on government support be permanent. This commenter indicated that DHS should not count short-term

[230] *See* Memorandum from Sasha Gersten-Paal, Director, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, to All State Agencies, ''SNAP—Fiscal Year 2022 Cost-of-Living Adjustments'' (Aug. 16, 2021), *https://www.fns.usda.gov/snap/fy-2022-cost-living-adjustments* (last visited Aug. 15, 2022) (''The minimum benefit for the 48 states and DC will increase to $20 and will also increase in Alaska, Guam, Hawaii and the U.S. Virgin Islands.'').

[231] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41361 (Aug. 14, 2019).

[232] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41361 (Aug. 14, 2019).

[233] *See, e.g., Cook County* v. *Wolf,* 962 F.3d 208, 236–37 (7th Cir. 2020) (Barrett, J., dissenting) (''The upshot is that the [2019 Final Rule] will rarely apply to a noncitizen who has received benefits in the past. . . . Notwithstanding all of this, many lawful permanent residents, refugees, asylees, and even naturalized citizens have disenrolled from government-benefit programs since the public charge rule was announced. Given the complexity of immigration law, it is unsurprising that many are fearful about how the rule might apply to them. Still, the pattern of disenrollment does not reflect the rule's actual scope.'').

[234] *New York* v. *DHS,* 969 F.3d 42, 74 (2d Cir. 2020).

reliance on public benefits against individuals, particularly when such reliance is due to job loss, illness, or other temporary conditions.

Response: DHS disagrees with the commenter's statements that the ''primarily dependent'' standard is vague and subject to inconsistent application. DHS has been applying this standard since the 1999 Interim Field Guidance was published (with the exception of the time period during which the 2019 Final Rule was in effect). To the extent that difficulties in applying the standard arise, DHS may issue interpretative guidance informed by the terms of the statute and rule, as well as the relevant data. DHS agrees that evidence of persistent and/or exclusive dependence on the government for subsistence without any countervailing evidence that a noncitizen would be able to support themselves in the future would likely lead to the finding that a noncitizen is likely at any time to be primarily dependent on the government for subsistence. In addition, while DHS agrees that some degree of persistent dependence is reflected in the primary dependence standard (*e.g.,* long-term institutionalization suggests persistent dependence), DHS does not agree that such dependence must be exclusive (*i.e.,* that there must be evidence that a noncitizen is unable to meet *any* of their needs without government assistance).

Similarly, to the extent that commenters are suggesting that when looking at the likelihood of becoming primarily dependent on the government for subsistence, DHS should be assessing the likelihood of becoming primarily dependent on the government solely on a permanent basis, DHS disagrees. DHS notes, however, that evidence establishing that an applicant is primarily dependent on the government for subsistence on a permanent basis would lead to a finding that an applicant is inadmissible on the public charge ground.

DHS also disagrees that the statute demands such a high standard. While DHS acknowledges that the Second Circuit issued the strongest pronouncement regarding the statutory meaning of the term ''public charge,'' [235] it was not the only court to consider the meaning of the term. The Ninth Circuit found that the agency departed from the historical interpretation of the term,[236] and the Fourth and Seventh Circuits found the term to be ambiguous and open to reasonable agency interpretation, and the Supreme Court stayed the injunctions that were upheld by the Second (and Seventh) Circuits.[237]

As noted in the NPRM,[238] although the term ''public charge'' does not have a single clear meaning, its basic thrust is clear: significant reliance on the government for support. This has been the longstanding purpose of the public charge ground of inadmissibility; individuals who are unable or unwilling to work to support themselves, and who do not have other nongovernmental means of support such as family members, assets, or sponsors, are at the core of the term's meaning. Individuals who are likely to primarily rely on their own resources as well as some government support—even if they could be reliably identified—are less readily characterized as likely to become public charges. DHS does not believe that the term is best understood to include a person who receives benefits from the government to help to meet some needs but is not primarily dependent on the government, and instead has one or more sources of independent income or resources upon which the individual primarily relies.

As indicated in the NPRM, and this final rule, when making public charge inadmissibility determinations, DHS intends to analyze the factors set forth in this rule in the context of each noncitizen's individual circumstances.[239] When looking at past or current receipt of public benefits as potentially indicative of a likelihood of primary dependence on the government for subsistence, DHS will look at the recency, amount, and duration of such dependence. Finally, DHS plans to issue guidance for officers and the public. While not outcome determinative, this guidance would be intended to better ensure that the regulatory standard is appropriately and consistently applied. In conclusion, DHS is declining to modify the standard in accordance with the above suggestions.

b. General Comments on the Inclusion or Exclusion of Specific Public Benefits

Comment: Several commenters stated that DHS should exclude from consideration all current or past receipt of public benefits. Other commenters focused on exclusion of all temporary current or past receipt of public benefits. Others asked DHS to exclude all non-cash benefits, including long-term institutionalization. One of those commenters stated that they opposed consideration of public benefits because nonimmigrant visa holders and undocumented immigrants are ineligible for Federal means-tested public benefits and there should therefore be no current or past public benefit use for DHS to consider. Other commenters similarly opposed the inclusion of consideration of receipt of any public benefits because of a concern that people will avoid all benefits due to the confusion regarding the scope of the public charge inadmissibility determination. Still other commenters opposed such inclusion because the consideration is not mandated by either PRWORA or IIRIRA.

Response: DHS disagrees with commenters that it should eliminate all consideration of current or past receipt of public benefits, or that it should not consider temporary use of such benefits. While DHS acknowledges that relatively few noncitizens subject to the public charge ground of inadmissibility are eligible for the public benefits

[235] *New York* v. *DHS,* 969 F.3d 42, 64, 74 (2d Cir. 2020) (''We start our analysis below by considering whether Congress has spoken to its intended meaning of the statutory term 'public charge' and conclude that it has done so. . . . The settled meaning of 'public charge,' as the plain meaning of the term already suggests, is dependency: being a persistent 'charge' on the public purse. And as we explain further below, the mere receipt of benefits from the government does not constitute such dependency.'').

[236] *City and County of San Francisco* v. *USCIS,* 981 F.3d 742, 756–58 (''From the Victorian Workhouse through the 1999 Guidance, the concept of becoming a 'public charge' has meant dependence on public assistance for survival. Up until the promulgation of this Rule, the concept has never encompassed persons likely to make short-term use of in-kind benefits that are neither intended nor sufficient to provide basic sustenance . . . For these reasons we conclude the plaintiffs have demonstrated a high likelihood of success in showing that the Rule is inconsistent with any reasonable interpretation of the statutory public charge bar and therefore is contrary to law.'').

[237] *See Cook County* v. *Wolf,* 962 F.3d 208, 226 (7th Cir. 2020). (''As the district court recognized, there is abundant evidence supporting Cook County's interpretation of the public-charge provision as being triggered only by long-term, primary dependence. But the question before us is not whether Cook County has offered a reasonable interpretation of the law. It is whether the statutory language unambiguously leads us to that interpretation. We cannot say that it does. As our quick and admittedly incomplete overview of this byzantine law has shown, the meaning of 'public charge' has evolved over time as immigration priorities have changed and as the nature of public assistance has shifted from institutionalization of the destitute and sick, to a wide variety of cash and in-kind welfare programs. What has been consistent is the delegation from Congress to the Executive Branch of discretion, within bounds, to make public-charge determinations.''); *Casa de Maryland* v. *Trump,* 971 F.3d 220, 229 (4th Cir. 2020) (*rehearing granted*) (''[T]he public charge provision has led for almost a century and a half a long and varied life, with different administrations advancing varied interpretations of the provision, depending on the needs and wishes of the nation at a particular point in time. To be sure, the public charge provision ties alien admissibility to prospective alien self-sufficiency. But within that broad framework, Congress has charged the executive with defining and implementing what can best be described as a purposefully elusive and ambiguous term.'').

[238] 87 FR at 10606 (Feb. 24, 2022).

[239] *See* 8 CFR 212.22(b).

considered under this rule prior to applying for a visa, admission or adjustment of status, DHS believes that when certain public benefits are received, such receipt can be indicative of future primary dependence on the government for subsistence. Moreover, Congress appears to have recognized that past receipt of public benefits is properly considered in determining likelihood of someone becoming a public charge, as evidenced by its prohibition against considering the receipt of public benefits that were authorized under 8 U.S.C. 1641(c) for certain battered noncitizens.[240] DHS believes that Congress' prohibition of consideration of prior receipt of public benefits by a specific class of noncitizens indicates Congress understood and accepted consideration of past receipt of public benefits in other circumstances.

DHS notes that section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), only designates statutory minimum factors and otherwise grants discretion to the Secretary to establish a regulatory framework for making public charge inadmissibility determinations. As part of the exercise of that discretion, DHS has added the consideration of past and current receipt of certain public benefits to the list of factors officers will consider when making public charge inadmissibility determinations. While not required to do so, DHS has determined that past or current receipt of public cash assistance for income maintenance or long-term institutionalization at government expense is probative for determining whether a noncitizen will become primarily dependent on the government for subsistence in the future. As discussed throughout this final rule, DHS will take any such receipt into consideration in the totality of the circumstances including the recency, duration, and amount of receipt.

Comment: One commenter recommended that DHS not consider direct cash assistance, SSI, or other public benefits used by individuals with disabilities who are using those benefits specifically because they are individuals with disabilities. The commenter acknowledged that use of public benefits is only one part of the public charge inadmissibility determination, but stated that because officers have high caseloads and make decisions using paper evidence, they may fail to consider the relationship between using one public benefit and another. The commenter stated that eliminating the consideration of public benefits would benefit immigrants with disabilities who rely on these programs. The commenter recommended instead that USCIS ''limit the discussion to an immigrant's financial circumstances sans their receipt of public benefits, as is required by law. In situations where the immigrant's only income is public benefits, we recommend that this be recorded neutrally without reference to specific benefits (such as by stating that the immigrant does not earn income and having this fact, rather than the individual benefits, be considered relevant to the determination).''

Response: As discussed in more detail below, DHS disagrees that it should exclude from consideration all public benefits used by individuals with disabilities. As for other applicants, current or prior use of public cash assistance for income maintenance or long-term institutionalization at government expense could, in conjunction with other factors, be predictive of primary dependence on the government for subsistence. To be clear, this final rule is unequivocal on the point that DHS cannot use the very fact of disability alone to conclude that a noncitizen is likely at any time to become a public charge.

It was not clear from these comments why the commenter believed that officers would have difficulty considering the relationship between different kinds of benefit use for this or any other pool of applicants. However, officers will only consider the receipt of public cash assistance for income maintenance and long-term institutionalization at government expense. As explained in the NPRM, DHS will not consider the use of home and community-based services (HCBS), and will also take into consideration any evidence that a person was long-term institutionalized at government expense in violation of their rights. DHS has clarified in this final rule that the noncitizen's household income does not include income from public benefits listed in 8 CFR 212.21(b).[241] In addition, relevant changes to the Form I–485 collect information regarding the noncitizen's household income, assets, and financial status separately from information about past or current receipt of public benefits.

Comment: One commenter stated that healthcare received by asylees, refugees, and noncitizens without lawful status should be considered in a public charge inadmissibility determination until the Biden Administration shifts funding from USAID or the UN to reimburse U.S. taxpayers for funding short- and long-term ''charity'' hospital care.

Response: Refugees and asylees are exempt from the public charge ground of inadmissibility by statute, and those exemptions are reflected in new 8 CFR 212.23(a)(1) and (2). DHS will not consider any public benefits received by these populations. Some populations of noncitizens who entered the United States without inspection or are in the United States without a lawful immigration status may be subject to the public charge ground of inadmissibility if they seek to adjust status to that of a lawful permanent resident. In instances where the public charge ground of inadmissibility applies, DHS will consider such noncitizens' past or current receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. In addition, to the extent these individuals are subject to the affidavit of support requirement, benefit-granting agencies can move to enforce such affidavits of support in order to be reimbursed for the cost of benefits provided. However, DHS is not the Federal agency tasked with the enforcement of affidavits of support. Similarly, DHS is not aware of any initiatives whereby USAID or the UN would cover the cost of medical care for certain noncitizens.

Comment: One commenter commended DHS for obtaining on-the-record letters from HHS and USDA concerning the public charge ground of inadmissibility and the benefits that those agencies administer. The commenter strongly encouraged DHS to obtain similar letters from six other federal agencies, implying that those letters should similarly discuss the benefits that the agencies administer and the relationship of those benefits to the public charge ground of inadmissibility.

Response: DHS will not be including any additional letters with this final rule. In the published NPRM, DHS included letters from both HHS and USDA, and DHS believes those letters continue to support issuance of this final rule.

c. Comments on ''Subsistence''

Comment: One commenter expressed agreement with DHS's standard of ''primarily dependent,'' but recommended replacing ''for subsistence'' with ''for a recent and sustained amount of time with little prospect for change.'' The commenter stated that the 1999 Interim Field Guidance indicated that recency and length are more predictive, and that DHS should not define subsistence by

[240] *See* INA sec. 212(s), 8 U.S.C. 1182(s).

[241] 8 CFR 212.22(a)(1)(iv).

reference to benefits that families use to support work, such as health care, nutrition, or housing assistance. The commenter stated that this recommended definition is aligned with the longstanding interpretation of the law.

Response: DHS agrees with the commenter that it should consider the recency and duration of public benefit receipt when making a determination regarding whether a noncitizen is likely at any time to become primarily dependent on the government. However, DHS is also limiting the list of public benefits considered as part of a public charge inadmissibility determination to those benefits most indicative of primary dependence on the government, namely public cash assistance for income maintenance and long-term institutionalization at government expense. As explained throughout this final rule, this approach satisfies DHS's objective to faithfully administer this ground of inadmissibility while also being mindful of the potential indirect effects of its actions on a wide range of government programs. DHS is not adopting the suggestion proposed by this commenter, given that the regulatory framework finalized in this rule already takes into account the recency and duration of public benefit receipt.

d. Proposals for Specific Thresholds

Comment: One commenter recommended that DHS further define ''primarily dependent'' to indicate cash assistance for income maintenance comprising 75 percent to 100 percent of a person's income, so as to clarify the definition and reduce the chilling effect of the use of common cash benefit programs. Another commenter indicated that DHS should avoid any numerical analysis or threshold because an attempt to find a one-size-fits all threshold is likely to be over-inclusive and not sufficiently nimble to account for the myriad of ways in which older adults access government benefits.

Response: DHS appreciates these recommendations and has decided not to define ''primarily dependent'' in terms of a numerical threshold in this final rule. DHS believes that setting a numerical threshold in this context is unnecessary and might in certain respects or circumstances be viewed as arbitrary. In addition, this approach would be unnecessarily inflexible and take away from the individualized determinations that are contemplated by the statutory language. DHS considers the word ''primarily'' to have its ordinary meaning—namely main, chief, principal, of first importance, or foremost.[242] The longstanding ''primarily dependent'' standard has never been accompanied by a numerical threshold, and the commenter did not provide any examples of past standards setting a numerical threshold in this respect.

2. Public Cash Assistance for Income Maintenance

Comment: Two commenters supported the rule's determination that public cash assistance for income maintenance includes SSI, TANF, or State, Tribal, territorial, or local cash benefit programs for income maintenance because they are intended to maintain a person at a minimum level of income. One commenter stated that by modifying the definition to ''cash assistance,'' the rule mitigates the impact of an applicant's use of public benefits and is a positive modification to the public charge standard.

Most commenters supported DHS's proposal to exclude most noncash benefits from consideration. Many commenters agreed that noncash benefits are supplemental benefits and that DHS should exclude programs not intended for income maintenance, such as CHIP, SNAP, or Medicaid, other than Medicaid for long-term institutionalization at government expense, from a public charge inadmissibility determination. Commenters added that numerous public benefit programs and resources are vital to foster healthy individuals and communities, including public assistance programs that provide medical care and health insurance, food and nutrition, and housing assistance. One commenter stated that most immigrants who receive benefits like SNAP or Medicaid are employed or are married to someone who works—a sign that their family is working but workers are in low-paid jobs. The commenter described an analysis of Census data showing that 77 percent of working-age immigrants (18 to 64) who received one or more of six benefits (TANF, SSI, Medicaid, SNAP, housing assistance, or General Assistance) during 2020 also worked during the year or were married to a worker. For half of working-age immigrants who received benefits, the work was year-round, that is, 50 weeks of the year or more.[243] The share who are working or married to a worker would be higher if one looks over multiple years. The commenter wrote that because a large majority of people who are immigrants and receive these benefits are in families that include people who work, the commenter agreed that it is consistent with the intent of the law not to include noncash benefits including SNAP, housing assistance, and Medicaid in the definition of public benefits.

These commenters support not including these benefits in the list of public benefits considered in public charge inadmissibility determinations.

Response: DHS agrees with these commenters. As discussed in the NPRM, the structure of means-tested benefits programs—many of which were changed significantly in 1996, one month after the last amendment to the public charge ground of inadmissibility—supports the view that predicted participation in non-cash programs is not a good indicator that a noncitizen is likely to become a public charge. Many modern public assistance programs take the form of payments or in-kind benefits to help individuals meet particular needs and are not limited to individuals without a separate primary means of support. The Medicaid program, subsidized housing, and SNAP provide benefits to millions of individuals and families across the nation, many of whom also work.[244] One analysis of the 2019 Final Rule found that ''[i]n a single year, 24 percent—nearly 1 in 4—of U.S.-born citizens receive one of the main benefits in the [rule's] definition . . . . Looking at benefit receipt at any point over a 20-year period, approximately 41 to 48 percent of U.S.-born citizens received at least one of the main benefits in the public charge definition.'' [245] Although

[242] *See, e.g., Board of Governors* v. *Agnew,* 329 U.S. 441, 446 (1947) (holding that the word ''primarily'' means ''first,'' ''chief,'' or ''principal'' but can also mean ''essentially,'' ''fundamentally,'' or ''substantially'' (such that more than one activity could be principal)); *Malat* v. *Riddell,* 383 U.S. 569, 571–72 (1966) (holding that ''primarily'' means ''of first importance'' or ''principally'').

[243] The commenter reported that it analyzed the March 2021 Current Population Survey and considered participation in six forms of assistance covered by the 2019 Final Rule and available in the annual Census data: the individual's Medicaid or SSI participation and the family's SNAP, housing, TANF, or General Assistance participation.

[244] For instance, in July 2021, over 76 million individuals were enrolled in Medicaid, of whom between 42 and 44 million were adults. *See Medicaid.gov,* ''July 2021 Medicaid & CHIP Enrollment Trends Snapshot,'' *https://www.medicaid.gov/medicaid/national-medicaid-chip-program-information/downloads/july-2021-medicaid-chip-enrollment-trend-snapshot.pdf* (last visited Aug. 18, 2022).

[245] Danilo Trisi, ''Administration's Public Charge Rules Would Close the Door to U.S. to Immigrants Without Substantial Means,'' Center on Budget and Policy Priorities (Nov. 11, 2019), at 4, *https://www.cbpp.org/research/immigration/administrations-public-charge-rules-would-close-the-door-to-us-to-immigrants* (last visited Aug. 15, 2022). The analysis also observed that ''[i]n

the public charge ground of inadmissibility does not apply to most participants in these programs, and notwithstanding that the 2019 Final Rule took a different view as a consequence of a different approach to the concept of ''self-sufficiency'' and a decision to cover a wider range of public benefits, it would seem not to comport with common usage to describe so many Americans as being public charges.[246] Relatedly, all such non-cash program participants require a separate source of income to meet a number of basic needs. Cash assistance programs, on the other hand, are typically reserved for individuals with few if any other sources of income.[247] In addition, because cash assistance is not restricted to particular uses, receipt of cash assistance—which often coincides with the receipt of other means-tested benefits [248]—allows an individual to become dependent on the government in a way that participation in one or more non-cash benefits programs cannot. For example, an individual who receives only non-cash assistance would need another source of income to acquire various basic necessities like clothing or household items, while an individual who receives cash assistance could rely on that assistance, potentially combined with non-cash government benefits, to the exclusion of any other independent source of income or support.

When deciding to limit consideration to public cash assistance for income maintenance and ''institutionalization for long-term care'' at government expense,[249] both the former INS and DHS consulted with benefit-granting agencies. The former INS concluded that cash assistance for income maintenance and long-term institutionalization at government expense constituted the best evidence of whether a noncitizen is primarily dependent on the government for subsistence.[250] DHS's general approach to public benefits in this rule also better advances the multiple policy objectives established by Congress. This rule is an effort to faithfully implement the public charge ground of inadmissibility without unnecessarily and at this point, predictably, harming separate efforts related to health and well-being of people whom Congress has made eligible for supplemental supports.

Comment: Many commenters suggested explicitly including a list in the regulatory text, not just the preamble of the final rule, of public benefits that would not be included in a public charge inadmissibility determination, as well as providing a non-exclusive list of examples of public benefits not included. These commenters explained that this would clearly communicate to entities administering these benefits, recipients of benefits, and officers those benefits which benefits are not covered.

Response: DHS has included such a non-exclusive list in the final regulatory text. DHS intends to further address this issue in future guidance.

a. Comments on Proposed Inclusion of SSI and TANF

Comment: Many commenters recommended limiting public charge consideration to only the two listed Federal cash-assistance programs, TANF and SSI. Commenters stated limiting the definition to include only two Federal benefits is simpler to communicate and understand, less likely to create confusion among immigrants and their families, and less likely to deter participation in public benefit programs that promote healthy communities. One commenter stated that even if the rule were amended to further define income maintenance or provide exclusions in regulation, there will always be too much variety to clearly include and exclude all programs. Thus, the commenter said that DHS should remove non-Federal cash assistance programs from the rule.

Response: DHS is declining to exclude the consideration of State, Tribal, territorial, and local cash assistance for income maintenance. DHS believes that such programs serve similar purposes to Federal programs and are generally readily identifiable as general assistance programs. DHS is concerned about distinguishing between benefits that serve the same basic purpose, solely on the basis of funding source or authority. If questions arise about which cash benefits are considered and not considered, DHS may address the matter in interpretative guidance. DHS believes that excluding all such programs from consideration would be inconsistent with Congressional intent, because receipt of cash assistance for income maintenance from such State, Tribal, territorial, or local governments is fairly indicative of primary dependence on the government for subsistence.

Comment: Several commenters opposed the inclusion of SSI in a public charge inadmissibility determination, saying this targets people with disabilities and older adults. The commenters recommended DHS revise the language to include only long-term use of SSI. One commenter also mentioned that short-term use of SSI benefits may help individuals to stabilize their living and employment situation and should not prevent them from adjusting status in the United States.

Response: DHS thanks commenters for these suggestions. While DHS disagrees that it should exclude SSI from consideration in public charge inadmissibility determinations, DHS notes that current or past receipt of SSI, or any other covered public benefit, is

contrast, only about 5 percent of U.S.-born citizens meet the [1999 Interim Field Guidance] benefit-related criteria in the public charge [inadmissibility] determination.'' *Ibid.*

[246] In the 2018 NPRM, DHS stated that ''[c]ash aid and non-cash benefits directed toward food, housing, and healthcare account for significant federal expenditure on low-income individuals and bear directly on self-sufficiency,'' and emphasized the significant impact, in terms of overall expenditures, of non-cash benefit programs such as Medicaid and SNAP. *See* ''Inadmissibility on Public Charge Grounds,'' 83 FR 51114, 51160 (Oct. 10, 2018). At the same time, DHS acknowledged that ''receipt of noncash public benefits is more prevalent than receipt of cash benefits'' (*ibid.*), and DHS cited data indicating that over 20 percent of the U.S. population receives Medicaid, SNAP, or Federal housing assistance, whereas 3.5 percent of the U.S. population receives cash benefits (*id.* at 51162). DHS acknowledges that non-cash benefits programs involve significant expenditures of government funds, but the Department believes that the term ''public charge'' is best interpreted by reference to the degree of an individual's dependence on the government for support, rather than the scale of overall government expenditures for particular programs. And DHS has limited consideration of past receipt of public benefits to the benefits covered by this rule for the reasons stated throughout this preamble.

[247] *See, e.g.,* HHS Office of Family Assistance, ''Characteristics and Financial Circumstances of TANF Recipients, FY 2010'' (Aug. 8, 2012), *https://www.acf.hhs.gov/ofa/data/characteristics-andfinancial-circumstances-tanf-recipients-fiscal-year2010* (last visited Aug. 15, 2022) (''In FY 2010, about 17 percent of TANF families had non-TANF income.''); SSA, ''Fast Facts & Figures About Social Security'' (2021), *https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2021/fast_facts21.pdf* (among SSI recipients, ''[e]arned income was most prevalent (4.1%) among those aged 18–64''); GAO, GAO–17–558, ''Federal Low-Income Programs: Eligibility and Benefits Differ for Selected Programs Due to Complex and Varied Rules'' (June 2017), at 23–24 (illustrating income eligibility thresholds for a hypothetical family of three, and showing lower income eligibility thresholds for SSI ($1,551) and TANF ($0 to $1,660, depending on the State) as compared to SNAP ($2,184), Housing Choice Vouchers ($1,613 to $4,925, depending on the program and State), and Medicaid ($218 to $5,359, depending on the beneficiary's age and the State)).

[248] *See, e.g.,* Center on Budget and Policy Priorities, ''Policy Basics: Supplemental Security Income'' (Feb. 8, 2021), *https://www.cbpp.org/research/social-security/supplemental-security-income* (''Over 60 percent of SSI recipients also get SNAP (food stamps) and about one-quarter receive housing assistance.'') (last visited Aug. 18, 2022).

[249] As explained more fully below, for the purposes of this rule, DHS is replacing the term ''institutionalization for long-term care at government expense'' that was used in the 1999 NPRM and 1999 Interim Field Guidance with the term ''long-term institutionalization.''

[250] *See* ''Inadmissibility and Deportability on Public Charge Grounds,'' 64 FR 28676, 28677 (May 26, 1999). The former INS consulted primarily with HHS, SSA, and USDA in formulating the list of public benefits that it would have considered. *Ibid.*

not alone dispositive with respect to whether a noncitizen will be found likely at any time to become a public charge. As proposed in the NPRM, and retained in this final rule, DHS will consider not only the fact of receipt in the totality of the circumstances, but also the recency, duration, and amount of public benefits received when determining whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence, and thus likely to become a public charge. While DHS agrees that SSI, by design, is reserved for specific populations of individuals (namely those who are over the age of 65, are blind, or have disabilities), DHS notes that SSI is included in the list of considered public benefits not because it is received by certain groups of individuals sharing such characteristics, but because of the degree of dependence on the government for subsistence that receipt of SSI may indicate. DHS is separately tasked by section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), to consider whether age and health could make a noncitizen likely to at any time become a public charge.

Comment: One commenter stated that by including SSI in the consideration of a public charge inadmissibility determination, DHS is indirectly including the receipt of Medicaid-funded long-term services and supports into a public charge inadmissibility determination, even when they are supports delivered by the community. The commenter stated that most people with disabilities who rely on Medicaid-funded HCBS also rely on SSI and other cash assistance programs, and that including SSI in the public charge inadmissibility consideration would discriminate against people with disabilities who require HCBS. Another commenter stated that SSI and long-term institutionalization are factors that solely apply to people with disabilities.

Response: As explained in the NPRM, DHS is excluding the consideration of HCBS in large part because HCBS help older adults and persons with disabilities live, work, and fully participate in their communities, promoting employment and decreasing reliance on costly government-funded institutional care. As indicated by HHS in its letter to DHS supporting the February 24, 2022 NPRM, HHS distinguished HCBS from long-term institutionalization at government expense by stating that HCBS do not provide ''total care for basic needs'' because HCBS do not pay for room and board. To the extent HCBS are coupled with receipt of cash assistance for income maintenance, such as SSI, DHS believes that such receipt of SSI could be indicative or predictive of primary dependence on the government for subsistence. Because SSI is similarly situated to other cash assistance for income maintenance programs, DHS does not believe that it would be reasonable to exclude SSI from consideration. DHS disagrees that considering SSI discriminates against older adults or people with disabilities; such consideration treats them on par with other recipients of cash assistance for income maintenance.

Comment: Several commenters disagreed that cash-support programs, such as TANF, are indicative of the likelihood of an individual being primarily dependent on the government for subsistence and argued that DHS should accordingly not consider these programs. For example, commenters explained that: TANF has its own built-in protections against abuse and long-term reliance; in at least some jurisdictions TANF recipients receive a low amount of funds compared to the high costs of living; and TANF recipients must comply with work requirements and are limited to 60 months of receipt. One commenter also stated that assessment of public charge inadmissibility based on TANF receipt is weak, given low-income noncitizen immigrants are much less likely to receive TANF benefits than similar U.S.-born adults, their use of benefits declines over time, and people generally cannot receive TANF benefits for more than five years.

Response: DHS disagrees that DHS should exclude TANF from consideration in public charge inadmissibility determinations. However, as DHS indicated in the NPRM and in this final rule, the consideration of prior or current receipt of TANF, and other programs providing cash assistance for income maintenance, is not dispositive in a public charge inadmissibility determination. Rather, DHS will consider all the factors in new 8 CFR 212.22, including the noncitizen's household income and assets, as well as liabilities, exclusive of any income received from public benefits or illegal activities or sources and an Affidavit of Support Under Section 213A of the INA if required, and will also take into consideration the recency, amount, and duration of receipt of public benefits received, including TANF, in the totality of the circumstances. DHS believes that these considerations are more relevant to assessing the likelihood of becoming primarily dependent on the government for subsistence than overall statistics about costs of living in a particular geographic area.

While DHS appreciates the study analyzing the SIPP data cited by the commenter comparing benefit use among citizens versus noncitizens and how noncitizen benefit use varies over time,[251] DHS does not think that a lower rate of receipt of TANF by noncitizens supports exclusion of TANF from consideration. Although fewer noncitizens than citizens may be receiving TANF, especially prior to applying for a visa, admission, or adjustment of status, DHS finds that, based on information provided by HHS during this rulemaking, cash assistance programs under TANF are much more frequently used as a primary source of subsistence. As a result, such past and current receipt can still be indicative of primary dependence on the government for subsistence. Therefore, TANF is properly considered in the totality of the circumstances.

Comment: One commenter specifically indicated agreement with the exclusion of child-only TANF cases from a public charge inadmissibility determination because cash assistance like TANF reduces child poverty and improves children's long-term health and educational and economic outcomes. The commenter stated that immigration-related concerns should not impede children from receiving these critical benefits.

Response: DHS appreciates these comments but is declining to exclude all consideration of TANF received by children from public charge inadmissibility determinations. DHS did propose and is finalizing the proposal in this final rule to not attribute the receipt of cash assistance for income maintenance to a noncitizen if the noncitizen is receiving a public benefit (in this case TANF) solely on behalf of another, such as a child. However, if the applicant is a child and is subject to the public charge ground of inadmissibility, DHS would still consider the receipt by the child of TANF or other covered public benefits under new 8 CFR

[251] Leighton Ku and Erin Brantley, ''Immigrants' Progress: Changes in Public Charge Policies Can Promote The Economic Mobility of Immigrants and Their Contribution to the U.S. Economy,'' Social Science Research Network (Apr. 18, 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4086782* (''Census Bureau data [] demonstrates immigrants are often poor and in need when they first arrive in the US, but rapidly improve their economic status the longer they remain. Longitudinal analysis further shows that low-income non-citizen immigrants are less than half as likely to receive cash assistance thru Temporary Assistance for Needy Families (TANF) and less than one-seventh as likely to receive Supplemental Security Income (SSI) than similar low-income US-born citizens.'') (last visited Aug. 15, 2022).

212.21(b). Such consideration is not outcome determinative given that it is only one among a number of factors to be considered, and that DHS would still look at the recency, amount, and duration of receipt when determining whether a child noncitizen is likely at any time to become primarily dependent on the government for subsistence. In addition, DHS is not precluded from considering empirical evidence that receiving public benefits as a child could lead to better long-term outcomes, and make a child less likely at any time to become a public charge.

b. Comments on Proposed Inclusion of Other Cash Benefit Programs for Income Maintenance

Comment: Many commenters, including a group of 13 United States Senators, opposed the inclusion of State, Tribal, territorial, or local benefits, including programs providing cash assistance for income maintenance, as part of the public charge inadmissibility determination and recommended DHS delete this clause from the regulatory text. Commenters explained that programs funded by State and local government are an exercise of the powers reserved to the States themselves and that counting programs provided by Tribal governments is a violation of Tribal sovereignty and self-determination.

Commenters specifically provided examples of State-funded benefits that provide rental assistance, medical insurance, earned income tax credits, nutrition programs, guaranteed income pilots, and cash assistance that are temporary and act as pathways to self-sufficiency and said that DHS should not punish participants in these programs by being subject to the public charge inadmissibility determination. One of these commenters specifically referenced the New York Safety Net Assistance program (SNA) that is available to individuals not eligible for TANF. The commenter stated that the cash assistance portion of the benefit is mandatory (even if insignificant) and said that the program is aimed at preventing homelessness and primarily comprises rental and medical assistance. The commenter characterized the program as a proven path to self-sufficiency. Some commenters pointed to States that may have elected to provide State-funded coverage to immigrants who are in the United States lawfully but who do not qualify for Federal means-tested public benefits, and said that some States may provide veteran services benefits to dependents who may not be eligible for Federal veterans' benefits. Those commenters also remarked that State and local programs can be dynamic and variable among States in name and form, which makes the rule complicated to explain to impacted individuals, as well as complicated to administer and which will contribute to confusion among the public for public charge inadmissibility determinations. Commenters stated that public charge concerns should not limit the ability of States and localities to create support programs and that the rule should not penalize immigrants in any way for accepting the benefits for which they are eligible at the State and local level.

Some commenters additionally stated that exempting State and local programs would better allow local governments to provide services and increase trust within communities and improve constituents' quality of life, but not exempting these programs would require detailed policy and legal assessments for appropriate messaging and targeted outreach. One commenter also wrote about the difficulties and costs of constantly training staff and community partners on the potential immigration consequences of the receipt of new State and local public benefits.

Response: While DHS appreciates these comments, DHS is not excluding State, Tribal, territorial, or local cash assistance for income maintenance from this final rule. As discussed previously, DHS is concerned about distinguishing between benefits that serve the same basic purpose, solely on the basis of funding source or authority. DHS disagrees that considering benefits interferes with State rights or Tribal sovereignty. This final rule does not regulate which benefits or programs States and other governmental entities may provide. DHS is taking into consideration those programs that are more indicative of primary dependence on the government for subsistence in the totality of the noncitizen's circumstances. As indicated in the NPRM, these considerations exclude any special-purpose or supplemental programs, as well as disaster and similar assistance. With respect to the New York's SNA program, if the program provides a combination of non-cash and cash benefits, DHS would only consider the cash portion of the benefit in the totality of the circumstances, and such receipt would never alone be outcome determinative. If an individual receives a small amount of cash assistance for a limited period of time, such receipt would be unlikely to result in an adverse public charge inadmissibility determination. DHS also notes that applicants who are uncertain whether a benefit they are receiving is cash assistance for income maintenance can include information about the program to assist officers in determining whether the benefit should be considered.

In addition, DHS is only considering State, Tribal, territorial, or local programs providing medical coverage in narrow circumstances of long-term institutionalization at government expense. As with Medicaid, DHS is not considering application for, or approval to receive medical coverage or the fact that the individual is getting medical care or treatments through the State, Tribal, territorial, or local program, unless that care is long-term institutionalization.

Comment: One commenter stated that if DHS chooses to retain consideration of State and local benefits, DHS should explicitly distinguish State, local, territorial, or Tribal tax credits and other cash assistance programs from ''cash assistance for income maintenance.'' One commenter indicated that while USCIS has been clear that it will not consider tax credits, including the child tax credit, in public charge inadmissibility determinations, there is a concern that the rule would not explicitly protect a future child allowance that is not delivered through the tax system from consideration in a public charge inadmissibility determination. The commenter also noted that even when a child allowance was delivered through the tax system, focus groups and parents in mixed status families reported concerns that the CTC would have an impact on their immigration status.

Response: DHS is not considering tax credits as cash assistance for income maintenance, whether they are Federal, State, Tribal, territorial, or local, because many people with moderate or higher incomes are eligible for these tax credits, and the tax system is structured in such a way as to encourage taxpayers to claim and maximize all tax credits for which they are eligible. In addition, as the Department of the Treasury has noted, ''[i]t can be challenging to distinguish between the portion of a credit that offsets an individual tax liability versus the portion that is refundable. Determining the impact of a refundable tax credit depends on multiple variables, including other return elements and information the taxpayer provides, some of which are unrelated to the refundable tax credit in question.'' [252] DHS also has no interest in any action that may cause fear or

[252] *See* Dep't of the Treasury, ''Agency Financial Report: Fiscal Year 2021'' (2021), at 198, *https://home.treasury.gov/system/files/266/Treasury-FY-2021-AFR.pdf* (last visited Aug. 10, 2022).

confusion in relation to the payment of income taxes. Finally, these tax credits may be combined with other tax credits between spouses. One spouse may be a U.S. citizen, and the couple may file the tax return jointly. In such a case, DHS would not be able to determine whether the noncitizen or the U.S. citizen received the tax credit.

In addition, while DHS is clear that it will not consider the Child Tax Credit (CTC), DHS would consider any other general cash assistance that is available to families with children, which is similarly situated to programs like TANF, to be cash assistance for income maintenance, unless it could be classified as a special-purpose program. TANF, for example, is available to pregnant individuals or those responsible for one or more children under the age of 19, but there are no restrictions on the use of TANF cash assistance. Therefore, if similar general assistance is not provided as a tax credit and is not restricted in how it may be used, DHS would consider such assistance cash assistance for income maintenance. If, on the other hand, a future allowance is restricted in how it may be used—for example, cash or cash equivalent that may only be used to pay for daycare or school, then DHS would consider such assistance special-purpose and would not consider it in public charge inadmissibility determinations.

Comment: One commenter stated generally that DHS should not include cash assistance and that DHS should instead treat it on par with general health, nutrition, and housing programs, among others. The commenter stated that including cash assistance will only confuse people who may assume that COVID–19 stimulus checks, tax returns, and credits are included, particularly citing the need to specifically exclude coverage for testing and treatment for COVID–19. Another commenter stated that the use of cash assistance for designated purposes does not accurately predict whether a person is likely to become a public charge because individuals who receive these benefits can also independently earn income or have resources.

Response: As discussed previously in this final rule, DHS is not eliminating the consideration of cash assistance for income maintenance. However, such cash assistance does not include special-purpose benefits like disaster assistance. Finally, DHS was very clear in the NPRM, and is reiterating in this final rule, that DHS will not consider receipt of treatments or preventive services related to COVID–19 for purposes of public charge determinations. While COVID–19 vaccines, for example, are free to anyone who desires to get one, DHS is not considering healthcare coverage (except for long-term institutionalization at government expense), so DHS would not consider medications to treat COVID–19 or hospitalization in this context.

Comment: Other commenters also requested the explicit exclusion of benefits used by survivors of domestic violence or other serious crimes or benefits used by anyone during natural disasters, such as State-funded emergency relief funds, or other extraordinary circumstances, for example COVID–19-related relief funds that have been made available to everyone, including noncitizens without lawful status in the United States. They stated that use of these benefits is due entirely to external events and does not provide any information on the recipient's likelihood of becoming primarily reliant on government assistance.

Response: As indicated throughout this final rule, the only benefits DHS is considering are Federal (SSI and TANF), State, Tribal, territorial, and local cash assistance for income maintenance and any program (including Medicaid) that provides or covers the costs of long-term institutionalization at government expense. DHS is not considering disaster assistance, COVID–19 stimulus payments, or other similarly situated benefits. DHS notes that at least some survivors of domestic violence are exempt from the public charge ground of inadmissibility. Where the ground does not apply, DHS would not consider any public benefits received by those individuals. DHS is not adding a separate exclusion for all victims of crime and/or domestic violence because such an exclusion may overlap with existing exemptions and because an exclusion for all victims of crime would not take into account whether a noncitizen is receiving benefits because they were victimized or whether the benefits had nothing to do with the noncitizen's victim status. An applicant may always supplement their application with an explanation of the temporary circumstances that gave rise to benefits receipt covered by the rule.

Comment: A commenter also raised concerns with the consideration of ''general assistance'' and ''guaranteed income'' programs in public charge inadmissibility determinations. The commenter stated that ''[o]nly half of the states in the nation provide any type of general assistance, and it is only available to very few of those in need,'' noting that ''[s]ome are only available to individuals with a disability, and have maximum grant levels below the federal poverty level in all but two states and below one-quarter of the federal poverty level in half the programs.'' The commenter said that these State- and locally-funded programs are by definition guided by State and local priorities, and that DHS should not include them in public charge inadmissibility determinations because they do not provide enough income for ''income maintenance'' that would indicate ''primary dependence'' on the government, and because they are not funded nor guided by priorities set by the federal government. The commenter also flagged a ''growing trend'' around the country known as ''Guaranteed Income'' programs, which range between $200 and $1,000 monthly to households with eligibility and prioritization chosen by the locality or State implementing the program. The commenter stated that ''Guaranteed Income'' programs are not intended to be the sole source of income for the recipient households, but instead a support to allow the households to meet their other needs without creating dependence on the programs due to their time-limited nature. The commenter also expressed concern that looking at the amount and duration of benefit receipt would create disparate treatment among recipients given that different jurisdictions have differing resources available.

Response: As indicated previously, DHS is declining to exclude from consideration State, Tribal, territorial, and local cash assistance for income maintenance because such assistance can be indicative of primary dependence on the government for subsistence. The definition of government is not limited to the Federal government, and, as indicated in other comment responses, DHS has concluded that it would not be reasonable to distinguish between cash assistance recipients solely because of the source of the funds (*i.e.,* solely because the funds came from the Federal government, as opposed to State, Tribal, territorial, or local government). To the extent that ''guaranteed income'' programs are not the same as cash assistance for income maintenance in that they typically do not provide the primary source of income for recipients, or are made available without income-based eligibility rules, DHS would not consider these programs.

c. Suggestions That Other Benefit Programs Be Included in Public Cash Assistance for Income Maintenance

Comment: A commenter requested that DHS include the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) programs in the definition of public cash assistance for income maintenance. The commenter stated that although these payments are employment-based subsidies, they are still means-tested transfer payments for which noncitizens must individually qualify and are evidence that such noncitizens are not self-sufficient without a government subsidy. The commenter stated that at a minimum, DHS should exclude payments under either program from the definition of gross annual household income.

Response: DHS appreciates the comments regarding the EITC and CTC but is declining to add these to the definition of public cash assistance for income maintenance in new 8 CFR 212.21(b). Although EITC and the CTC benefits provided could be considered a particular form of cash assistance, DHS is not including the consideration of tax credits in this final rule because many people with moderate or higher incomes are eligible for these tax credits, and the tax system is structured in such a way as to encourage taxpayers to claim and maximize all tax credits for which they are eligible. In addition, as the Department of the Treasury has noted, ''[i]t can be challenging to distinguish between the portion of a credit that offsets an individual tax liability versus the portion that is refundable. Determining the impact of a refundable tax credit depends on multiple variables, including other return elements and information the taxpayer provides, some of which are unrelated to the refundable tax credit in question.'' [253] DHS also has no interest in any action that may cause fear or confusion in relation to the payment of income taxes. Finally, these tax credits may be combined with other tax credits between spouses. One spouse may be a U.S. citizen, and the couple may file the tax return jointly. Therefore, DHS would not be able to determine whether the noncitizen or the U.S. citizen received the tax credit. DHS is also not including the suggestion to exclude from the household income any amounts attributable to these tax credits, in part because of the same practical limitations.

d. Requests That Non-Cash Benefits Other Than Long-Term Institutionalization at Government Expense Be Considered

Comment: A commenter recommended that DHS withdraw the definition of public benefit and promulgate a new NPRM that defines public benefit in a manner that the commenter believes would be more commensurate with Congressional intent and with the way States and the Federal government distribute monies for public benefits, as the commenter does not believe it is appropriate to exclude entire programs, like Medicaid, that cost billions of dollars a year. Another commenter wrote that that PRWORA broadly defined federal public benefits and indicated that the proposed definition of public benefits in the NPRM is too restrictive. Another commenter wrote that in differentiating between types of benefits, DHS ignores Congressional intent in favor of an interim guidance memorandum that was never meant to be the equivalent of a final agency rule. Several commenters stated that by limiting the public charge inadmissibility determination to only cash benefits for income maintenance or long-term institutionalization, the definition improperly restricts the benefits that DHS could consider in the analysis. Several commenters stated that distinguishing between cash and noncash benefits is ''contrary to our national principle of self-sufficiency.'' One commenter said that the proposed rule's removal of the consideration of any supplemental or in-kind benefits is not a permissible construction of the statute, a claim they stated is supported by history and Congress's 1996 statutory amendments and additions. That commenter stated that many recognize that the 1996 affidavit of support provision reflects Congress's ''preference that the Executive consider even supplemental dependence in enforcing the public charge exclusion.'' [254] Another commenter similarly recommended the rule require officers to consider all means-tested public benefits, including public benefits provided by State, Tribal, territorial, and local governments to ''nonqualified aliens'' under PRWORA, consistent with Congress's scheme in limiting access to public benefits and the provisions of the INA, which according to the commenter state that the law is intended to protect each of these entities and allow them to recover lost benefits they may have provided.

Response: Congress itself previously distinguished between cash and non-cash benefits in the same manner as this rule in the IRCA legalization provision, which provided that ''[a]n alien is not ineligible for adjustment of status under [that provision] due to being [a public charge] if the alien demonstrates a history of employment in the United States evidencing self-support *without receipt of public cash assistance*.'' [255] Further, INS made this same distinction in the 1999 Interim Field Guidance, after which Congress amended the applicability of section 212(a)(4) of the INA multiple times, but only to limit the application of the ground of inadmissibility to certain populations or to limit consideration of certain benefits in certain circumstances.[256] As noted previously, Congress has long deferred to the Executive to interpret the meaning of ''likely at any time to become a public charge.'' DHS is not treading new ground by exercising that discretion in the way presented in this rule. DHS believes Congress' prohibition of consideration of prior receipt of public benefits by a specific class of noncitizens when making public charge inadmissibility determinations [257] indicates that Congress believed that the consideration of receipt of at least some public benefits was relevant to determining whether an applicant is likely at any time to become a public charge and that DHS should considered the receipt in all other circumstances when making a public charge inadmissibility determination. However, Congress left it to the agencies administering the ground to specify which public benefits should be considered when defining key statutory terms and standards, such as the forward-looking and predictive ''likely at any time to become a public charge,'' and the ''factors to be taken into account,'' which entails assessing current and past behavior in order make the prediction of possible future likelihood of becoming a public charge.

Comment: Some commenters stated that that the distinction that DHS drew between monetary and non-monetary benefits is artificial. A few commenters also stated that the proposed rule uses semantics rather than facts to argue

[253] *See* Dep't of the Treasury, ''Agency Financial Report: Fiscal Year 2021'' (2021), at 198, *https://home.treasury.gov/system/files/266/Treasury-FY-2021-AFR.pdf* (last visited Aug. 10, 2022).

[254] *Cook County* v. *Wolf,* 962 F.3d 208, 248 (7th Cir. 2020) (Barrett, J., dissenting).

[255] Public Law 99–603, tit. II, sec. 201 (Nov. 6, 1986) (codified at section 245A(d)(2)(B)(ii)(IV) of the INA, 8 U.S.C. 1255a(d)(2)(B)(ii)(IV)) (emphasis added); *see also id.* at secs. 302, 303 (similar provision for Special Agricultural Workers).

[256] *See, e.g.,* Public Law 113–4, sec. 804 (2013) (codified as amended at section 212(a)(4)(E)(i)–(iii) of the INA, 8 U.S.C. 1182(a)(4)(E)(i)–(iii)); Public Law 106–386, sec. 1505(f).(2000) (codified as amended at section 212(s) of the INA, 8 U.S.C. 1182(s)).

[257] *See* INA sec. 212(s), 8 U.S.C. 1182(s).

substantive differences between cash and non-cash benefits. Commenters stated that Congress was concerned about noncitizens relying on all government-funded welfare programs, not only receiving income-deriving benefits, and indicated that there is simply no functional difference between a cash and a non-cash benefit. Both stem from public funds used for public benefits that are equally relied on by those who cannot afford to meet some need. The commenter wrote that a recipient of federal or State housing assistance significantly relies on the government, as do the recipients of Medicaid or other State low or no-cost medical benefits. Another commenter also indicated that there is no difference between being reliant on benefits for a certain need, rather than reliant on benefits for income. One commenter stated that DHS relies on a flawed premise that, for public charge purposes, the analysis should rest on how the benefit is used by the individual, but instead DHS should only look to whether an individual is, in fact, relying on a public benefit. The commenter said that if the goal is to ensure that the noncitizen is not reliant on the government, the focus should be on how much the government spends on the benefit, not whether the benefit is income-deriving. A commenter supporting the exclusion of noncash benefits and advocating for exclusion of cash benefits as well stated that the distinction between cash and noncash benefits is arbitrary and confusing, and indicated that the assertion that cash benefits allow individuals to become dependent on the government in a way that participation in non-cash benefit programs did not was not supported by DHS with statistics. The commenter said that including this distinction would risk perpetuating and exacerbating disparities in access to stability and opportunities.

Response: DHS disagrees that it is drawing an artificial or arbitrary distinction between cash and non-cash benefits or that it is contradicting Congress' statements regarding self-sufficiency and dependence on public benefits. In determining to exclude most non-cash benefits as part of the definition of ''likely at any time to become a public charge,'' DHS has concluded, based on feedback from benefits-granting agencies, that non-cash benefits generally are less indicative of primary dependence on the government for subsistence than those benefits included in this rule for consideration. During the development of the NPRM, DHS consulted with benefits-granting agencies. In its on-the-record letter,[258] USDA advised that participation in nutrition programs, such as SNAP, ''is not an appropriate indicator of whether an individual is likely to become primarily dependent on the government for subsistence.'' The letter explained that SNAP is supplementary in nature as the benefits are calculated to cover only a portion of a household's food costs with the expectation that the household will use its own resources to provide the rest. The letter also stated that SNAP benefits are modest and tailored based on the Thrifty Food Plan (TFP), USDA's lowest cost food plan, and that an individual or family could not subsist on SNAP alone. USDA emphasized that a recipient can only use SNAP benefits for the purchase of food, such as fruits and vegetables, dairy products, breads, and cereals, or seeds and plants that produce food for the household to eat. The recipient may not convert SNAP benefits to cash or use them to purchase hot foods or any nonfood items. Receiving SNAP benefits only pertains to a need for supplemental food assistance and does not address all food needs or other general needs such as cooking equipment, hygiene items, or clothing, for example. USDA also stated that most SNAP recipients work and that there is no research demonstrating that receipt of SNAP benefits is a predictor of future dependency.

Similarly, in its on-the-record consultation letter,[259] HHS evaluated the Medicaid program within the context of a public charge definition based on primary dependence on the government for subsistence. HHS stated that ''with the exception of long-term institutionalization at government expense, receipt of Medicaid benefits is . . . not indicative of a person being or likely to become primarily dependent on the government for subsistence.'' This conclusion was based on HHS's assessment that Medicaid, except for long-term institutionalization, does not provide assistance to meet basic subsistence needs. In addition, HHS highlighted developments since 1999 that ''reaffirm Medicaid's status as a supplemental benefit.'' These developments include Congressional action that has expanded Medicaid coverage, such that in many States individuals and families are eligible for Medicaid despite having income substantially above the HHS poverty guidelines. HHS also noted that among working age adults without disabilities who participate in the Medicaid program, most are employed.[260] HHS also agreed with DHS that ''receipt of cash assistance for income maintenance, in the totality of the circumstances, is evidence that an individual may be primarily dependent on the government for subsistence.'' HHS addressed the TANF program, which it administers, and stated that unlike Medicaid, cash assistance programs under TANF have remained limited to families with few sources of other income and are much more frequently used as a primary source of subsistence. DHS acknowledges the possibility of opposing views,[261] but believes that the information in these letters provides ample support for the distinction that DHS has historically drawn between cash and noncash benefits.

DHS also notes that, based on experience with the 2019 Final Rule, DHS knows that including non-cash benefits as part of a public charge inadmissibility determination, both in the definition and in the factors considered, predictably results in widespread chilling effects based on a misunderstanding of the law, while ultimately not resulting in any denials under that rule. As DHS explained in the NPRM, the inclusion of non-cash benefits in the 2019 Final Rule had a significant chilling effect on enrollment in Federal and State public benefits, including Medicaid, resulting in fear and confusion among both noncitizens and U.S. citizens. Concerns over actual and perceived adverse legal consequences tied to seeking public benefits have affected whether or not immigrants seek to enroll in public benefit programs, including Medicaid and CHIP, and have resulted in a decrease in health insurance rates among eligible immigrants, particularly Latinos.[262] Medicaid provides critical

[258] *See* Letter from USDA Deputy Under Secretary on Public Charge (Feb. 15, 2022), *https://www.regulations.gov/document/USCIS-2021-0013-0199* (last visited July 12, 2022).

[259] *See* Letter from HHS Deputy Secretary on Public Charge (Feb. 16, 2022), *https://www.regulations.gov/document/USCIS-2021-0013-0206* (last visited July 12, 2022).

[260] *See* Rachel Garfield, et al., ''Work Among Medicaid Adults: Implications of Economic Downturn and Work Requirements,'' Kaiser Family Foundation (Feb. 11, 2021), *https://www.kff.org/coronavirus-covid-19/issue-brief/work-among-medicaid-adults-implications-of-economic-downturn-and-work-requirements/* (last visited Aug. 15, 2022).

[261] *See, e.g., Cook County,* 962 F.3d 208, 249 (7th Cir. 2020) (Barrett, J., dissenting) (suggesting that DHS might reasonably decline to distinguish between ''$500 for groceries or $500 worth of food'').

[262] HHS, Assistant Secretary for Planning and Evaluation, Office of Health Policy, ''Health Insurance Coverage and Access to Care for Immigrants: Key Challenges and Policy Options'' (Dec. 17, 2021), *https://aspe.hhs.gov/sites/default/files/documents/96cf770b168dfd45784cdcefd533d53e/immigrant-health-equity-brief.pdf* .

health care services including vaccination, testing and treatment for communicable diseases; the importance of these services has been demonstrated during the COVID–19 pandemic.[263]

The final rule is guided by data and input from expert agencies regarding the nature of certain noncash benefits, as well as a recognition of the predicted and documented effects of the 2019 Final Rule's chilling effects that reduced noncitizens accessing critical benefits, including health benefits.[264] By focusing on those public benefits that are most indicative of primary dependence on the government for subsistence, DHS can faithfully administer the public charge ground of inadmissibility without exacerbating challenges confronting individuals who work, go to school, and contribute meaningfully to our nation's social, cultural, and economic fabric. This approach is consistent with the INA, PRWORA, and this country's long history of welcoming immigrants seeking to build a better life. By focusing on cash assistance for income maintenance and long-term institutionalization at government expense, DHS can identify those individuals who are likely at any time to become primarily dependent on the government for subsistence, without interfering with the administrability and effectiveness of other benefit programs that serve important public interests.

Importantly, as noted above receipt of most non-cash public benefits by applicants for visas, admission, and adjustment of status who are subject to the public charge ground of inadmissibility is uncommon.[265] It would be exceedingly rare to encounter a non-institutionalized person who is primarily dependent on the government for subsistence, but who does not receive any degree of cash assistance for income maintenance from the government.

Comment: Some commenters stated that drawing a distinction between cash and noncash benefits does not make economic sense. One commenter cited estimates in the 2019 Final Rule that the rule would ''cumulatively save the States $1.01 billion annually,'' and also stating that the federal government only pays a portion of the costs.[266] The commenter stated that the States need that savings in order to adequately provide for the economically disadvantaged. Another commenter also remarked that the distinction between cash and noncash benefits ignores costs to the States. And another commenter stated that it is not appropriate to exclude whole programs where any State is spending billions of dollars per year, although they supported a *de minimis* exception to certain benefit programs.

Response: DHS disagrees that treating non-cash benefits differently than cash benefits is irrational. As discussed in some detail above, DHS is drawing a reasonable line between, on the one hand, cash assistance for income maintenance and long-term institutionalization at government expense (which DHS views as more probative of primary dependence on the government for subsistence) and, on the other hand, supplemental and special-purpose non-cash benefits (which are less probative of such dependence). In addition, DHS is taking into consideration the impacts of the 2019 Final Rule on families, communities, States, and localities that suffered economically due to reduction in food security, adverse impacts on public health, and increase in uncompensated medical care, including during the COVID–19 pandemic, as a result of chilling effects caused by the 2019 Final Rule.[267] DHS recognizes that a regulatory alternative that would consider a wider range of non-cash benefits similar to the 2019 Final Rule would likely result in a reduction of payments by States to beneficiaries as a result of disenrollment/forgone enrollment. However, DHS notes that this particular transfer effect may be attributable to a very significant extent to confusion and uncertainty among populations that are not directly regulated by this rule. In addition, a range of downstream consequences for the general public and for State and local governments may accompany such an effect (such as avoidance of preventative medical care, children's immunizations, and nutrition programs, primarily by persons not even subject to the public charge ground of inadmissibility). DHS therefore disagrees that the line drawn in this rule with regard to which benefits DHS will consider for public charge purposes ignores the economic effects on States; DHS is aware of such effects, but in light of the nature of the public charge inquiry and the applicability of the ground of inadmissibility, DHS has chosen to address the problem differently than some commenters prefer. DHS also does not believe that using this rule to deter those who are not subject to the public charge ground of inadmissibility from accessing benefits for which they are eligible would be an appropriate or valid exercise of authority.

DHS acknowledges that the economic analysis for the 2019 Final Rule accounted for a 2.5 percent rate of disenrollment/forgone enrollment from public benefit programs for ''individuals who are members of households with foreign-born non-citizens,'' resulting in an anticipated reduction in transfer payments from both Federal and State governments to individuals, and that it referenced ''the 10-year undiscounted amount of state transfer payments of the provisions of [the 2019] final rule [of] about $1.01 billion annually.'' However, as DHS noted in the NPRM and discusses later in this final rule, there are challenges associated with measuring chilling effects with precision. With respect to the chilling effects associated with the 2019 Final Rule, different studies have used different data, methodologies, and periods and populations of analysis, each with their own potential advantages and disadvantages, yet all found some degree of chilling effect.

As DHS noted in the NRPM, the estimated rate of disenrollment/forgone enrollment used in the 2019 Final Rule was based on a potentially overinclusive population sample, at least as it relates to the population that would be directly regulated by the 2019 Final Rule. [268] As

[263] *See* Centers for Medicare & Medicaid Services (CMS), ''Coverage and Reimbursement of COVID–19 Vaccines, Vaccine Administration, and Cost-Sharing under Medicaid, the Children's Health Insurance Program, and Basic Health Program'' (updated May 2021), *https://www.medicaid.gov/state-resource-center/downloads/covid-19-vaccine-toolkit.pdf*; CMS State Health Official letter #12–006, ''Mandatory Medicaid and CHIP Coverage of COVID–19-Related Treatment under the American Rescue Plan Act of 2021'' (issued Oct. 22, 2021), *https://www.medicaid.gov/federal-policy-guidance/downloads/sho102221.pdf;* CMS State Health Official letter #21–003, ''Medicaid and CHIP Coverage and Reimbursement of COVID–19 Testing under the American Rescue Plan Act of 2021 and Medicaid Coverage of Habilitation Services'' (issued Aug. 30, 2021) *https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-003.pdf.*

[264] *See* Hamutal Bernstein et al., ''Immigrant Families Continued Avoiding the Safety Net during the COVID–19 Crisis,'' Urban Institute (2021), at 1, *https://www.urban.org/sites/default/files/publication/103565/immigrant-families-continued-avoiding-the-safety-net-during-the-covid-19-crisis.pdf* (last visitedAug. 17, 2022).

[265] *See, e.g.,* 8 U.S.C. 1611; 8 U.S.C. 1621.

[266] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41301 (Aug. 14, 2019). *City & County of San Francisco* v. *U.S. Citizenship & Immigr. Servs.,* 981 F.3d 742, 754 (9th Cir. 2020).

[267] *See generally,* 87 FR at 10587–10597 (Feb. 24, 2022).

[268] As discussed in the Regulatory Alternative section, a 2.5 percent rate of disenrollment/forgone enrollment from public benefit programs appears to have resulted in an underestimate due to the documented chilling effects associated with the 2019 Final Rule among other parts of the noncitizen and citizen populations who were not included as adjustment applicants or members of households of adjustment applicants as well as other noncitizens who were not adjustment applicants.

discussed at length later in this preamble, DHS has included estimates of a similar disenrollment rate in the economic analysis for this rule. DHS developed the estimates following consideration of a range of studies of the effects of the 2019 Final Rule, and cautions that any quantified estimate is subject to significant uncertainty.

Despite this uncertainty as to its precise magnitude, as DHS explained in the NPRM, a variety of evidence indicates that the inclusion of non-cash benefits in the 2019 Final Rule had significant chilling effect on enrollment in Federal and State public benefits, including Medicaid, resulting in fear and confusion among both noncitizens and U.S. citizens. Concerns over actual and perceived adverse legal consequences tied to seeking public benefits have affected whether or not immigrants seek to enroll in public benefit programs, including Medicaid and CHIP, and have depressed health insurance uptake among eligible immigrants.[269] Medicaid provides critical health care services including vaccination, testing and treatment for communicable diseases.[270] By focusing on those public benefits that are indicative of primary dependence on the government for subsistence, DHS can faithfully administer the public charge ground of inadmissibility without exacerbating challenges confronting individuals who work, go to school, and contribute meaningfully to our nation's social, cultural, and economic fabric. This approach is consistent with the INA, PRWORA, and this country's long history of welcoming immigrants seeking to build a better life. By focusing on cash assistance for income maintenance and long-term institutionalization at government expense, DHS can identify those individuals who are likely at any time to become primarily dependent on the government for subsistence, without interfering with the administrability and effectiveness of other benefit programs that serve important public interests.

As discussed in the NPRM, based on the review of sources looking at the impacts of the 2019 Final Rule, DHS concluded that inclusion of non-cash benefits in the definition of ''likely at any time to become a public charge'' or in the list of ''factors to consider'' is not only unnecessary to faithfully implement the INA but would lead to predictably harmful chilling effects.[271] DHS believes that this rule is consistent with the goals set forth in 8 U.S.C. 1601.[272] Indeed, the rule's consideration of receipt of public cash assistance for income maintenance or long-term institutionalization at government expense helps ensure that DHS focuses its public charge inadmissibility determinations on applicants who are likely to become primarily dependent on the government for subsistence and therefore lack self-sufficiency. DHS further notes that its administrative implementation of the public charge ground of inadmissibility is informed not only by the policy goals articulated in 8 U.S.C. 1601(2) with respect to self-sufficiency and the receipt of public benefits but also by other relevant and important policy considerations, such as clarity, fairness, national resilience, and administrability.[273] Therefore, DHS declines to adopt these suggestions.

3. Long-Term Institutionalization at Government Expense

Comment: One commenter recommended DHS provide officers appropriate training to ensure public charge inadmissibility determinations support robust compliance with the Americans with Disabilities Act, the Rehabilitation Act, and the Supreme Court's decision in *Olmstead* v. *L.C.,* particularly with respect to persons at serious risk of institutionalization or segregation but not limited to individuals currently in institutional or other segregated settings. Other commenters stated that DHS should not subject an individual institutionalized in violation of federal law to a public charge inadmissibility determination. Commenters recommended that DHS should direct officers not to assume the lack of evidence that an applicant's past or current institutionalization violates federal law means institutionalization was voluntary or lawful. Two commenters similarly stated that if the final rule includes consideration of past or current long-term institutionalization as part of the public charge inadmissibility determination, DHS should include a presumption that the institutionalization was improper because *Olmstead* v. *L.C.*[274] places the burden on the government rather than the individual to show that community placement is improper and thus the public charge inadmissibility determination should do the same. One commenter also stated that the lack of evidence that past or current institutionalization is in violation of Federal law should never be construed against the applicant, recommending deleting the reference in the regulatory text that evidence be ''submitted by the applicant.'' Additionally, one commenter added that there is no simple way to establish that a person was institutionalized in violation of federal anti-discrimination laws or because of a lack of access of services. Another commenter said that DHS should examine the impact on children with special health care needs of the inclusion of ''long-term institutionalization at government expense'' as grounds for inadmissibility in public charge inadmissibility determinations.

Response: DHS agrees that it will need to provide training to officers on all aspects of this final rule and specifically on how it should consider disability in the totality of the circumstances analysis, as well as how it should consider evidence that a noncitizen's rights were violated in instances where the noncitizen was eligible for but unable to obtain HBCS in lieu of long-term institutionalization. As proposed in the NPRM, DHS will not consider disability as sufficient evidence that an applicant for admission or adjustment of status is likely at any time to become a public charge. For example, DHS will not presume that an individual having a disability in and of itself means that the individual is in poor health or is likely to receive cash assistance for income maintenance or require long-term institutionalization at government expense. DHS will also not presume that disability in and of itself negatively impacts the analysis of the other factors in new 8 CFR 212.22.

DHS also recognizes that there are some circumstances where an

[269] *See* HHS, Assistant Secretary for Planning and Evaluation, Office of Health Policy, ''Health Insurance Coverage and Access to Care for Immigrants: Key Challenges and Policy Options'' (Dec. 17, 2021), *https://aspe.hhs.gov/sites/default/files/documents/96cf770b168dfd45784cdcefd533d53e/immigrant-health-equity-brief.pdf* (last visited Aug. 18, 2022); Kaiser Family Foundation, ''Health Coverage of Immigrants'' (Apr. 6, 2022), *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/* (last visited Aug. 18, 2022).

[270] *See* CMS, ''Coverage and Reimbursement of COVID–19 Vaccines, Vaccine Administration, and Cost-Sharing under Medicaid, the Children's Health Insurance Program, and Basic Health Program'' (updated May 2021) *https://www.medicaid.gov/state-resource-center/downloads/covid-19-vaccine-toolkit.pdf*; CMS State Health Official letter #12–006, ''Mandatory Medicaid and CHIP Coverage of COVID–19–Related Treatment under the American Rescue Plan Act of 2021'' (issued Oct. 22, 2021), *https://www.medicaid.gov/federal-policy-guidance/downloads/sho102221.pdf*; CMS State Health Official letter #21–003, ''Medicaid and CHIP Coverage and Reimbursement of COVID–19 Testing under the American Rescue Plan Act of 2021 and Medicaid Coverage of Habilitation Services'' (issued Aug. 30, 2021), *https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-003.pdf.*

[271] 84 FR at 10589–10591 (Feb. 24, 2022).

[272] 87 FR at 10611 (Feb. 24, 2022).

[273] *See, e.g.,* 6 U.S.C. 111(b)(1)(F).

[274] 527 U.S. 581 (1999).

individual may be institutionalized long-term in violation of Federal antidiscrimination laws, including the Americans with Disabilities Act (ADA) and Section 504. The ADA requires public entities, and Section 504 requires recipients of Federal financial assistance, to provide services to individuals in the most integrated setting appropriate to their needs.[275] As discussed in the NPRM, the Supreme Court in *Olmstead* v. *L.C.,*[276] held that unjustified institutionalization of individuals with disabilities by a public entity is a form of discrimination under the ADA and Section 504. Given the significant advancements in the availability of Medicaid-funded HCBS since the 1999 Interim Field Guidance was issued,[277] individuals who previously experienced long-term institutionalization may not need long-term institutionalization in the future. The public charge ground of inadmissibility is designed to render inadmissible those persons who, based on their own circumstances, would need to rely on the government for subsistence, and not those persons who might be confined in an institution without justification. The possibility that an individual will be confined without justification thus should not contribute to the likelihood that the person will be a public charge. Therefore, while DHS will consider current or past long-term institutionalization as having a bearing on whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence, DHS will also consider evidence that past or current institutionalization is in violation of Federal law, including the Americans with Disabilities Act or the Rehabilitation Act.[278] However, DHS will not implement the commenter's suggestion to strike the reference in the regulatory text that evidence that the past or current institutionalization is in violation of Federal law is to be submitted by the applicant. DHS notes that an applicant for admission or adjustment of status bears the burden of proof to establish eligibility for the immigration benefit sought and DHS declines to shift this burden of proof to itself.

In addition, DHS again confirms in this final rule that HCBS are not considered long-term institutionalization.

Comment: Several commenters supported the change in language from the 1999 Interim Field Guidance ''institutionalization for long-term care at government expense'' to the rule's ''long-term institutionalization at government expense,'' because it clarifies that short-term residential care for rehabilitation or mental health treatment is not included, as well as the statement that long-term institutionalization is the only category of Medicaid-funded services that DHS would consider in public charge inadmissibility determinations.

One commenter supported adoption of an objective metric for long-term institutionalization, such as a stay of 30 or more days in a nursing facility or other specifically listed type of institutional setting. Another commenter suggested that long-term be defined as five or more years. Another commenter also stated that if DHS does continue to consider long-term institutionalization, it should only consider it if it is current and has lasted for at least five years. A commenter stated that it is important to define long-term in the rule because to one officer it may mean six months and to another six years. A commenter, who received support from other commenters on this point, stated that they did not support a time-based definition of ''long-term'' because it is likely to be overly inclusive. They stated that DHS should define ''long-term institutionalization'' to refer to someone who is permanently residing in an institution, an approach that they stated aligns with HHS's recommendation during the 1999 rulemaking. They stated that HHS defined ''long-term institutionalized care'' as ''the limited case of [a noncitizen] who permanently resides in a long-term care institution (*e.g.,* nursing facilities) and whose subsistence is supported substantially by public funds (*e.g.,* Medicaid).'' Another commenter recommended clearly stating that long-term means uninterrupted, extended periods of stay in an institution. One commenter stated that long-term care is hard to define precisely, citing an article on the National Institutes of Health website.[279] Several commenters recommended clarifying that ''long-term'' means ''permanently'' to narrow the definition and limit confusion. One commenter thought that a two- or three-tiered medical evaluation is more helpful than setting a time limit of ''long-term'' to the institutional care.

Response: With respect to commenters' suggestions to set a specific threshold for long-term institutionalization, DHS appreciates the comments that it received on this topic. DHS is declining to adopt a specific length of time to define ''long-term'' and is not aware of a definitional standard in Medicaid or other benefit programs that would support a specific numerical threshold. However, DHS, in collaboration with HHS, will develop sub-regulatory guidance to help assess evidence of institutionalization. Relevant considerations in determining whether a person is institutionalized on a long-term basis may include the duration of institutionalization and (where applicable) whether the person has been assessed and offered, and has declined, comparable services and supports such as HCBS, and availability of such services in the geographic area where the individual resides.

While DHS believes that permanent institutionalization would be the most likely to contribute to an inadmissibility determination as part of the totality of circumstances, DHS believes that institutionalization of indefinite duration, or shorter than indefinite duration, may also qualify. As discussed throughout this final rule, DHS will take into consideration whether the noncitizen's rights were violated because the noncitizen was eligible but was not provided the opportunity to receive care through HCBS rather than long-term institutionalization. Lastly, DHS is uncertain what the commenter meant by a ''two- or three-tiered medical evaluation'' or how such evaluation would help DHS determine the likelihood that an individual would become long-term institutionalized at government expense. As a result, DHS is

[275] *See* U.S. Department of Justice, Civil Rights Division, Disability Rights Section, ''Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead* v. *L.C.,*'' *https://www.ada.gov/olmstead/q&a_olmstead.htm* (last updated Feb. 25, 2020) (last visited Aug. 16, 2022).

[276] 527 U.S. 581 (1999).

[277] For example, Congress has expanded access to HCBS as an alternative to long-term institutionalization since 1999 by establishing a number of new programs, including the Money Follows the Person program and the Balancing Incentive Program, and new Medicaid State plan authorities, including Community First Choice (42 U.S.C. 1396n(k)) and the HCBS State plan option (42 U.S.C. 1396n(i)). Most recently, Congress provided increased funding to expand HCBS in the American Rescue Plan. These programs are in addition to the HCBS waiver program (42 U.S.C. 1396n(c)), first authorized in the Social Security Act in the early 1980s. As a result of a combination of these new HCBS programs and authorities and the Supreme Court's *Olmstead* decision in 1999, States have expanded HCBS. *See, e.g.,* CMS, ''Long-Term Services and Supports Rebalancing Toolkit'' (Nov. 2020), *https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/ltss-rebalancing-toolkit.pdf.*

[278] *See* new 8 CFR 212.22(a)(3).

[279] Penny Feldman and Robert Kane, ''Strengthening Research to Improve the Practice and Management of Long-Term Care,'' The Millbank Quarterly (June 2003), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690214/* (last visited Aug. 18, 2022).

not making any changes to the final rule based on that comment.

Comment: One commenter stated that allowing USCIS to incorporate into its standard an assessment of whether the institutionalization of any given individual was consistent with the Americans with Disabilities Act, *Olmstead* v. *L.C.,* and related authorities for the prospect of obtaining immigration relief would create distorted incentives and needlessly complicate both areas of law. The commenter explained that the courts, not USCIS, are best situated to elevate such disputes.

Response: DHS concluded that considering evidence that a noncitizen was institutionalized in violation of their rights is an important guardrail in public charge inadmissibility determinations. DHS understands that services available to individuals may not be in full compliance with disability rights laws, depending on their place of residence. For that reason, individuals who might otherwise receive HCBS are institutionalized at government expense instead. Given this, DHS has expressly stated in the regulatory text that DHS will consider evidence submitted by the applicant that their institutionalization violates Federal law, in the totality of the circumstances, and has updated the instructions for Form I–485 to inform applicants that they should submit such evidence.

Comment: Several commenters recommended DHS not include ''long-term institutionalization'' in the definition of ''likely at any time to become a public charge.'' One commenter stated that long-term institutionalization is a factor that only applies to people with disabilities. The commenter stated that if long-term institutionalization is included, they support the limitations that DHS has proposed and that they urge as narrow of a definition as possible that places minimum weight on past institutionalization. Some commenters further stated that the inclusion of long-term institutionalization discriminates against people with disabilities and older people and disproportionately affects people of color, with one commenter stating that considering long-term institutionalization negatively in a public charge inadmissibility determination is at odds with DHS's statement that disability will not alone be a sufficient basis to determine whether a noncitizen is likely to become a public charge. One commenter stated that DHS should not consider Medicaid benefits, including the provision of HCBS, and disagreed that long-term institutionalization is a suitable exception in determining whether one is likely to become a public charge. The commenter added that if DHS does continue to consider long-term institutionalization, it should do so only if DHS can demonstrate that the individual had a meaningful, affordable, and available option, known to them, to receive HCBS instead of institutionalization; and that institutionalization is current and has lasted for at least 5 years. One commenter stated that including long-term institutionalization at government expense would continue to discriminate against people with developmental disabilities by making them more likely to be found to be public charges since only people with disabilities and older adults experience long-term institutionalization. One commenter stated that including long-term institutional care in a public charge inadmissibility determination contributes to substantial opportunity costs that are borne by immigrant families, particularly women, who must then provide the needed care themselves, citing a study that found family caregivers who leave the workforce to care for a family member experience an average of $303,880 in lost income and benefits over their lifetime. The commenter remarked that including long-term institutional care financed by Medicaid likely would disproportionately and adversely impact women economically and have ripple effects throughout family structures and help perpetuate disparities across American society.[280]

Response: DHS appreciates these comments but is declining to omit long-term institutionalization from consideration in this final rule. DHS disagrees that the provision discriminates on the basis of disability, race, or any other protected ground. In a decision affirming a preliminary injunction against the 2019 Final Rule, the Seventh Circuit wrote that the public charge statute's ''health'' criterion and the Rehabilitation Act ''can live together comfortably, as long as we understand the 'health' criterion in the INA as referring to things such as contagious disease and conditions requiring long-term institutionalization, but *not* disability per se.'' [281] This rule is not inconsistent with that view.

As stated previously, considering the past or current receipt of long-term institutionalization at government expense is a longstanding element of the public charge inadmissibility analysis. In DHS's view, this scenario is at the core of the public charge statute. Past or current receipt of long-term institutionalization at government expense can be predictive of future dependence on those same benefits. However, such consideration is not alone dispositive. In addition, as indicated previously, DHS will take into consideration any credible and probative evidence that an individual was institutionalized in violation of disability laws.

Comment: Another commenter stated that DHS should not include long-term institutionalization in the public charge assessment. They stated that the preamble to the 1999 proposed regulations lists ''the historical context of public dependency when the public charge immigration provisions were first enacted more than a century ago'' as support for the agency's proposed definition of public charge. However, they stated that modern long-term institutionalization is unlike the turn of the century almshouses. Specifically, the commenter stated that while only a small portion of the population resided in institutional settings at that time, today long-term institutionalization is more widespread. They also stated their view that the need for long-term care is expected to grow over time as the population ages and medical advances increase the lifespans of people with disabilities or health challenges.[282] Commenters stated that while approximately 60 million Americans receive taxpayer-funded health care through Medicare, the program does not cover the costs of custodial long-term care. As a result, the commenters said, Medicaid is the primary payer for long-term care in the United States, covering over 60 percent of nursing home residents.[283] Given its pervasiveness, the commenters wrote, Medicaid funding for long-term care is more like

[280] *See* Peter Arno et al., ''The MetLife Study of Caregiving Costs to Working Caregivers: Double Jeopardy for Baby Boomers Caring for Their Parents,'' MetLife Mature Market Institute (June 2011), *https://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf.* The study estimated ranges from a total of $283,716 for men to $324,044 for women, or $303,880 on average. The average figure breaks down as follows: $115,900 in lost wages, $137,980 in lost Social Security benefits, and conservatively $50,000 in lost pension benefits.

[281] 962 F.3d 208, 228 (7th Cir. 2020).

[282] *See* Administration for Community Living, ''How Much Care Will You Need?,'' *https://acl.gov/ltc/basic-needs/how-much-care-will-you-need* (last modified Feb. 18, 2020) (estimating that almost 70 percent of people turning 65 will require long-term services and supports, with 37 percent requiring care outside of their own homes) (last visited Aug. 18, 2022).

[283] Medicaid and CHIP Payment and Access Commission, ''Nursing facilities: Long-Term Services and Supports,'' *https://www.macpac.gov/subtopic/nursing-facilities/* (last visited Aug. 18, 2022).

a general public health program than evidence of an individual's dependency.

Response: While DHS acknowledges that more individuals reside in institutional facilities today than at the turn of the century, the population of the United States is also much larger, and the portion of the overall population residing in such facilities remains very small. The study cited by the commenter found 84,108 ''paupers'' residing in almshouses in 1910,[284] out of a total population of 92,228,496, or 0.09%.[285] By contrast, the 2020 Census found 1,697,989 [286] individuals residing in nursing facilities/skilled-nursing facilities, or other institutional facilities (excluding correction facilities for adults and juvenile facilities) out of a total population of 331,449,281, or 0.5%.[287] While DHS acknowledges that relatively larger percentage of U.S. residents live in nursing facilities or other institutional facilities today than the population residing in almshouses in 1910, that percentage is still very small.

As this commenter and many others have noted, the United States has made significant advances both for older adults and for individuals with disabilities, since the publication of the 1999 Interim Field Guidance. This is reflected in the decreasing population (and percentage of the overall population) residing in such facilities during that time period. If, as the commenter states, the need for certain services is growing over time ''as the population ages and medical advances increase the lifespans of people with disabilities or health challenges,'' Census data shows that U.S. residents are increasingly receiving such services outside of institutional settings. In the 2000 Census, 1,954,740 [288] individuals resided in nursing homes or other institutional facilities, out of a total population of 281,421,906,[289] or 0.7%. As a comparison to the 2020 figures above shows, even with an increasing population, an aging population, and the medical advances noted by the commenter, both the total number and percentage over the overall population residing in such facilities fell over that two-decade period.

Since the population residing in nursing facilities or other institutional settings (both overall and as a percentage of the total population) remains small and has decreased over the past two decades, even if Medicaid is the primary source of funding for 62 percent of nursing home residents,[290] such a small percentage of the overall population is residing in nursing homes and institutions providing long-term care that Medicaid funding for long-term care cannot be said to be ''a general public health program.'' Long-term institutionalization at government expense remains rare among the U.S. population as a whole, and given DHS's conclusion that it is indicative of primary dependence on the government for subsistence, DHS declines to exclude long-term institutionalization at government expense from consideration in public charge inadmissibility determinations.

Comment: One commenter stated that there is no bright line between long-term and short-term institutionalization for rehabilitation purposes. The commenter wrote that many people return to their community after being institutionalized for long-term care, but their ability to do so can depend on the availability of HCBS, other resources in their area, their health status, and their access to rehabilitative services while in long-term care. As they and other commenters have noted, the availability of alternatives to institutionalization varies greatly by geography and a person's disability, age, and wealth. The commenter stated that these factors also affect the availability of other resources needed to transition from long-term care into the community.[291] A person's likelihood of transitioning from long-term care back to the community can also depend on the characteristics of the long-term care facility.[292] The commenter stated that DHS should not penalize immigrants for the structural deficiencies of the country's healthcare system. Finally, the commenter wrote that inviting officers to forecast whether an individual is likely to use government programs to pay for future long-term institutionalization is particularly speculative given the potential for medical advances and changes in the healthcare delivery system.

Response: As discussed in the NPRM, DHS will not consider HCBS in public charge inadmissibility determinations. DHS will, however, consider evidence that individuals were institutionalized in violation of their rights. Where such evidence is credible, it will have the tendency of offsetting evidence of current or past institutionalization. DHS acknowledges that there may be limitations on the resources and services available to individuals, and that many factors could have an impact on whether an individual is institutionalized for long-term care or receives care through HCBS.

With respect to commenter requests to exclude from public charge inadmissibility determinations the consideration of past or current long-term institutionalization, particularly focusing on the prevalence of nursing home care for older adults, and the impacts on adult children who are caregivers, DHS is not adopting this request. As noted above, long-term institutionalization at government expense is at the core of the public charge statute. Although some individuals may ultimately enter institutional care at government expense because of problems associated with local health care systems, at bottom, this type of benefit tracks most closely to the almshouse concept closely associated with the public charge ground of inadmissibility. DHS acknowledges the difficulties associated with predicting that an individual will be institutionalized in the future, let alone the difficulties associated with predicting the funding source for such institutionalization. DHS will ensure that officers make predictive public

[284] Department of Commerce, Bureau of the Census, Bulletin 120, ''Paupers in Almshouses: 1910'' (1914), at 46, *https://www2.census.gov/prod2/decennial/documents/03322287no111-121ch7.pdf* (last visited July 21, 2022).

[285] United States Census Bureau, ''History Through The Decades: 1910 Fast Facts,'' *https://www.census.gov/history/www/through_the_decades/fast_facts/1910_fast_facts.html* (last visited July 21, 2022).

[286] United States Census Bureau, ''Group Quarters Population by Major Group Quarters Type'' (Aug. 2021), *https://data.census.gov/cedsci/table?q=group%20quarter&tid=DECENNIALPL2020.P5* (last visited July 21, 2022).

[287] United States Census Bureau, ''Apportionment Population, Resident Population, and Overseas Population: 2020 Census and 2010 Census'' (Apr. 26, 2021), *https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-tableA.pdf* (last visited July 21, 2022).

[288] United States Census Bureau, ''Population in Group Quarters by Type, Sex and Age, for the United States: 2000'' (Nov. 10, 2003), *https://www2.census.gov/programs-surveys/decennial/2000/phc/phc-t-26/tab01.pdf* (last visited July 21, 2022).

[289] United States Census Bureau, ''Resident Population of the 50 States, the District of Columbia, and Puerto Rico: Census 2000'' (Dec. 2000), *https://www2.census.gov/programs-surveys/decennial/2000/phc/phc-t-26/tab01.pdf* (last visited July 21, 2022).

[290] Medicaid and CHIP Payment and Access Commission, ''Nursing facilities: Long-Term Services and Supports,'' *https://www.macpac.gov/subtopic/nursing-facilities/* (last visited Aug. 18, 2022).

[291] The commenter referenced Julie Robinson et al., ''Challenges to community transitions through Money Follows the Person,'' 55 Health Servs. Res. 3 (2020), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7240761/* (last visited Aug. 16, 2022).

[292] The commenter cited Amanda Holup et al., ''Community Discharge of Nursing Home Residents: The Role of Facility Characteristics,'' 51 Health Servs. Res. 2 (2016), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4799895/* (last visited Aug. 16, 2022).

charge inadmissibility determinations on the basis of available evidence to the extent appropriate, and without unduly speculating as to an applicant's future circumstances.

Comment: Several commenters supported including long-term institutionalization at government expense in the public charge inadmissibility determination, with one commenter reasoning that DHS should account for immigrants who may come to the United States for free medical care. Another commenter similarly emphasized that places like nursing homes may take advantage of the use of Medicaid, and policies should focus on managing that concern.

Response: DHS agrees that it should continue to consider long-term institutionalization at government expense. DHS does not agree that it should include other forms of Medicaid or other healthcare coverage at government expense. With respect to comments about Medicaid abuse, DHS notes that it does not have authority to regulate how Medicaid is used in nursing homes. DHS is simply considering in public charge inadmissibility determinations whether or not the noncitizen has been, is currently, or is likely at any time to be institutionalized long-term at government expense. This approach is consistent with long-standing interpretation of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

Comment: Many commenters stated that they supported DHS's decision not to consider use of HCBS by a noncitizen in a public charge inadmissibility determination. One commenter recommended DHS explicitly clarify in the preamble of the final rule and in sub-regulatory guidance that it will not consider HCBS in a public charge inadmissibility determination. One commenter cited the material differences between the use of HCBS and reliance on institutional long-term care, as well as the public health interest of reducing the spread of infection in congregate settings and the national economic interest of reducing the cost of long-term care and promoting individuals' independence, and recommended DHS include clarification in the preamble of the rule and sub-regulatory guidance and policies for adjudicating officers to ensure that they will not consider Medicaid HCBS in a public charge inadmissibility determination. The commenter also requested clarification in the preamble that HCBS are not included.

Response: DHS agrees with commenters that HCBS and Medicaid generally (with the exception of long-term institutionalization at government expense) should not considered in public charge inadmissibility determinations. DHS is retaining this clarification in this final rule. DHS intends to also retain this clarification in any sub-regulatory guidance issued for officers and the public.

Comment: Some commenters stated that there were issues with the inclusion of long-term institutionalization at government expense and the exclusion of HCBS. One commenter stated that due to an Indiana law that requires a person to qualify for SSI in order to remain in HCBS programs, the rule will negatively affect every person receiving HCBS who is 18 years or older in Indiana. Other commenters also pointed out that studies have found there is unequal minority access to HCBS, which adds to another layer of bias to which this community is subject, and stated that DHS should not punish immigrants with disabilities because their State does not offer HCBS. Another commenter stated that, if the rule does not exclude all of Medicaid, older immigrants may be afraid to access any type of HCBS or other health support. One commenter disagreed with the inclusion of long-term institutionalization unless DHS can demonstrate that the individual had a meaningful, affordable, and available option to receive HCBS instead and that the institutionalization was current. Some commenters similarly stated that institutionalization for long-term care at government expense should not be a barrier to immigration unless DHS can demonstrate that the individual had access to HCBS rather than institutionalization. The commenters said that DHS should require officers to assess the availability of alternatives to institutionalization, including waiting lists for HCBS, average time to be placed into HCBS, and availability of transition services. A commenter appreciated DHS's clarification in the preamble that HCBS are not to be included. The commenter stated that older adults receive HCBS from a variety of programs, including Medicaid, Medicare, and Older Americans Act programs.

Response: As noted above, consistent with the NPRM, DHS will consider evidence that long-term institutionalization of an individual was in violation of federal law. This would include circumstances where the individual has experienced long-term institutionalization due to lack of HCBS availability, and may include consideration of evidence regarding HCBS waiting lists, States' compliance with disability rights laws, etc. DHS declines, however, to shift the burden to itself to demonstrate that long-term institutionalization was not in violation of an individual's rights because the applicant for admission or adjustment of status has the burden of proof to establish eligibility for the immigration benefit sought. With respect to the comment regarding eligibility for SSI and HCBS, if a noncitizen is receiving SSI, then they are receiving public cash assistance for income maintenance. While their receipt of HCBS would not be considered in a public charge inadmissibility determination, DHS would consider their receipt of SSI.

Comment: A few commenters suggested that DHS include guidance directing the consideration of the role an individual's family would have in overseeing the individual's care, as well as the impact the denial of an individual's application for permanent resident status based on a public charge inadmissibility determination would have on a family.

Response: DHS will consider whether the noncitizen is likely at any time to become primarily dependent on the government for subsistence by taking into consideration the totality of the circumstances. Where there is evidence that a noncitizen has a medical condition that impacts their ability to care for themselves, DHS can also take into consideration whether the noncitizen is being cared for and/or supported by their family or sponsor(s). DHS does not believe that it should take into consideration the impact of an inadmissibility determination on a family because the impact on the family may not make a noncitizen more or less likely to become primarily dependent on the government for subsistence. However, in the context of the assets, resources, and financial status factor, DHS is taking into consideration the household assets and resources, including income, rather than solely one individual's. DHS acknowledges that it would take into consideration insufficient assets and resources that may be a direct result of, for example, a member of a household no longer being able to provide financial support because they must depart the United States due to an inadmissibility finding. In addition, and similar to the approach that DHS took in the 2019 Final Rule, DHS could take into consideration in the totality of the circumstances that a noncitizen in the household subject to the public charge ground of inadmissibility is a primary caregiver to another member of the household and while not contributing income to the household is providing an in-kind contribution to the household. However,

''impact on the family'' is not a relevant factor in the public charge inadmissibility determination, as the assessment is related to the noncitizen's likelihood at any time to become a public charge.

Comment: One commenter supported the rule's provision that use of Medicaid alone does not render an individual inadmissible on the public charge ground, because the Department of Health and Human Services has stated that Medicaid ''does not provide assistance to meet basic subsistence needs such as food or housing, with the exception of long-term institutionalization, and as such the receipt of Medicaid is not indicative of a person being or likely to become primarily dependent on the government for subsistence.'' Another commenter stated that the rule's anticipated positive effect on healthcare enrollment, including in Medicaid and other publicly funded and administered health insurance programs, will leave the States in a better position to assist public health and relief efforts during COVID–19 and future public health crises. This increased access to healthcare, as well as to nutritional services, will reduce disruptions in benefits and result in long-term net benefits for States and their residents, according to the commenter. The commenter also noted the rule will alleviate administrative costs to State benefits-granting agencies, which were forced to devote scarce time and resources to attempt to counteract the fear and confusion caused by the 2019 Final Rule. Another commenter specifically pointed to the positive effect Medicaid coverage has with regular check-ups and access to prescription medications and ultimately mortality rates. This commenter cited that deferring or delaying care will often result in increased rates of poverty and housing instability and reduced rates of productivity and educational attainment, and that the rule will help alleviate the apprehension of noncitizens from enrolling in Medicaid and help maintain the financial viability of the emergency care safety net.

Response: DHS agrees that enrollment in Medicaid, compared with those benefits considered under this rule, is less indicative of primary dependence on the government for subsistence, with the exception of long-term institutionalization at government expense. DHS agrees that Medicaid and other public health services provide many socially beneficial services, and also play an important role in public health, as evidenced by the important role it plays in combatting the spread and effects of COVID–19. Therefore, DHS is not considering the receipt of Medicaid in this final rule, with the exception of Medicaid-funded long-term institutionalization at government expense.

Comment: Many commenters, including a group of thirteen United States Senators, stated that DHS should exclude all Medicaid and Medicare coverage, including long-term institutionalization, from consideration. An association wrote that its members were over 300 hospitals that provide a disproportionate share of the nation's uncompensated care—$56 million in uncompensated care annually. The commenter wrote that the 2019 Final Rule hampered the public health response to COVID–19 and that patients forgoing public insurance programs and seeking care at hospitals without insurance strained the tight budgets of essential hospitals. The commenter wrote that the Medicaid program is an integral part of the American health care system, providing coverage of primary care, prenatal care, mental health and substance misuse services, specialty care, prescription drug coverage, and a variety of wraparound services. The commenter also stated that Medicaid also is a critical source of coverage for children, paying for routine check-ups, oral and vision care, and treatment for chronic conditions. Citing studies, the commenter stated that care reimbursed by Medicaid drives improved outcomes; reduces emergency department use and unnecessary hospitalizations; and helps decrease infant and child mortality rates.[293] The commenter also stated that the benefits of Medicaid go beyond health care—individuals who receive Medicaid go on to become productive members of the workforce and realize better employment and educational attainment, thus strengthening the economy.

Several commenters, one citing various studies, wrote about the chilling effect of including any Medicaid, and stated that families may forgo accessing necessary healthcare because of fear of affecting the whole family's immigration status.[294] A commenter said that insurance coverage helps keep families stable and leads to a vibrant and strong local economy. One commenter wrote about the heavy burden State benefit-granting agencies will be put under to fill gaps in Federal benefits for long-term institutionalization and care. Commenters also stated that many nursing home residents have qualified for Medicaid only after having first exhausted the maximum time covered by Medicare, any private long-term care insurance, and their savings, and that DHS should not penalize older adults who have no alternative to institutionalization for the structural limitations of the U.S. healthcare system. One commenter said there would be increased hospital costs and unsustainable financial burdens on healthcare systems if Medicaid is not extended to all people, not just those eligible under current immigration laws. Some commenters also stated that there is a growing number of older adults with conditions that require some level of care, and that who becomes institutionalized and for how long has changed over the years, with the result that substantial portions of the U.S. population will likely end up in an institution on a long-term basis, such as in a nursing facility, at some point in their lifetime. Commenters also remarked upon the variability of availability of alternatives to institutionalization by geography, disability, age, and wealth.

Commenters also stressed the importance of not including Medicaid in a public charge inadmissibility determination, with one stating that discouraging access to proper mental health care may put a patient at risk to themselves or others and punishes these people for having legitimate illnesses. Another commenter stated that access to Medicaid and other health care programs provide a critical lifeline for survivors of domestic violence, sexual assault, and human trafficking to treat significant health consequences of abuse, as healthcare is a benefit that many survivors cannot afford. Commenters stated that the definition of public charge should explicitly state that any form of Medicaid and other

[293] Laura Wherry et al., ''Childhood Medicaid Coverage and Later Life Health Care Utilization'' (Feb. 2015), *https://www.nber.org/papers/w20929* (last visited July 21, 2022). Andrew Goodman-Bacon, ''Public Insurance and Mortality: Evidence from Medicaid Implementation'' (Nov. 2015), *http://www-personal.umich.edu/~ajgb/medicaid_ajgb.pdf* (last visited July 21, 2022).

[294] Randy Capps et al., ''Anticipated 'Chilling Effects' of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families,'' Migration Policy Institute (Dec. 2020), *https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real* (last visited Aug. 16, 2022). HHS, Assistant Secretary for Planning and Evaluation, ''Caring for Immigrants: Health Care Safety Nets in Los Angeles, New York, Miami, and Houston'' (Jan. 31, 2001), *https://aspe.hhs.gov/reports/caring-immigrants-health-care-safety-nets-los-angeles-new-york-miami-houston#main-content* (last visited Aug. 18, 2022). Hamutal Bernstein et al., ''Immigrant Serving Organizations' Perspectives on the COVID–19 Crisis,'' Urban Institute (Aug. 2020), *https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis* (last visited Aug. 17, 2022).

health insurance and health care services will not be considered for public charge inadmissibility determinations, particularly with an extension of Medicaid and CHIP eligibility for pregnant and postpartum noncitizens. One commenter stated that Medicaid covers almost half of childbirths in the United States, and agreed that including Medicaid in the public charge inadmissibility determination would contribute to a chilling effect where immigrants of all statuses are wary of seeking the maternity care they need.

One commenter cited a Kaiser Family Foundation finding that in the United States one in three people turning 65 will require nursing facility care in their lives. One commenter stated that DHS should recognize that including long-term institutionalization is particularly outdated, given the much larger and different role than publicly founded almshouses played in the early days of the public charge doctrine. One commenter also remarked that programs like Medicaid allow intergenerational households the ability to earn income and contribute to their communities without placing their loved ones at risk of going without care for fear of immigration consequences. Commenters added that an inclusion of long-term care creates confusion about the receipt of Medicaid more broadly and it would be far easier and clearer to exclude all Medicaid coverage completely. One commenter also remarked that reducing access to healthcare for parents will subsequently reduce access to their children, putting families at greater risk of medical debt, unpaid bills, and bankruptcy. Commenters stated that including any form of Medicaid coverage in public charge inadmissibility determinations will introduce confusion for immigrants and have measurable chilling effects, and that immigrant women, who are more likely to live in poverty than immigrant men or U.S. citizens, would be disproportionately harmed by the resulting chilling effects. One commenter stated that DHS should not put access to Medicaid at risk or discourage enrollment in any programs that serve to keep older adults and people with disabilities healthy, together with their families, and integrated in their communities. The commenter stated that Medicaid is particularly critical to helping people with disabilities, including older adults, live in the community because it covers services and supports that private insurance does not, such as personal care, transportation, and home modifications. The commenter stated that they are concerned that if the rule does not exclude all of Medicaid that older immigrants may be nonetheless afraid to access any kind of HCBS or other health support.

Response: DHS emphasizes that it will generally not consider non-cash public benefits, including government-funded healthcare coverage such as Medicaid or Medicare. The only healthcare service included in the public charge inadmissibility determination is long-term institutionalization at government expense (including when funded by Medicaid). The regulatory text clearly identifies the only benefits that DHS considers both for the purposes of ''defining likely at any time to become a public charge'' [295] and for making a public charge determination.[296] Moreover, DHS has provided regulatory text that explains the types of institutionalizations that do not qualify as long-term institutionalization at government expense as defined in 8 CFR 212.21—such as short-term rehabilitation and imprisonment. DHS is committed to mitigating chilling effects and intends to also make this point clear in guidance and any communication materials stemming from this final rule in order to ensure that the public understands that DHS does not consider other forms of Medicaid in public charge inadmissibility determinations.

With respect to long-term institutionalization in a nursing home for older individuals, DHS is aware of the prevalence of nursing home care for older individuals, both native-born and intending immigrants who reach a certain age. While the public charge inadmissibility determination is based on the statutory language ''likely at any time,'' DHS acknowledges that the further out in time an event may occur, the more difficult it is for officers to determine whether such an event is likely to occur. For example, where an applicant for admission or adjustment of status is in the prime of their life, healthy, and able to support themself, DHS is unlikely to determine that the noncitizen is inadmissible because they may need long-term nursing home care at government expense at a later point in their life. However, where a noncitizen is older, has one or more serious health conditions, and limited resources, DHS may conclude that such noncitizen is likely at any time to become primarily dependent on the government for subsistence, based in part on the likelihood that the noncitizen may need nursing home care at government expense.

Comment: One commenter suggested that DHS create an internal structure to expedite appeals and allow families an easier way to clarify the status of their loved ones who require long-term services and supports for noncitizens denied based on a public charge inadmissibility determination.

Response: DHS is not adopting the proposal to create a special appellate process for public charge inadmissibility determinations. Although not specific to this rule, in cases in which an applicant has not submitted all required initial evidence or the evidence submitted does not demonstrate eligibility, USCIS has the discretion to issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) with respect to any basis for ineligibility, including the public charge ground of inadmissibility, in accordance with 8 CFR 103.2(b)(8) and USCIS policy in regard to RFEs, NOIDs, and denials.

DHS notes that there is no administrative appeal available from a denial of an application for adjustment of status issued by USCIS,[297] but an applicant may file a motion to reopen/reconsider as set forth in 8 CFR 103.5, and USCIS may certify any such case to the Administrative Appeals Office (AAO) if it involves an unusually complex or novel issue of law or factor.[298] If the noncitizen is placed in removal proceedings, they can renew the denied adjustment of status application before an immigration judge.[299] With respect to inadmissibility determinations made by CBP, if found inadmissible, CBP will generally place the individual in removal proceedings in which the individual can seek relief or protection from removal.

Comment: One commenter stated that including institutionalization for long-term care financed by Medicaid in a public charge inadmissibility determination likely contributes to uncompensated care costs currently borne by providers relating to medication non-adherence and accidental falls. The commenter reasoned that long-term institutionalization helps patients that are vulnerable to missing their medications and accidental falls by having skilled professionals take care of them and that, if they fear immigration consequences, immigrant families may avoid this professional care.

[295] *See* 8 CFR 212.21(a).

[296] *See* 8 CFR 212.21(b) and (c).

[297] 8 CFR 245.2(a)(5)(ii).

[298] 8 CFR 103.4(a)(1).

[299] 8 CFR 245.2(a)(5)(ii).

Response: DHS agrees with commenters that long-term institutionalization at government expense provides relevant and important services to individuals who need such care. Nonetheless, DHS is declining to exclude past or current institutionalization from consideration, or from the definition of ''likely at any time to become a public charge.'' As indicated elsewhere in this final rule, DHS believes that past or current institutionalization at government expense, together with other factors, can be indicative of future primary dependence on the government for subsistence. DHS recognizes that individuals and families may need to make decisions regarding reliance on public benefits' impact on their immigration status; however, DHS does not consider excluding the fact of such institutionalization to be justified.

Comment: Some commenters stated that if DHS decides to continue to consider long-term institutionalization, it should clarify that involuntary civil commitment in criminal proceedings is excluded from its definition. Commenters also suggested to exclude involuntary observation or commitment to a civil psychiatric facility pursuant to a judicial order pending or after a finding of incompetence to stand trial in a criminal proceeding for lack of responsibility for criminal conduct by reason of mental illness. The commenter stressed that the standards and purposes of civil commitment in criminal proceedings differ from those of voluntary admission to a care facility and DHS should make clear to officers that they should not equate the two. Another commenter similarly supported the rule's clarification that imprisonment for conviction of a crime would not be considered in a public charge inadmissibility determination.

Response: DHS notes that involuntary observation or commitment to a psychiatric facility pursuant to judicial order pending or after a finding of incompetence to stand trial in a criminal proceeding may be considered in the totality of the circumstances under the health factor if the underlying condition is identified on Form I–693, and DHS is not adding an exception for these circumstances. However, commitment to a facility, rather than prison, resulting from a criminal proceeding would not be considered long-term institutionalization at government expense. Rather, under the health factor, DHS could take into consideration the underlying medical/psychiatric condition in the totality of the circumstances when making a determination regarding whether the noncitizen is likely to be primarily dependent on the government in the future. In addition, DHS notes that criminal activity may separately subject a noncitizen to criminal grounds of inadmissibility, even if the noncitizen is determined not likely to become a public charge at any time in the future.

DHS is not taking into consideration current or past incarceration for a crime in a public charge inadmissibility determination, but notes that the fact of such incarceration may lead the noncitizen to be excluded and/or removed from the United States based on the criminal inadmissibility standards.

Comment: One commenter recommended that due to historical and ongoing racism and xenophobia in the United States health care system and health policies resulting in low-income immigrant women facing high rates of maternal morbidity, all receipt of Medicaid, including Medicaid for long-term institutionalization, by pregnant people be excluded from a public charge inadmissibility determination. The commenter stated that pregnant individuals have significantly higher instances of COVID–19 hospitalization and case fatality than similarly aged adults and are at risk of severe or critical disease and preterm birth, complications that are heightened for low-income immigrant women. The commenter also recommended Medicaid use, including Medicaid for long-term institutionalization, for children be excluded from a public charge inadmissibility determination because childhood institutionalization is not an indicator of long-term institutionalization and reliance on the government, and because COVID–19 has also affected children, with hospitalization rates especially high for children under 5 who were not at the time of the comment eligible for vaccinations. Another commenter similarly stated that DHS should exclude Medicaid for institutional long-term care for children because Medicaid supports many children with special health care needs, and Medicaid and CHIP cover almost half of all children in the United States with special health needs, children who are more likely to be low-income, from marginalized communities, and younger than children on private insurance only. The commenter stated that considering children's use of Medicaid for long-term institutionalization is likely to discriminate against children with disabilities and children from marginalized communities. The commenter expressed concern that allowing any type of Medicaid coverage to be included in the rule will cause confusion and perpetuate the chilling effect caused by the 2019 Final Rule. The commenter noted that it is also important to realize that not all children who receive long-term care may require it into adulthood, and that considering its use would discriminate against children with disabilities. One commenter also stated that many older adults and individuals with disabilities rely on Medicaid for long-term care, and recommended that DHS exclude any type of Medicaid benefit from consideration because it discriminates against this population. The commenter also stated that it is difficult to provide clear messages to people who need Medicaid now that their use of Medicaid for non-institutional purposes will not be used to indicate that they will rely on Medicaid should they need long-term care in the future.

Response: DHS is not excluding past or current long-term institutionalization from consideration in this final rule, nor is DHS adding exclusions for pregnant individuals, children, or older adults. DHS has made clear that considering any receipt of public benefits, including long-term institutionalization at government expense, is not alone dispositive in determining whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence. Instead, DHS will perform a totality of the circumstances analysis, and will also look at the recency and duration of such long-term institutionalization. In addition, in the NPRM DHS distinguished long-term institutionalization at government expense from periodic or intermittent stays in an institution. Additionally, receipt of Medicaid for the purpose of obtaining preventive services or treatment for COVID–19 will not be considered under this final rule. Finally, as indicated in the NPRM, the population of individuals who are both subject to the public charge ground of inadmissibility and institutionalized for long-term care at government expense is anticipated to be very small.

With respect to the commenter's assessment that inclusion of long-term institutionalization at government expense will discriminate against children and individuals from low-income, marginalized communities, DHS notes that Medicaid, for example, provides long-term institutionalization even for wealthier individuals if they are determined to be ''medically needy''

through spend-down programs.[300] In addition, given the purpose and history of the public charge ground of inadmissibility, DHS is not able to exclude long-term institutionalization at government expense from consideration, given that such institutionalization can provide the most probative evidence of likely future primary dependence on the government for subsistence. That said, and as discussed throughout this final rule, such past or current institutionalization will be taken into account in the totality of the circumstances. With respect to the institutionalization of children, DHS notes that it can and will consider in the totality of the circumstances any evidence supplied by the applicant that the child's condition is not permanent, or can be managed through HCBS, rather than long-term institutionalization, as well as any evidence that the child was or is institutionalized in violation of their rights.

While DHS is concerned about chilling effects that might have resulted from the 2019 Final Rule and has taken considerable efforts to reduce or reverse such chilling effects, DHS believes that the policy contained in this final rule faithfully administers the public charge ground of inadmissibility while taking care to avoid potential chilling effects that could arise as a result of the policy reflected in this final rule. DHS is again noting that it is not considering non-cash benefits, including healthcare coverage under this final rule, with the narrow exception of long-term institutionalization.

Comment: One commenter stated that if DHS considers long-term institutionalization in a public charge inadmissibility determination, DHS should consider only current institutionalization, as the fact that a person was institutionalized in the past does not suggest a likelihood of future institutionalization.

Response: DHS agrees with this commenter in part. As indicated in the NPRM and this final rule, DHS will consider the duration and recency of benefit receipt, which will also apply to long-term institutionalization at government expense. If such institutionalization occurred many years ago it is unlikely to affect the inadmissibility determination in terms of future institutionalization. If, however, it was recent, or there is evidence of repeat long-term institutionalization, then it is more likely to be probative evidence related to future primary dependence at any time.

4. Receipt of Public Benefits

Comment: Many commenters supported the clarification that applying for or receiving benefits on behalf of another will not be considered in the public charge inadmissibility determination. The commenters stated that this clarification is critical to ensuring that children in immigrant families continue to receive benefits for which they are eligible. Some commenters stated that this definition will greatly assist States' public benefits program staff in effectively communicating to families concerning the public charge inadmissibility determination.

Response: DHS agrees that the clarification that the receipt of public benefits occurs when a public benefit-granting agency provides public benefits to a noncitizen, but only where the noncitizen is listed as a beneficiary; applying for a public benefit on one's own behalf or on behalf of another, and receiving public benefits on behalf of another, would not constitute receipt of public benefits by the noncitizen applicant. Similarly, approval for future receipt of a public benefit on the noncitizen's own behalf or on behalf of another would not constitute receipt of public benefits by the noncitizen applicant, though if information or evidence of such approval is in the record, DHS will consider it in the totality of the circumstances. Any evidence of approval for future receipt of a public benefit on behalf of an applicant, while not constituting receipt of public benefits, would indicate a probability of future receipt of public benefits and be considered by DHS as probative of being likely of becoming a public charge in the future. Finally, the noncitizen's receipt of public benefits solely on behalf of another, or the receipt of public benefits by another individual (even if the noncitizen assists in the application process), would also not constitute receipt of public benefits by the noncitizen. DHS believes that this approach, which is similar to the policy approach to ''receipt'' in the 2019 Final Rule, is appropriate.

Comment: Several commenters suggested that DHS should clarify what does not count as receipt of a public benefit; for example, it should state that an intending immigrant who is not eligible for a particular benefit will not be considered to have received that benefit themselves, even if another person in the household receives it or if they are listed as a member of the household by the benefits granting agency to provide greater ease of administration and mitigation of the chilling effect. Commenters said that the rule should also clearly state that children in mixed-status families will not impact a public charge inadmissibility determination for their families by accessing certain benefits to which they are legally entitled because data demonstrates that eligible children miss out on essential benefits because of their parents' immigration concerns.

Commenters' suggestions for clarification of the definition included citing the use of language such as ''child only'' TANF benefits and ''serving as the representative payee'' for someone under the SSI program, and specifically stating that recipients of a benefit do not include those assisting with an application for the benefit. Commenters further suggested the definition of receipt should include common words that do not necessarily equate to receipt, such as ''payee,'' ''representative payee,'' ''head of household,'' and receipt ''on behalf of,'' and should also include that approval for long-term institutional care without being the resident of the designated care facility does not count as receipt of public benefits and other guidance on what does not count as ''receipt.'' Several commenters suggested the definition should specifically state that issuance or provision of service of the actual benefit is essential to the definition of receipt of a public benefit. One commenter further stated that DHS should add additional rules as to what is not counted as receipt and add a non-exclusive list of examples of what does not count as receipt of benefits by an intending immigrant.

Response: DHS appreciates the commenters' thoughtful consideration of the proposed definition of receipt of public benefits and their corresponding suggestions. DHS has determined that receipt of public benefits occurs when a public benefit-granting agency provides public cash assistance for income maintenance or long-term institutionalization at government

[300] *See* Letty Carpenter, ''Medicaid eligibility for persons in nursing homes,'' 10 Health Care Financing Review 2, 67–77 (Winter 1988), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192916/pdf/hcfr-10-2-67.pdf* (last visited Aug. 16, 2022) (''Basically, there is no absolute upper limit on the amount of income that a medically needy applicant can start with. Anyone who is otherwise eligible (*e.g.,* who belongs to one of the groups that the State has chosen to cover and whose assets are within allowable ceilings) can potentially qualify, provided their medical expenses are high relative to their income . . . In the process known as spend down, a medically needy person establishes eligibility once income, after deducting expenses the person has incurred for medical or remedial services, has been reduced to welfare-related thresholds. In spending down, the medically needy are assumed to use income in excess of these thresholds to pay their medical bills, including nursing home bills.'').

expense to a noncitizen, where the noncitizen is listed as a beneficiary. DHS included the clarifications that applying for a public benefit on one's own behalf or on behalf of another does not constitute receipt of public benefits by such noncitizen, and approval for future receipt of a public benefit on one's own behalf or on behalf of another does not constitute receipt of public benefits (although, as noted, approval for future receipt on one's own behalf can be considered in the totality of the circumstances). DHS also clarified that a noncitizen's receipt of public benefits solely on behalf of another individual does not constitute receipt of public benefits, and if a noncitizen assists another individual with the application process, this assistance does not constitute receipt for such noncitizen.[301] Further, DHS believes that by indicating that ''receipt of public benefits occurs when a public benefit-granting agency *provides* public cash assistance for income maintenance or long-term institutionalization at government expense to a noncitizen,'' [302] the rule sufficiently indicates that a public benefits granting agency must issue such benefit to the noncitizen beneficiary to meet the definition of receipt.

DHS believes this language clearly indicates that a noncitizen who is not a named beneficiary of a public benefit is not considered to have received that public benefit. Therefore, if a member of the noncitizen's household receives a benefit, the noncitizen will not be considered to have received a public benefit if the noncitizen is not identified as a named beneficiary of such benefit. Due to the wide variety of programs that provide or fund public cash assistance for income maintenance and long-term institutionalization at government expense, and the varying requirements and procedures for such programs, individuals may be confused about whether DHS would consider their or their family members' participation in or contact with such programs in the past, currently, or in the future to be ''receipt'' of such benefits. DHS believes that this rule's definition will help alleviate such confusion and unintended chilling effects that resulted from the 2019 Final Rule by clarifying that only the receipt of specific benefits covered by the rule, only by the noncitizen applying for the immigration benefit, and only where such noncitizen is a named beneficiary would be taken into consideration. By extension, DHS would not consider public benefits received by the noncitizen's relatives (including U.S. citizen children or relatives).

DHS disagrees that the regulatory language requires additional clarifying language to emphasize that only those benefits [303] for which a noncitizen is the named beneficiary and are actually received by that noncitizen will be considered in a public charge inadmissibility determination. However, DHS will consider providing more extensive examples of what is and is not considered receipt of public benefits when issuing guidance related to this rule.

Comment: An advocacy group recommended DHS include a noncitizen's dependent's receipt of public benefits when making a public charge inadmissibility determination, stating that an analysis of a noncitizen's financial status and likelihood of becoming a public charge is incomplete without assessing any public benefits that are used by the noncitizen's dependents because a noncitizen is not self-reliant if required to depend upon public benefits to support children or other dependent family members.

Response: DHS disagrees that it should consider a noncitizen's dependent's receipt of public benefits in a public charge inadmissibility determination. DHS recognizes that past policies, such as the 1999 Interim Field Guidance and the rules implementing IRCA legalization, allowed for consideration of a dependent's receipt of public benefits. But the statute does not require such a policy, and neither the NPRM, nor the 2019 Final Rule, provided for a scenario in which a noncitizen is incentivized to disenroll a dependent (such as a U.S. citizen child) to avoid an adverse public charge inadmissibility determination. DHS expects that it would be quite rare for a noncitizen to subsist primarily on their dependents' benefits, such that it would be necessary to expand the aperture of DHS's inquiry in the manner proposed by the commenter. DHS also observes that a variety of programs provide or fund public cash assistance for income maintenance and long-term institutionalization at government expense, and that if DHS were to adopt the policy proposed by the commenter, individuals may be confused about whether DHS would consider their or their family members' participation in or contact with such programs in the past, currently, or in the future to be ''receipt'' of such benefit. DHS believes that this rule's definition of receipt of public benefits will help alleviate such confusion. Accordingly, under this final rule, DHS will only consider the receipt of the benefits listed in 8 CFR 212.21(b) and (c), and only if received by the noncitizen applying for the immigration benefit as a named beneficiary of the public benefit. DHS will not consider public benefits received by the noncitizen's relatives (including U.S. citizen children or relatives).

Comment: One commenter suggested that DHS should expressly clarify in this final rule that utilization of Medicaid for healthcare, SNAP, and public housing, whether past or current, should never be considered in a public charge inadmissibility determination.

Response: DHS appreciates the commenter's suggestion, and has added language to 8 CFR 212.22(a)(3) stating that DHS will not consider receipt of, or certification or approval for future receipt of, public benefits not referenced in 8 CFR 212.21(b) or (c), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, any benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits. While this was implicit in the regulatory text of the NPRM that identified only the benefits that DHS would consider, and DHS was clear in the NPRM that it would not consider any benefits other than those referenced in 8 CFR 212.22(a)(3) in making a public charge inadmissibility determination, DHS agrees with the commenter that stating this explicitly within the regulatory text will help clarify this important point for the public and potentially reduce uncertainty and disenrollment effects from these programs.

5. Government

Comment: Commenters stated that the definition of government should only include the Federal government, eliminating references to State, Tribal, or local cash benefit programs for income maintenance, and clarify that SSI and TANF are the specific programs that may be considered in a public charge inadmissibility determination as this decision to provide this assistance is constitutionally reserved by the States. One of those commenters went further in stating that rather than defining ''government,'' if DHS would clarify that the only public benefits to be considered in a public charge inadmissibility determination are cash assistance for income maintenance

[301] *See* 8 CFR 212.21(d).

[302] *See* 8 CFR 212.21(d) (emphasis added).

[303] As defined in 8 CFR 212.21(b).

received through SSI and TANF then providing that specificity would obviate any need to define the word government.

A commenter noted that although the 1999 Interim Field Guidance and 1999 NPRM include State and local governments in the definition of government, neither explained the basis for this conclusion. Another commenter stated that the definition of government should only include the Federal government, because immigration is a matter regulated by the Federal government and because one government agency should not penalize anyone for appropriately accessing services promoted and provided by another government agency.

Response: DHS disagrees with the commenters who stated that the definition of government should only include the Federal government and not include State, Tribal, territorial, or local government entity or entities of the United States. DHS declines to exclude the consideration of State, Tribal, territorial, and local cash assistance for income maintenance because excluding those programs would unfairly distinguish recipients of Federal aid from those receiving aid from States, Tribes, territories, and localities. Furthermore, DHS believes that excluding all such programs from consideration would be contrary to Congressional intent to the extent that receipt of non-Federal benefits, such as State, Tribal, territorial, or local benefits, may be no less indicative of primary dependence on the government for subsistence than Federal benefits.

In this rule, DHS has chosen to consider the same list of public benefits that are considered under the 1999 Interim Field Guidance with certain clarifications. These benefits are public cash assistance for income maintenance and long-term institutionalization at government expense (including when funded by Medicaid). DHS believes that this approach is consistent with a more faithful interpretation of the term ''public charge'' and has the additional benefit of being more administrable and consistent with long-standing practice than the 2019 Final Rule. DHS also believes this approach is less likely to result in the significant chilling effects and effects on State and local governments and social service providers (such as increases in inquiries regarding the public charge implications of receiving certain benefits and increases in uncompensated care) that were observed following promulgation of the 2019 Final Rule.

As noted by one commenter, the 1999 NPRM defined government as any Federal, State, or local government entity or entities of the United States but did not explain the basis for the definition.[304] However, both the 1999 Interim Field Guidance and the 1999 NPRM suggest that the definition for public charge is tied to the fact that the types of benefits that are indicative of primary dependence on the government for subsistence are public cash assistance for income maintenance provided by Federal, State, and local benefits-granting agencies as well as institutionalization at Federal, State, and local entities' expense.[305] Similarly, DHS currently believes that it is appropriate to use a definition of government that includes all U.S. government entities. For much of the time that the concept of public charge has been part of our immigration statutes, States, Tribes, territories, and localities provided much of the public support available to noncitizens and although the Federal government has increased its role in providing benefits, the social safety net in the United States continues to consist of a variety of Federal, State, Tribal, territorial, and local programs that operate collaboratively to provide support for individuals. These non-Federal programs play an important role and are interwoven with Federal programs (some programs are funded by the Federal Government as well as States, Tribes, territories, and localities).

Moreover, there are provisions of law that demonstrate Congressional concern not only with noncitizens' receipt of Federal public benefits, but also noncitizens' receipt of State, Tribal, territorial, and local public benefits. For example, in addition to codifying Federal deeming provisions in 8 U.S.C. 1631, Congress included State ''deeming'' provisions in 8 U.S.C. 1632, which allow States to consider the income and resources of a noncitizen's sponsor and spouse in ''determining the eligibility and the amount of benefits'' of a noncitizen. Consistent with Congress' focus on benefits provided by Federal, State, Tribal, territorial, and local entities, and its focus on reimbursing and holding harmless those entities, DHS believes that it is appropriate and consistent with Congressional purpose to define government to ''mean[] any Federal, State, Tribal, territorial, or local government entity or entities of the United States.'' [306]

Comment: Some commenters supported the definition of government including Federal, State, Tribal, territorial, and local governments for public charge inadmissibility determination purposes. One of the commenters stated further that to so define government would clarify for noncitizens that receipt of cash assistance from private or non-governmental entities will not have any implication on their applications to adjust their status.

Response: DHS agrees with the commenters who stated that the term DHS should define ''government'' as any Federal, State, Tribal, territorial, or local government entity or entities of the United States, and this rule accordingly retains the same definition proposed in the NPRM. As stated in the NPRM, this definition identifies which public cash assistance and long-term institutionalization programs DHS will consider in a public charge inadmissibility determination.[307]

6. Other Definitions

Comment: Two commenters suggested using the definition of household size as defined in connection with the Affidavit of Support Under Section 213A of the INA, with one commenter stating that an additional definition is superfluous and would add confusion and inconsistency.

One commenter stated that DHS should define a noncitizen's household and should use the definition of household used in the 2019 Final Rule, taking into account the number of household members and the number of individuals for whom a noncitizen or noncitizen's parent or guardians provide at least 50 percent of financial support. The commenter stated that DHS should consider the noncitizen's household size as the primary element of the family status factor.

Another commenter recommended that household remain undefined, as it does not appear in the statute or elsewhere in the proposed regulations. Several commenters remarked that when household was given a distinct definition in the 2019 Final Rule it caused harm and confusion.

Response: DHS appreciates all of the commenters who responded to DHS's request in the NPRM to comment on how, if at all, DHS should define ''household'' for use in in applying the statutory minimum factors, as it did in the 2019 Final Rule. Because a

[304] ''Inadmissibility and Deportability on Public Charge Grounds,'' 64 FR 28676, 28681 (May 26, 1999).

[305] ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28692 (May 26, 1999); ''Inadmissibility and Deportability on Public Charge Grounds,'' 64 FR 28676, 28677 (May 26, 1999).

[306] *See* 8 CFR 212.21(e).

[307] *See* 87 FR at 10615 (Feb. 24, 2022).

definition of household provides important clarity for the public and for officers as to how DHS will be considering both the family status and assets, resources, and financial status factors, DHS disagrees with the commenter who suggested the regulations should not define household.

DHS considered the calculation used to determine a sponsor's household size in connection with an Affidavit of Support Under Section 213A of the INA, but notes that the sponsor's household size calculation pertaining to Affidavit of Support Under Section 213A of the INA is designed to demonstrate that a sponsor's income and assets are sufficient to support their household at the corresponding HHS Poverty Guideline. Because the intent for a public charge inadmissibility determination is not a direct comparison of a noncitizen's income with a noncitizen's household size, DHS decided to use a simpler definition of household in the public charge inadmissibility determination that would better reflect whether an individual is likely at any time to become a public charge in a totality of the circumstances assessment. Accordingly, this rule defines a noncitizen's household as ''(1) The alien; (2) The alien's spouse, if physically residing with the alien; (3) If physically residing with the alien, the alien's parents, the alien's unmarried siblings under 21 years of age, and the alien's children as defined in section 101(b)(1) of the INA; (4) Any other individuals (including a spouse or child as defined in section 101(b)(1) of the Act not physically residing with the alien) who are listed as dependents on the alien's federal income tax return; and (5) Any other individual(s) who list the alien as a dependent on their federal income tax return.'' [308]

DHS believes that the definition from the 2019 Final Rule classifying people as household members depending on a threshold of either 50 percent or more financial support from or to the noncitizen places an unnecessary burden of quantification and analysis on applicants. As commenters to the 2019 Final Rule noted, such a definition could also disadvantage larger households who must show larger incomes or resources to support the larger numbers being counted, regardless of the reality of the economic benefits certain family members might provide to such households, or such households may be providing to society.[309] This could also disadvantage members of families who provide financial assistance to extended family members in cases of emergencies or for other short-term periods of time without being legally required to do so because counting those individuals as part of a noncitizen's ''household'' would increase the household size and decrease the household income even in circumstances that may be temporary. DHS recognizes that it could define ''household'' in ways that are potentially more expansive (as in the 2019 Final Rule) or less expansive, but DHS believes that this rule's definition of household provides officers with a sufficiently accurate representation of the assets and resources available to a noncitizen, recognizing that multiple household members may contribute to the overall financial picture of the household as a whole, without at the same time creating a system that is potentially unworkable or overinclusive.

I. Factors

1. Statutory Minimum Factors

Comment: A number of commenters stated that they supported the NPRM's proposed return to the statutory factors and use of the Affidavit of Support Under Section 213A of the INA over the approach taken in the 2019 Final Rule. Several of the commenters further stated support for DHS forgoing defining the statutory factors and merely relying on the statutory language because the 2019 Final Rule created complicated definitions that required USCIS officers to review voluminous amounts of documentation and assign negative or positive weight to evidence and what commenters stated led to inconsistent results. Furthermore, some commenters stated that defining the factors would invite potential abuse by officers and result in a more complicated and discretionary determination that is unnecessary and harmful.

Response: DHS acknowledges the commenters' concerns about complicated and potentially harmful interpretations of the statutory minimum factors. In this rule, DHS is maintaining the longstanding and straightforward framework set forth in the 1999 Interim Field Guidance, in which officers consider the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA, where required, and current and/or past receipt of public benefits, in the totality of the circumstances, without separately codifying evidence required for each factor as was done in the 2019 Final Rule. DHS believes this will reduce burdensome and unnecessary evidentiary and information collection requirements pertaining to the statutory minimum factors, which in turn will decrease the burdens on DHS when reviewing and evaluating information and evidence.

While DHS is neither codifying specific evidentiary requirements for the statutory minimum factors nor creating a separate form to collect information and evidence about those factors, following receipt of public comments, DHS has made changes to the provisions addressing the following statutory minimum factors to identify information relevant to such factors: health, family status; assets, resources, and financial status; and education and skills. In accordance with those changes, DHS has made changes to Form I–485 to effectuate the relevant information collection. The identification and collection of this relevant information will help officers make public charge inadmissibility determinations without being unnecessarily burdensome for the public and for DHS, and will provide clarity to the public regarding what information is relevant and needed to make public charge inadmissibility determinations.

DHS will make a public charge inadmissibility determination based on the totality of a noncitizen's circumstances.[310] The rule explicitly states that none of the statutory minimum factors other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, ''should be the sole criterion for determining if an alien is likely to become a public charge.'' [311] As noted in the NPRM,[312] this rule includes elements consistent with the standard previously in place for over 20 years.

In addition, consistent with 8 CFR 212.22(b), DHS plans to issue subregulatory guidance to officers to inform (but not dictate the outcome of) the totality of the circumstances assessment, which will address how the factors identified in the rule may affect the likelihood that a given noncitizen will become primarily dependent on the government for subsistence at any time as informed by an empirical analysis of the best-available data. DHS plans to issue such guidance prior to the implementation date of this rule, and expects that this guidance will promote consistency in adjudication as well as

[308] *See* 8 CFR 212.21(f).

[309] *See* 84 FR 41292, 41393–41396 (Aug. 14, 2019).

[310] *See* 8 CFR 2 12.22(b).

[311] *See* 8 CFR 212.22(b).

[312] *See* 87 FR at 10621 (Feb. 24, 2022).

transparency for applicants and other stakeholders. DHS may periodically update this guidance as needed to reflect current data.

To illustrate the approach taken in this rule, consider the following hypothetical examples of noncitizens applying for adjustment of status by submitting to USCIS, for instance, the Form I–485, Application to Register Permanent Residence or Adjust Status; a valid Form I–693, Report of Medical Examination and Vaccination Record; a sufficient Form I–864, Affidavit of Support Under Section 213A of the INA, if required; and all other required supporting evidence. Note that the following examples are meant as illustrations only, and that in any individual case, an officer's consideration of each factor identified in the rule would entail a detailed review and analysis.

(1) The officer considers the noncitizen's age; health; family status; assets, resources, and financial status; education and skills; past and current receipt of public cash assistance of income maintenance or long-term institutionalization at government expense; sufficient Affidavit of Support Under Section 213A of the INA; and the guidance. The guidance includes an empirical analysis of how these factors (except for the sufficient Affidavit of Support Under Section 213A of the INA) may affect the likelihood that a noncitizen would at any time of becoming primarily dependent on the government for subsistence, based on the best-available data. The officer determines that the noncitizen's combination of factors does not contain any adverse indications (such as past or current receipt of public cash assistance for income maintenance or inadequate assets, resources, or financial status). As a result, the officer finds in the totality of the circumstances that the applicant has met their burden of demonstrating they are not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

(2) The officer considers the factors and empirical evidence in the guidance in the manner described above except that the evidence reflects that the noncitizen received public cash assistance for income maintenance several years ago, which comprised a small portion of the noncitizen's income and did not last for an extended period of time. The officer's determination therefore entails consideration of the duration and recency of public cash assistance for income maintenance, which in this hypothetical case occurred several years ago, comprised a small portion of the individual's income and did not last for an extended period of time. The officer ultimately determines, following consideration of the guidance and the individual circumstances presented by the applicant (such as the applicant's health, education, and income), that the applicant has met their burden of demonstrating they are not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

(3) The officer considers the factors and empirical evidence in the manner described above, except that the evidence reflects that the noncitizen's receipt of public cash assistance for income maintenance has occurred over an extended period of time and continues to this day, and the noncitizen has almost no other sources of income. Following consideration of this information, together with the other factors (such as the noncitizen's education and skills), the officer determines in the totality of the circumstances that the applicant is inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

Comment: One commenter disagreed with considering statutory minimum factors in a public charge inadmissibility determination, stating that the use of those factors may still be discriminatory against individuals with disabilities. The commenter stated that having a disability can affect every single aspect of one's life, so the fact that disability alone cannot lead to a finding of inadmissibility does not account for the ways in which the individual's disability may impact the other factors considered. Another commenter stated that many immigrants come to the United States to improve the factors used to make a public charge inadmissibility determination and encouraged DHS to remember the inalienable rights of life, liberty, and the pursuit of happiness.

Response: Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific factors, at a minimum, in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors are the noncitizen's age; health; family status; assets, resources, and financial status; and education and skills.[313] The statute does not indicate the circumstances under which any of these factors are to be treated positively or negatively, how much weight the factors should be given, or what evidence or information is relevant to the each of the statutory minimum factors. DHS may not alter or dismiss the factors as set forth by Congress in the statute. DHS is maintaining the longstanding and straightforward framework set forth in the 1999 Interim Field Guidance, in which officers consider the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, where required, in the totality of the circumstances, without separately codifying initial supporting evidence that must be submitted for each factor as was done in the 2019 Final Rule. DHS believes that this will reduce burdensome and unnecessary evidentiary and information collection requirements pertaining to the statutory minimum factors, which in turn will decrease the burdens on DHS when reviewing and evaluating information and evidence. DHS also believes that this focus on a totality of the circumstances framework is the fairest and most equitable way to apply the public charge ground of inadmissibility.

a. Age

Comment: A number of commenters disagreed that a person's age may impact their ability to work or is relevant to the likelihood of becoming a public charge. One commenter stated that employers are prohibited from discriminating against people who are 40 and over based on the Age Discrimination in Employment Act of 1967 [314] and, thus, DHS should caution its officers to the potential for abuse of this specific criterion. One commenter noted that many older immigrants make important contributions to their households, including providing income, caregiving, and other support that enables other household members to work outside the home. The commenter further stated that these contributions in turn benefit our communities and our economy.

Response: Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors include the noncitizen's age.[315] However, DHS appreciates commenters' concerns that a person's age may not determine their likelihood of becoming a public charge.

[313] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i). The statute also permits, but does not require, the consideration of a sufficient Affidavit of Support Under Section 213A of the INA, if required. *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[314] Public Law 90–202, 81 Stat. 602 (1967).

[315] *See* INA sec. 212(a)(4)(B)(i)(I), 8 U.S.C. 1182(a)(4)(B)(i)(I).

For this reason, DHS notes that in this rule DHS specifically indicates that the determination of an individual's likelihood of becoming a public charge must be based on the totality of the individual's circumstances and no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining if an individual is likely to become a public charge.[316] Age is not the only factor taken into account in a public charge inadmissibility determination and does not automatically determine if a noncitizen is likely at any time to become a public charge.

In order to ensure that DHS officers are making clear, fair, and consistent public charge inadmissibility determinations, the regulations also state that every written denial decision issued by USCIS should reflect consideration of each of the factors outlined in this rule and specific articulation of the reasons for the officer's determination.[317] DHS believes this will help ensure that public charge inadmissibility determinations do not reflect a misunderstanding of age discrimination laws.

Comment: A few commenters suggested that children should not be penalized when considering age as a factor, or that age for minor children should not be a consideration, despite the INA not containing an explicit exemption for children. Other commenters similarly suggested that DHS positively interpret the statutory factor of age for children and require officers to apply a heightened standard for finding that a child is likely at any time to become a public charge. Commenters urged that, if a child is found to be inadmissible under the public charge ground of inadmissibility, officers should include specific reasoning including the consideration of this heightened standard.

Some commenters suggested alternatively that DHS create a child-specific framework for the statutory factors for cases that involve children in guidance to officers, not ignoring or exempting children from the statutory minimum factors but acknowledging that children are different from adults and interpreting the factors in a child-appropriate manner. For example, children's dependence on family is normal and not an indication of their likelihood of becoming a public charge in the future. The commenters also suggested that DHS view being in school and having strong family support as factors in a child's favor, as research shows that the earlier a child has access to strong social networks and educational opportunities the better their future earnings and outcomes.

Response: As noted previously, DHS disagrees with commenters who suggested that the public charge ground of inadmissibility should not be applied to children because it is difficult to predict a child's likelihood of becoming primarily dependent on the government for subsistence. While DHS acknowledges that the public charge inadmissibility determination is a complex assessment, the language of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), requires that this be a predictive assessment, and only those categories designated by Congress are exempt from the public charge ground of inadmissibility.[318] DHS notes that Congress did not exclude children from the public charge ground of inadmissibility and therefore, unless a child is seeking admission or adjustment of status in a classification that Congress expressly exempted from the public charge ground of inadmissibility, for example adjustment of status as a special immigrant juvenile,[319] DHS must apply the ground to applications for admission or adjustment of status.

DHS recognizes that it must apply the statutory minimum factors to individuals' specific circumstances, and as such, has made clear that a public charge inadmissibility determination should be based on the totality of a noncitizen's circumstances. These factors include the noncitizen's age; health; family status; assets, resources, and financial status; and education and skills.[320] As stated throughout this rule, no one factor other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, ''should be the sole criterion for determining if an alien is likely to become a public charge'' [321] and ''DHS may periodically issue guidance to officers to inform the totality of the circumstances assessment.'' [322] DHS believes that a public charge inadmissibility determination that takes into account the totality of a noncitizen's circumstances, including their age, is consistent with a the statute. While DHS will not create a different standard for children, DHS intends to issue guidance as appropriate that will clarify considerations that are relevant to considering a child's receipt of public benefits in the totality of the circumstances.

To address the comment requesting that officers be required to include specific reasoning for a public charge inadmissibility finding for children, DHS notes that the regulations state that every written denial decision issued by USCIS should reflect consideration of each of the factors outlined in this rule and specific articulation of the reasons for the officer's determination, which will help ensure that public charge inadmissibility determinations will be fair and consistent with the law.

b. Health

Comment: Some commenters recommended that DHS not consider health as a factor in public charge inadmissibility determinations because it unfairly hinders all immigrants, especially those with disabilities and chronic health conditions that face heightened healthcare costs as well as disproportionate barriers to education and employment, making them unable to show significant assets or resources. Another commenter stated that a person's health status should never be considered when evaluating whether they are likely to become a public charge because it unfairly discriminates against individuals from communities where preventive care and other services are not widely accessible, as well as against individuals who have chronic health conditions or disabilities. Some commenters stated that any individual may become disabled due to illness, injury, or the development of a condition at any time and the rule does little to protect immigrants who are injured or disabled while working in the United States, or those who may become infected with COVID–19.

Response: DHS designed this rule to adhere to, and implement, congressional instructions. DHS did not issue this rule to discriminate against applicants based on their health, and moreover, did not intend to single out or discriminate against those with disabilities or chronic health conditions or applicants who come from communities where preventive care and other services are not widely accessible. Rather, as noted in the NPRM [323] and above in this preamble, this rule is intended to articulate a policy with respect to the public charge ground of inadmissibility that that is fully consistent with law and

[316] *See* 8 CFR 212.22(b).

[317] *See* 8 CFR 212.22(c).

[318] *See* 8 CFR 212.23.

[319] INA sec. 245(h)(2)(A), 8 U.S.C. 1255(h)(2)(A).

[320] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i). The statute also permits, but does not require, the consideration of a sufficient Affidavit of Support Under Section 213A of the INA, if required. *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[321] *See* 8 CFR 212.22(b).

[322] *See* 8 CFR 212.22(b).

[323] 87 FR at 10599 (Feb. 24, 2022).

that is clear, fair, and comprehensible for officers as well as for noncitizens. This rule, and in particular, the consideration of the health factor, is simply a reflection of and wholly consistent with Congress' mandate that DHS consider an applicant's health in every public charge inadmissibility determination.[324]

DHS disagrees with commenters' suggestion that it has the authority to ignore any of the statutorily mandated factors, including the health factor, in making a public charge inadmissibility determination, even if an applicant has a chronic medical condition, disability, or lives in a community where preventive care and other services are not widely accessible. In fact, under the plain language of the statute, Congress requires DHS to review the applicant's health when determining whether the applicant is likely at any time to become a public charge.[325] DHS will not disregard the factors that Congress mandated DHS consider, and DHS therefore declines to adopt this suggestion in this rule.

To the extent that commenters are concerned that DHS, in considering an applicant's health, will treat an applicant's disability or particular health conditions, such as chronic health conditions, as outcome determinative, DHS notes that it lacks the authority to treat any of the statutory minimum factors, including an applicant's health, as outcome determinative. Simply put, DHS will not treat any of the statutory minimum factors as outcome determinative in this rule,[326] and, as reflected in the NPRM,[327] this rule already includes a provision that prohibits treating any factor, other than the lack of a required Affidavit of Support Under Section 213A of the INA, as outcome determinative.[328] Indeed, under this rule, the mere presence of any medical condition would not, on its own, render an applicant inadmissible as likely at any time to become a public charge. On the contrary, as required by Congress,[329] in this rule, a noncitizen's health is but one factor that DHS must consider when determining whether a noncitizen is likely to become a public charge at any time.[330] Moreover, as noted in the NPRM[331] and as reflected in this final rule, the fact that an applicant has a disability as defined by Section 504 of the Rehabilitation Act will never alone be a sufficient basis to determine whether the noncitizen is likely at any time to become a public charge.[332]

Comment: One commenter remarked that being denied entry into the United States based on a disability violates noncitizens' human rights. Another commenter stated that ''the regulation of public charge goes beyond immigration control and prevention of abuse of public services . . . and is a threat to the human rights of every human being . . . .'' This commenter provided testimonials from members of the Disability and Immigration Justice Coalition to describe how the public charge ground of inadmissibility negatively affects their lives. The commenter also stated that the proposed rule encourages and supports social and cultural ableism, destroying decades of social justice work for disabled lives to be included, and that no human being is a public charge.

Response: The term ''public charge'' is a statutory term and part of a ground of inadmissibility that DHS administers pursuant to duly enacted laws. DHS notes that while it is required to administer the public charge ground of inadmissibility to all noncitizens who are subject to the ground, DHS does not intend to suggest through this rulemaking that a noncitizen's worth or value to society is in any way tied to a noncitizen being determined to be likely at any time to become a public charge.

With respect to comments and testimonials opposing the regulation of public charge as a threat to human rights, DHS notes that it was not clear from the comment whether the commenter objects to the application of the public charge ground of inadmissibility, or DHS's proposed rule—the commenter did not specifically address any aspect of the proposed rule. Nevertheless, DHS disagrees that this rule violates noncitizens' human rights, encourages ableism, or would deny admission or adjustment of status based on a noncitizen's disability. In fact, under this rule, disability alone is not a sufficient basis to determine that a noncitizen is likely at any time to become a public charge.[333] Although the statute requires DHS to consider an applicant's health when assessing the applicant's likelihood at any time of becoming a public charge,[334] which may include consideration of any disabilities identified in the report of medical examination in the record,[335] there is no presumption under the statute or in this rule that having a disability in and of itself means that the applicant is in poor health or is likely at any time to become a public charge. DHS will not, under this rule, presume that an applicant's disability in and of itself negatively impacts the applicant's health or any of the other statutory minimum factors that DHS considers as part of the public charge inadmissibility determination.[336] For example, as noted in the NPRM,[337] many disabilities do not impact an individual's health or require extensive medical care, and the vast majority of people with disabilities do not use institutional care.

Simply put, under this rule, DHS will not deny admission or adjustment of status to any applicant solely based on the applicant's disability. As noted in the NPRM[338] and above, under this rule, no one factor, other than the lack of a required Affidavit of Support Under Section 213A of the INA, is outcome determinative.[339] Indeed, under this rule, the fact that an applicant has a disability as defined by Section 504 of the Rehabilitation Act will never alone be a sufficient basis to determine whether an applicant for admission or adjustment of status is likely at any time to become a public charge.[340] The final rule also includes other provisions to better ensure fair and consistent treatment of individuals with disabilities—for example, long-term institutionalization in the context of Medicaid is limited to ''institutional services under section 1905(a) of the Social Security Act,''[341] which, as DHS clarified in the proposed rule, does not include HCBS.[342] In addition, the final rule includes a provision that allows DHS to consider evidence submitted by the applicant that the applicant's long-term institutionalization violates federal law, including the Americans with Disabilities Act or the Rehabilitation Act.[343] As a result, DHS declines to make any changes to the rule in response to this comment.

Comment: One commenter discouraged defining health in a way

[324] INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[325] *See* INA sec. 212(a)(4)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

[326] 8 CFR 212.22(b).

[327] 87 FR at 10621 (Feb. 24, 2022).

[328] *See* 8 CFR 212.22(b).

[329] *See* INA sec. 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

[330] 8 CFR 212.22(a)(1)(ii).

[331] 87 FR at 10620 (Feb. 24, 2022).

[332] 8 CFR 212.22(a)(4).

[333] *See* 8 CFR 212.22(a)(4) and (b).

[334] INA sec. 212(a)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

[335] *See* 8 CFR 212.22(a)(1)(ii).

[336] 8 CFR 212.22(a)(4).

[337] 87 FR at 10620 (Feb. 24, 2022).

[338] 87 FR at 10621 (Feb. 24, 2022).

[339] *See* 8 CFR 212.22(b).

[340] 8 CFR 212.22(a)(4).

[341] 8 CFR 212.21(c).

[342] 87 FR at 10614 (Feb. 24, 2022).

[343] 8 CFR 212.22(a)(3).

that would penalize individuals based on the nature or conditions of their work. This commenter remarked that farmworkers, in particular, engage in ''difficult, repetitive tasks, often in uncomfortable positions, resulting in musculoskeletal injuries . . . [as well as o]ther dangerous conditions [that] include handling heavy machinery, working with large animals, and working at heights . . . , '' which needs to be accounted for in the definition of health. This commenter also discouraged defining health to include consideration of an applicant's health insurance coverage in the definition, as few farmworkers have access to comprehensive health insurance. Some commenters, with one pointing to President Biden's executive order *Advancing Racial Equality and Support for Underserved Communities Through the Federal Government,*[344] stated that DHS should consider how social determinants of health, such as social, economic, and environmental factors, contribute to an applicant's health in a public charge inadmissibility determination. The commenter stated that poor health and shorter life expectancy concentrate among low-income people of color residing in certain places, including immigrants' native countries in the global south that have been disadvantaged by historical and structural factors such as colonization and racially discriminatory immigration policies. Another commenter similarly stated that when officers weigh the health factor, they should treat social determinants of health only in a positive manner, consider overall wellness without reference to disability to the extent possible, and should treat other ''aspects of health'' as irrelevant to the health factor, to avoid considering disability alone as influencing the likelihood of an immigrant being determined likely to become a public charge.

Response: DHS notes that it is not, in this rule, defining health to include an assessment of whether an applicant has health insurance coverage.[345] DHS further notes that it is not defining health to specify that any aspect of an applicant's health, including circumstances that might impact the reasons why an individual has certain health conditions, should be treated as a positive or negative factor. Rather, in response to public comments and feedback received, DHS has amended the rule to clarify that in considering an applicant's health in the totality of the circumstances, DHS will consider any report of an immigration medical examination performed by a civil surgeon or panel physician in the record.[346] The report of the immigration medical examination will include, as required by HHS regulations, any Class A or Class B medical conditions diagnosed by the physician, as well as ''the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable . . . [as well as] the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.'' [347] The report of medical examination will also include, as required by the CDC Technical Instructions for Civil Surgeons [348] and the Technical Instructions for Panel Physicians,[349] a notation for any Class B medical condition identified by the physician that although it ''does not constitute a specific excludable condition, [it] represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future.'' [350] DHS would rely on any such findings made by the civil surgeon or panel physician as to whether any Class A or Class B medical conditions were identified in the report of medical examination unless there is evidence that the report is incomplete.

DHS believes that this will ensure that DHS officers, who are not trained medical professionals, are assessing the applicant's health, based on reports from physicians designated to perform immigration medical examinations. DHS believes that the evidence it will consider in assessing an applicant's health will ensure that applicants understand what DHS will consider as part of the health factor, while minimizing burdensome information collection associated with this factor.

DHS further notes that it does not, through considering any report of medical examination in an applicant's file in this rule, intend the rule to penalize or negatively affect any particular group, including farmworkers or other workers who may become injured or sick due to job-related conditions or socioeconomic circumstances. Under this rule, being a farmworker who has been or is more likely to be injured on the job, or an individual whose socioeconomic circumstances may impact their health, would not on its own result in a finding that an applicant is inadmissible as likely at any time to become a public charge. As is the case with any of the statutory minimum factors, in making a public charge inadmissibility determination in the totality of the circumstances, the mere presence of any medical condition, as diagnosed on a report of medical examination in the record, would not render a noncitizen inadmissible under this rule; under this rule, DHS will, in the totality of the circumstances, take into account all of the factors identified in 8 CFR 212.22, including an applicant's health.[351] DHS would consider the existence of any medical condition and weigh such evidence in the totality of the circumstances.

As a result, DHS disagrees that it would be appropriate to implement commenters' suggestion that DHS give positive weight or favorably consider the social, economic, and environmental factors that go into the applicant's health. Indeed, as noted elsewhere in this rule, each public charge inadmissibility determination is extremely fact-specific and the factors that may weigh heavily in one case may not have equal weight in another case depending on those specific facts in the totality of the applicant's circumstances.[352] This is particularly true when considering an applicant's health. Therefore, DHS declines to implement any of the suggestions from these commenters.

Comment: One commenter recommended that evidence of ''inadmissibility-creating'' drug abuse or addiction be explicitly included as a heavily weighted negative factor in a public charge inadmissibility determination, as it would provide information relevant to a noncitizen's ability to maintain employment, income, and health, all of which are relevant to the noncitizen's ability to demonstrate self-reliance.

[344] E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' 86 FR 7009 (Jan. 25, 2021).

[345] 8 CFR 212.22(a)(1)(ii).

[346] 8 CFR 212.22(a)(1)(ii).

[347] 42 CFR 34.4(b)(2) and (c)(2).

[348] CDC, Civil Surgeons, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/medical-history-and-physical-exam.html* (last visited Aug. 16, 2022).

[349] CDC, Panel Physicians, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/medical-history-physical-exam.html* (last visited Aug. 16, 2022).

[350] *See CDC, ''Technical Instructions for Civil Surgeons,'' https://www.cdc.gov/immigrant refugeehealth/civil-surgeons.html (last visited Aug. 16, 2022). See* 42 CFR 34.3(i).

[351] 8 CFR 212.22(b).

[352] 87 FR at 10620 (Feb. 24, 2022).

Response: After considering public comments and feedback, DHS is amending the rule to include an express provision that DHS will consider, as part of the mandatory health factor, any report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required.[353] Such a report of an immigration medical examination documents whether the noncitizen has Class A medical conditions, which include drug abuse or addiction, and Class B medical conditions, and whether the applicant has complied with all vaccination requirements, which DHS uses to determine whether an applicant is inadmissible on the health-related grounds.[354] This addition will ensure that DHS officers consider, as part of the totality of the circumstances analysis, any health conditions, including drug abuse or addiction, identified on the report of medical examination.

To the extent that this commenter suggests that DHS needs to assess whether the applicant has demonstrated self-reliance, DHS believes, as noted in the NPRM, that this rulemaking reflects that the long-standing intent of the public charge ground of inadmissibility—reaching noncitizens with significant reliance on the government for support.[355] DHS believes that this rule properly focuses on applicants who are primarily dependent on the government for subsistence (*i.e.,* noncitizens who are unable or unwilling to work to support themselves, and who do not have other nongovernmental means of support such as family members, assets, or sponsors).[356] DHS therefore disagrees with this commenter that it needs to amend the regulation to include any heavily weighted negative (or positive) factor in order to ensure that applicants have demonstrated that they are self-reliant. DHS is not adding any heavily weighted negative factors to this rule because DHS believes, consistent with the statute, that each public charge inadmissibility determination is extremely fact-specific and that declaring factors to be ''heavily weighted'' in all cases is not calculated to yield fair or consistent results; the factors that may weigh heavily in one case may not have equal weight in another case depending on those specific facts in the totality of the applicant's circumstances.[357] As a result, DHS declines to add any heavily weighted factors, including a heavily weighted factor for drug abuse or addiction.

Comment: One commenter suggested that the health factor be given minimal weight in the totality of the circumstances.

Response: DHS disagrees that it would be appropriate to give the health factor minimal weight in every case for the same reason that DHS disagrees that it should treat health as a heavily weighted factor. As noted above, each public charge inadmissibility determination is extremely fact-specific and the factors that may weigh heavily in one case may not have equal weight in another case depending on those specific facts in the totality of the applicant's circumstances.[358] This is particularly true when considering an applicant's health. Some applicants, as reflected on a report of medical examination, may not have been diagnosed with any Class A or Class B medical conditions, while others have been diagnosed with Class A medical conditions such drug abuse or addiction or Class B conditions, such those that require extensive medical care or institutionalization. How much weight DHS would give to any of these medical conditions would depend on the exact nature of the condition as well as all of the other factors that DHS must consider in every case under this rule. As a result, DHS declines to add a provision to the rule that instructs officers to give minimal weight to the health factor in every case.

Comment: One commenter stated that DHS should narrow the consideration of health in a public charge inadmissibility determination to only include situations in which a person's health condition is likely to permanently and irreversibly make them primarily reliant on the government, and that this determination should only be made by qualified medical professionals, not officers. Another commenter appeared to suggest that the health factor should be narrowly defined as having a severe or extreme condition that, in the presence of circumstances where the person does not have relatives or friends in the United States indicating their willingness to come to their assistance, would make the person more likely to become a public charge.

Response: Congress requires DHS to consider the applicant's health when determining whether the applicant is likely at any time to become a public charge.[359] DHS disagrees that it should narrowly define the health factor to only include consideration of severe or extreme conditions that in the absence of having friends and family to provide financial support make the applicant more likely to become a public charge, or to conditions, as determined by qualified medical professionals, that permanently and irreversibly make applicants primarily reliant on the government. That Congress determined that an applicant's health is one of the mandatory factors that is relevant to determining the applicant's likelihood at any time of becoming a public charge suggests that Congress did not intend to limit the health consideration to any specific medical condition or circumstances. Therefore, DHS declines to narrow the health factor as commenters suggest.

DHS notes, however, as explained above, that it has amended the rule to include an express provision that DHS will consider, as part of the mandatory health factor, any report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required.[360] Such a report of an immigration medical examination documents whether the noncitizen has any Class A medical conditions, which include a current physical or mental disorder (and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the noncitizen or others) and drug abuse or addiction, and Class B medical conditions, including a physical or mental health condition, disease, or disability serious in degree or permanent in nature, and whether the applicant has complied with all vaccination requirements, which DHS uses to determine whether an applicant is inadmissible on the health-related grounds.[361] This addition will ensure that DHS officers consider, as part of the totality of the circumstances analysis,

[353] 8 CFR 212.22(a)(1)(ii). Note, however, that while this was not included in the proposed regulatory text, the NPRM indicated that the report would be considered. *See* 87 FR at 10617 (Feb. 24, 2022) (''DHS will collect information relevant to the statutory minimum factors from existing information collections, *e.g.,* information pertaining to the health factor will be obtained from Form I–693, Report of Medical Examination and Vaccination Record'').

[354] 42 CFR 34.3 and 34.4.

[355] 87 FR at 10620 (Feb. 24, 2022).

[356] 8 CFR 212.21(a). 87 FR at 10606 (Feb. 24, 2022).

[357] 87 FR at 10620 (Feb. 24, 2022).

[358] 87 FR at 10620 (Feb. 24, 2022).

[359] *See* INA sec. 212(a)(4)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

[360] 8 CFR 212.22(a)(1)(ii). Note, however, that while this was not included in the proposed regulatory text, the NPRM indicated that the report would be considered. *See* 87 FR at 10617 (Feb. 24, 2022) (''DHS will collect information relevant to the statutory minimum factors from existing information collections, *e.g.,* information pertaining to the health factor will be obtained from Form I–693, Report of Medical Examination and Vaccination Record'').

[361] 42 CFR 34.3 and 34.4.

any health conditions identified on the report of medical examination in the totality of the circumstances. The approach that DHS has taken in this rule leverages evidence that will generally already exist in the applicant's record. DHS acknowledges that some information on such a report may not bear significantly upon a determination that a person is or not likely to become a public charge, but in this instance, DHS believes that the matter can be appropriately addressed in guidance.

Comment: Many commenters expressed support for the rule's recognition that a noncitizen should not be considered likely at any time to become a public charge simply because the noncitizen has a disability and instead it is only one factor to be considered in the totality of circumstances and cannot be the sole basis for a denial. One of the commenters stated that (1) many disabilities do not impact an individual's health or require extensive medical care (*i.e.,* the presence of the disability is a life condition rather than a health condition); (2) many people have disabilities that do not result in either illness or long-term health conditions (*e.g.,* people with intellectual and developmental disabilities may not have a long-term health-related condition); and (3) many immigration officers are not trained to make disability or health diagnoses and should not assume that people who present with a disability have severe health issues.

Response: DHS agrees that officers should not assume that applicants with disabilities have health issues and that DHS officers should not make health diagnoses. After considering comments and public feedback, DHS has included a provision in this rule specifying that when considering an applicant's health, DHS will consider any report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required, to which DHS will generally defer absent evidence that such report is incomplete.[362] The report of the immigration medical examination will include, as required by HHS regulations, any Class A or Class B medical conditions diagnosed by the physician, as well as ''the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable . . . [as well as] the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.'' [363] The report of medical examination will also include, as required by the CDC Technical Instructions for Civil Surgeons [364] and the Technical Instructions for Panel Physicians,[365] a notation for any Class B medical condition identified on the form by the physician, that although it ''does not constitute a specific excludable condition, [it] represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future.'' [366] DHS would rely on any such findings made by the civil surgeon or panel physician as to whether any Class A or Class B conditions were identified in the report of medical examination unless there is evidence that the report is incomplete. DHS has amended the regulatory text consistent with this approach.

DHS notes, however, that in making a public charge inadmissibility determination in the totality of the circumstances, the mere presence of any Class A or Class B condition, diagnosed on a report of medical examination, including a ''disability serious in degree or permanent in nature . . .'' [367] would not alone render a noncitizen inadmissible under this rule; under this rule, DHS will, in the totality of the circumstances, take into account all of the factors identified in 8 CFR 212.22, including an applicant's health.[368] Furthermore, under this rule, DHS reiterates that an applicant with a disability would not be found inadmissible on the public charge ground solely on account of that disability.[369] Instead, DHS would look at whether the individual had a medical condition impacting their health and weigh such evidence in the totality of the circumstances.

Comment: Commenters stated that disability and chronic health conditions should not be considered in a public charge inadmissibility determination under any circumstances in order to avoid unfair decisions by officers based on misunderstanding or lack of information about a noncitizen's disability or officers' implicit bias. Similarly, one commenter stated that consideration of an applicant's health condition risks disqualifying applicants based on disability.

Response: DHS agrees that disability alone can never disqualify an individual but disagrees that it should exclude from consideration all disabilities. Under this rule, USCIS' approach to the health factor will result in the consideration of some health conditions that are also disabilities. Specifically, in each case, USCIS' review of the Form I–693 would result in consideration of a Class A or Class B condition reported by a civil surgeon or panel physician on a report of medical examination. Some of these conditions may relate to disabilities. DHS agrees it is important that decisions by its officers be based on objective information and believes the Form 1–693 will help. DHS will provide further guidance for officers on how to accurately consider whether a disability reported by a civil surgeon or panel physician impacts an applicant's likelihood of becoming a public charge.

Congress requires DHS to review the applicant's health when determining whether the applicant is likely at any time to become a public charge.[370] Congress did not direct DHS to consider disability as such, and DHS will not do so under this rule. That said, Congress also did not provide that DHS's consideration of an applicant's health should exclude consideration of any aspect of an applicant's health that also constitutes a disability. Consistent with the statute, DHS declines to exclude consideration of an applicant's disability as part of the health factor in the totality of the circumstances.

DHS further disagrees that considering any disabilities that are identified on a report of medical examination completed by a civil surgeon or panel physician disability will disqualify such applicants from immigration benefits based on their disability. Under this rule, DHS will not deny admission or adjustment of status to any applicant solely based on the

[362] 8 CFR 212.22(a)(1)(ii). Note, however, that while this was not included in the proposed regulatory text in the NPRM, the NPRM indicated that the report would be considered. *See* 87 FR at 10617 (Feb. 24, 2022) (''DHS will collect information relevant to the statutory minimum factors from existing information collections, *e.g.,* information pertaining to the health factor will be obtained from Form I–693, Report of Medical Examination and Vaccination Record'').

[363] 42 CFR 34.4(b)(2) and (c)(2).

[364] CDC, Civil Surgeons, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/medical-history-and-physical-exam.html* (last visited Aug. 16, 2022).

[365] CDC, Panel Physicians, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/medical-history-physical-exam.html* (last visited Aug. 16, 2022)

[366] *See* CDC, ''Technical Instructions for Civil Surgeons,'' *https://www.cdc.gov/immigrant refugeehealth/civil-surgeons.html* (last visited Aug. 16, 2022); *See* 42 CFR 34.3(i).

[367] 42 CFR 34.4(c).

[368] 8 CFR 212.22(b).

[369] 8 CFR 212.22(a)(4).

[370] *See* INA sec. 212(a)(4)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

applicant's disability. As noted in the NPRM and above, under this rule, no one factor, other than the lack of a required Affidavit of Support Under Section 213A of the INA, is outcome determinative.[371] Indeed, under this rule, the fact that an applicant has a disability as defined by Section 504 of the Rehabilitation Act will never alone be a sufficient basis to determine whether an applicant for admission or adjustment of status is likely at any time to become a public charge.[372]

In making a public charge inadmissibility determination in the totality of the circumstances, the mere presence of a disability or of a particular Class A or Class B condition diagnosed on a report of medical examination would not alone render a noncitizen inadmissible under this rule; under this rule, DHS will, in the totality of the circumstances, take into account all of the factors identified in 8 CFR 212.22, including an applicant's health.[373] Furthermore, under this rule, DHS reiterates that an applicant with a disability would not be found inadmissible on the public charge ground solely on account of that disability.[374]

Comment: A commenter stated that DHS should not use the Report of Medical Examination and Vaccination Record, or evidence of a medical condition, in a public charge inadmissibility determination because disability does not predict employability and does not consider that some disabilities or conditions are temporary and individuals may recover.

Response: DHS disagrees that it should not use a report of medical examination in an applicant's record as part of its consideration of an applicant's health in the totality of the circumstances. As noted in the NPRM,[375] consistent with DHS's desire to minimize burdensome and unnecessary evidentiary and information collection requirements pertaining to the statutory minimum factors, DHS believes it appropriate, when considering an applicant's health, to consider evidence that would generally already be in the applicant's record. A report of medical examination would normally be in an adjustment of status applicant's record, either because the adjustment applicant is required to undergo an immigration medical examination conducted by a USCIS-designated civil surgeon, which is documented on the Report of Medical Examination and Vaccination record (Form I–693) as part of the adjustment of status process,[376] or the applicant is exempt from the Form I–693 requirement because they were previously examined by a panel physician prior to entering the United States and has a report of medical examination completed by a panel physician overseas in their record.[377] As noted above, DHS added a provision in this rule, after considering public comments and feedback, to expressly consider any report of medical examination that is in an applicant's record, which DHS believes will ensure that DHS officers consider, as part of the totality of the circumstances analysis, any health conditions that bears on an applicant's likelihood at any time of becoming a public charge. DHS notes, however, that any conditions identified on a report of medical examination in the record will be considered, along with the other factors identified in this rule, in the totality of the circumstances.[378] No condition identified on a report of medical examination is outcome determinative.[379]

Comment: One commenter stated that health factors that are not recorded as a Class B certification by the civil surgeon performing the medical screening should be disregarded in a public charge inadmissibility determination.

Response: As noted above, when considering the applicant's health, DHS will consider any report of medical examination in the applicant's record as part of a public charge inadmissibility determination.[380] DHS notes, however, that any report of medical examination in the record will only contain diagnoses of Class A and Class B medical conditions.[381] While DHS will not require applicants to submit initial evidence other than any required report of medical examination, an applicant is free to submit any other evidence relevant to the health factor for consideration in the totality of the circumstances.

Comment: One commenter recommended that DHS provide further examples to clarify what is meant by ''disability alone'' in order to confirm that enrollment in programs available to working individuals with disabilities for whom risk of institutionalization is an eligibility criterion is not a sufficient basis for an adverse public charge inadmissibility determination.

Response: The provision stating that disability alone is an insufficient basis to determine whether the applicant is likely at any time to become a public charge means that evidence that the applicant has a disability cannot by itself be the basis to find that the applicant is inadmissible. As explained more thoroughly in the NPRM,[382] DHS will not presume that if an individual has a disability then the applicant necessarily is likely at any time to receive cash assistance for income maintenance or require long-term institutionalization at government expense, or otherwise presume that their disability in and of itself negatively impacts any of the statutory minimum factors, such as the applicant's education and skills, or assets, resources, and financial status. For example, many disabilities do not impact an individual's health or require extensive medical care and the vast majority of disabilities do not require institutional care at government expense. DHS, in considering an applicant's health, will consider the existence of any medical condition diagnosed on the report of medical examination and weigh such evidence in the totality of the circumstances. Moreover, as in every case, DHS will consider all of the factors set forth in 8 CFR 212.22(a) in determining whether an applicant is likely at any time to become a public charge in the totality of the circumstances.[383]

Comment: One commenter stated that DHS must consider a noncitizen's disabilities or chronic health conditions as part of the health factor, because an analysis of a noncitizen's health is incomplete without evaluating whether disabilities or chronic health conditions are present, and DHS should consider the existence of a medical condition in light of the effect that condition is likely to have on a person's ability to attend school or work in the totality of the circumstances. The commenter further stated that considering a noncitizen's disability is not unlawful or discriminatory because Congress requires DHS to consider a noncitizen's health as part of the public charge inadmissibility determination and has not prohibited the application of the public charge ground of inadmissibility to noncitizens with disabilities. The

[371] *See* 8 CFR 212.22(b).

[372] 8 CFR 212.22(a)(4).

[373] 8 CFR 212.22(b).

[374] 8 CFR 212.22(a)(4).

[375] 87 FR at 10617 (Feb. 24, 2022).

[376] INA sec. 232(b), 8 U.S.C. 1222(b); 8 CFR 245.5.

[377] *See, e.g.,* OMB, ''Medical Examination for Immigrant or Refugee Applicant,'' ''Report of Medical Examination by Panel Physician (Form DS 2054)'' OMB Control No. 1405–0113, *https://omb.report/omb/1405-0113* (last visited Aug. 16, 2022).

[378] 8 CFR 212.22(b).

[379] 8 CFR 212.22(b).

[380] 8 CFR 212.22(a)(1)(ii).

[381] 42 CFR 34.3(b).

[382] 87 FR at 10620 (Feb 24, 2022).

[383] *See* 8 CFR 212.22(b).

commenter also recommended DHS consider whether the noncitizen has the resources to pay for associated medical costs.

Response: DHS believes that disability is not necessarily indicative of poor health. DHS agrees that Congress did not specifically provide an exemption from the public charge ground of inadmissibility for individuals with disabilities, and in fact, as noted above, included health as a mandatory factor in the public charge inadmissibility determination.[384] DHS will consider health conditions identified in the record as part of the health factor in the totality of the circumstances. As noted above, Congress requires DHS to review the applicant's health when determining whether the applicant is likely at any time to become a public charge.[385]

DHS declines to add a provision in this rule that requires DHS to consider whether the noncitizen has the resources to pay for medical costs associated with a disability. As DHS noted above, DHS will not presume that an applicant who has a disability will require extensive medical care or treatment as a result of their disability. That said, DHS believes that its consideration of any report of medical examination in the record is adequate evidence of the applicant's health as it relates to whether the applicant requires extensive medical care. Indeed, as noted above, the report of medical examination will include, as required by HHS regulations, any Class A or Class B conditions diagnosed by the physician, as well as ''the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable . . . [as well as] the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.'' [386] In diagnosing a Class B condition on a report of medical examination, civil surgeons and panel physicians are required to note that that although it ''does not constitute a specific excludable condition, [it] represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment in the future.'' [387] This information, coupled with the noncitizen's household's income, assets, and liabilities, which is considered as part of the assets, resources, and financial status factor in the totality of the circumstances,[388] will adequately address whether or not the applicant has sufficient resources to pay for medical costs associated with a disability or any other condition diagnosed on the report of medical examination. As such, DHS will not add any provisions to this rule in response to this comment.

Comment: Several commenters stated that consideration of an applicant's health violates Section 504 of the Rehabilitation Act.

Response: DHS disagrees with the comments stating that consideration of an applicant's health, which includes consideration of any disabilities that are Class A or B conditions, as identified on a report of medical examination, violates the Rehabilitation Act. As noted in the NPRM, in enacting section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), which applies to all noncitizens seeking a visa, admission, or adjustment of status unless exempted by Congress, Congress required DHS to consider, as part of the public charge inadmissibility determination, a noncitizen's health. Although Congress has, over time, significantly reduced the prohibitions on immigration for noncitizens with mental and physical disabilities and also amended PRWORA to restore the ability of certain noncitizens with disabilities to receive certain public assistance, such as SSI,[389] Congress has never prohibited consideration of a noncitizen's health as part of a public charge inadmissibility determination if the noncitizen has mental or physical disabilities.

This rule is consistent with federal statutes and regulations with respect to discrimination against noncitizens with disabilities. If a disability on a report of medical examination in the record is related to a noncitizen's health, it is therefore properly considered as part of the public charge inadmissibility determination. However, under this rule, DHS will not presume that a noncitizen having a disability is necessarily in poor health. Furthermore, a noncitizen's health is never outcome determinative—that is, a noncitizen's health cannot be the sole basis for a finding that a noncitizen is inadmissible as likely to become a public charge.[390] As such, a disability alone will never result in a public charge inadmissibility finding, and, as noted in the NPRM,[391] the rule expressly prohibits disability being the sole basis for finding an applicant is inadmissible on the public charge ground.[392] If a noncitizen's disability is a Class A or B condition identified in the report of medical examination, then as with any other such condition, the noncitizen's disability will be considered along with the other factors in the totality of the circumstances. A noncitizen with a disability will neither be treated differently nor singled out, and the disability itself would not be the sole basis for an inadmissibility finding.[393] DHS will look at each of the statutory minimum factors, any current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense, and the favorably considered sufficient Affidavit of Support Under Section 213A of the INA, where required, in the totality of the circumstances. Therefore, DHS believes that consideration of an applicant's disability in the context of the totality of circumstances does not violate the Rehabilitation Act's prohibition on denying a benefit ''solely by reason of [an applicant's] disability.''

Therefore, DHS will not prohibit the consideration of an applicant's disability in the public charge inadmissibility determination to the extent is impacts their health. The final rule also includes other provisions to better ensure fair and consistent treatment of individuals with disabilities; for example, DHS will direct officers to take into account any evidence that the current or past institutionalization violates the

[384] INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4).

[385] *See* INA sec. 212(a)(4)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

[386] 42 CFR 34.4(b)(2) and (c)(2).

[387] CDC, Civil Surgeons, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/medical-history-and-physical-exam.html* (last visited Aug. 16, 2022); CDC, Panel Physicians, ''Medical History and Physical Examination,'' *https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/medical-history-physical-exam.html* (last viewed Aug. 16, 2022).

[388] *See* 8 CFR 212.22(a)(1)(iv). Note that an applicant's household income, assets, and liabilities excludes income from public benefits listed in 8 CFR 212.21(b) as well as income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales.

[389] *See generally* Mark Weber, ''Opening the Golden Door: Disability and the Law of Immigration,'' 8 Journal of Gender, Race and Justice 153 (2004), at 4–5, 8 (discussing historical changes in 1986 and 1990 immigration laws that removed various prohibitions on noncitizens with mental and physical disabilities, unless they represented a threat to themselves or others; describing restoration of SSI disability benefits to noncitizens who had been receiving them before August 22, 1996). *See also* John Stanton, ''The Immigration Laws from a Disability Perspective: Where We Were, Where We Are, Where We Should Be,'' 10 Geo. Immigr. L. J. 441 (Spring 1996) (pre-PRWORA analysis).

[390] 8 CFR 212.22(b).

[391] 87 FR at 10620 (Feb. 24, 2022).

[392] 8 CFR 212.22(a)(4).

[393] 8 CFR 212.22(a)(4); 8 CFR 212.22(b).

Rehabilitation Act or any other Federal law.[394]

Comment: One commenter stated that proposed 8 CFR 212.22(a)(4) is both a reasonable and necessary implementation of Section 504 of the Rehabilitation Act.

Response: DHS agrees that the regulation is consistent with Section 504 of the Rehabilitation Act. DHS notes that under this rule, the fact that an applicant has a disability as defined by Section 504 of the Rehabilitation Act will never alone be a sufficient basis to determine whether an applicant for admission or adjustment of status is likely at any time to become a public charge. As explained more in the responses to comments about the health factor, in making a public charge inadmissibility determination in the totality of the circumstances, the mere presence of any disability or a medical condition diagnosed on a report of medical examination [395] would not render a noncitizen inadmissible under this rule.[396] DHS will, in the totality of the circumstances, take into account all of the factors identified in 8 CFR 212.22(a), including an applicant's health.[397] Also under this rule, an applicant with a disability would not be found inadmissible on the public charge ground solely on account of that disability.[398]

c. Family Status

Comment: One commenter suggested that ''family status'' be defined expansively as ''family unit'' with the end goal of keeping families together. Furthermore this commenter stated that USCIS should interpret the term ''family unit'' to mean the noncitizen's close relatives that can care for the noncitizen such as spouses, parents, siblings, children, grandparents, aunts/uncles, and cousins in keeping with the Congressional goal and strong presumption to interpret immigration statutes in favor of keeping a family unit together.

Response: While DHS supports family unity, under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge, including the noncitizen's family status.[399] DHS acknowledges that the definition of a family may include a variety of a noncitizen's relatives and close relations. Therefore, DHS has decided that a noncitizen's family status will be determined using a noncitizen's household size, as defined in 8 CFR 212.21(f). This definition includes a noncitizen; the noncitizen's spouse (if residing with the noncitizen); parents, children, and unmarried siblings under 21 years of age (if residing with the noncitizen); any other individuals not physically residing with the noncitizen but listed as a dependent on a noncitizen's Federal income tax return; and any other individual who lists the noncitizen as a dependent on that individual's Federal income tax return. In order to account for the contributions of these household members, DHS will determine a noncitizen's assets, resources, and financial status based on the household's income, assets, and liabilities.[400] DHS believes this is the best way to interpret the impact of a noncitizen's family status and its relation to the noncitizen's likelihood of becoming a public charge at any time.

Comment: One commenter stated that the applicant's family status should only be taken into consideration in connection with reviewing the noncitizen's household size consistent with current calculations utilized for the Affidavit of Support Under Section 213A of the INA. Having household members with ties to the United States should be considered a positive factor. Family status should not be regarded as a negative factor except in consideration of assets, resources, and financial status and consistent with the requirements of the Affidavit of Support Under Section 213A of the INA.

Response: DHS appreciates this commenter's thorough recommendation for the approach to assessing an applicant's family status. DHS will not be assigning any weight within this rule regarding any of the statutory factors, but will instead indicate what will be considered in relation to each statutory minimum factor and direct officers to make a public charge inadmissibility determination based on the totality of a noncitizen's circumstances. A noncitizen's family status will be determined by that noncitizen's household size.[401]

DHS considered the calculation used to determine a sponsor's household size in connection with an Affidavit of Support Under Section 213A of the INA, but notes that the sponsor's household size calculation is designed to demonstrate that a sponsor's income and assets are sufficient to support their household at the corresponding HHS Poverty Guideline. Because the family status factor is intended for a public charge inadmissibility determination and not a direct comparison of a noncitizen's income with a noncitizen's household size, DHS decided to clarify a simpler definition of household size for use in a public charge inadmissibility determination that would better reflect if an individual is likely at any time to become a public charge in a totality of the circumstances assessment.

d. Assets, Resources, and Financial Status

Comment: One commenter disagreed with evaluating an applicant's assets as part of a public charge inadmissibility determination because some life events could negatively impact a family's finances at one point in time, and therefore availability of assets and resources is not a predictable factor. Another commenter expressed disapproval of using a noncitizen's limited assets or resources when such an assessment is unlikely to conceptualize the impact of low income immigrants to communities in the United States since noncitizens contribute greatly to the health of the U.S. economy and sometimes do so in professions that do not traditionally generate high income and therefore do not allow for the accumulation of wealth, assets, and resources, but remain essential to the economy.

Response: DHS disagrees that an applicant's assets, resources, and financial status should not be included in a public charge inadmissibility determination, and also disagrees that considering this factor diminishes the importance of certain low wage earners and their contributions to the United States. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors include the noncitizen's assets, resources, and financial status.[402] DHS appreciates that some noncitizens may not hold significant assets or resources, however, and DHS agrees that this does not necessarily indicate that such a

[394] 8 CFR 212.22(a)(3).

[395] 8 CFR 212.22(a)(1)(ii).

[396] 8 CFR 212.22(b).

[397] 8 CFR 212.22(b).

[398] 8 CFR 212.22(a)(4).

[399] *See* INA sec. 212(a)(4)(B)(i)(III), 8 U.S.C. 1182(a)(4)(B)(i)(III).

[400] *See* 8 CFR 212.22(a)(1)(iv).

[401] *See* 8 CFR 212.21(f).

[402] *See* INA sec. 212(a)(4)(B)(i)(IV), 8 U.S.C. 1182(a)(4)(B)(i)(IV).

noncitizen is likely to become a public charge. DHS notes that the public charge inadmissibility determination is based on a totality of the noncitizen's circumstances, and no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining if a noncitizen is likely to become a public charge.[403] DHS will review a noncitizen's circumstances, taking into account all of the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA, if required, current and past use of public cash assistance for income maintenance, and long-term institutionalization at government expense in order to make a complete and fair public charge inadmissibility determination.

Comment: A farmworker advocacy organization discouraged DHS from considering debts and other financial obligations, stating that many farmworkers, especially H–2A workers, have accumulated significant debt even though it is illegal for recruiters to charge fees, however, debt does not impact their ability to work and does not create a reliance on the U.S. government. The commenter noted that H–2 workers are not eligible for most public benefits. Other commenters expressed concerns about the consideration of debt and financial liabilities given that some populations are particularly vulnerable to unfair or predatory debt practices. A commenter raised the issue of debt in the context of domestic or immigrant abuse—where partners or others are accruing debt without the consent of the noncitizen.

Response: DHS disagrees with commenters that DHS should not consider debts or other financial obligations in a public charge inadmissibility determination. Under this rule, DHS is determining whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence. DHS also notes that an individual's financial obligations and debts affect the financial status of the individual, and an evaluation of a noncitizen's assets without considering the noncitizen's financial obligations and debts would result in an artificially inflated calculation of the noncitizen's financial status, as those obligations and debts would decrease the finances that are actually accessible to the noncitizen. DHS agrees that if a noncitizen has financial obligations and debts that it does not necessarily indicate that the noncitizen is likely at any time to become a public charge. DHS will use a totality of the circumstances framework so that officers may assess the noncitizen's circumstances as a whole. DHS also notes that VAWA noncitizens, T nonimmigrants and U nonimmigrants are exempt from the public charge ground of inadmissibility. With respect to H–2 nonimmigrants, DHS agrees that they are generally not eligible for public benefits. DHS also notes that these nonimmigrants can and should report the charging of unlawful recruitment fees.

Comment: One commenter stated that credit history should not be used in a public charge inadmissibility determination because it is an unreliable predictor of a person's long-term financial stability or future earnings. The same commenter also stated that, absent a refusal to accept work, a person's history of unemployment also should not be considered.

Response: DHS agrees that a noncitizen's credit history is not necessarily a predictor of a noncitizen's likelihood of becoming a public charge. This rule will not require noncitizens to submit evidence in relation to credit history in order to make a public charge inadmissibility determination.

DHS understands the commenter's concern that a person's history of unemployment may be considered negatively. DHS notes that a public charge inadmissibility determination will be made based on the totality of a noncitizen's circumstances, in which a noncitizen's employment history may be considered in light of the noncitizen's degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates that the noncitizen may have received or the income and assets employment may have generated. DHS understands that some noncitizens will have periods of unemployment and emphasizes that a history of unemployment is not a specific factor DHS has identified for a public charge inadmissibility determination but may be considered as part of a review of a noncitizen's assets, resources, and financial status in the totality of circumstances. In assessing a noncitizen's likelihood at any time of becoming a public charge, DHS will consider the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA, if required, current and/or past receipt of public cash assistance for income maintenance, and long-term institutionalization at government expense in the totality of the circumstances.[404]

Comment: Several commenters made suggestions about what DHS should consider regarding the assets, resources, and financial status factor. One commenter stated that DHS should consider the assets and resources of all family members, including a sponsor, if the noncitizen has one. Another commenter suggested DHS only require evidence of assets attained most recently, for example during the past 1 to 2 years, to show sufficient assets for the public charge inadmissibility determination. One commenter suggested that DHS make a fair assessment of unpaid, volunteer, and other activities individuals undertake without paid compensation, based on effective minimum wage or rates consistent with those paid for similar work in the applicant's relevant labor market, whichever is highest, and including reasonable paid fringe benefits.

Response: DHS agrees that it should consider the assets and resources of all family members, including a sponsor who executed an Affidavit of Support Under Section 213A of the INA, if applicable, but only if such family members are part of the applicant's household. As such, DHS specifies in this rule that a noncitizen's assets, resources, and financial status are demonstrated by the income, assets, and liabilities (excluding any income from public benefits listed in 8 CFR 212.21(b) and income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales) of the noncitizen's household.[405] The exclusion of income from illegal activities, including illegal gambling or drug sales, is consistent with how USCIS treats sponsors' household income, as it is defined in 8 CFR 213a.1, in the context of the Affidavit of Support Under Section 213A of the INA. In that context, a sponsor may not include any income from the intending immigrant derived from ''unlawful sources'' [406] or income from any household member derived ''from illegal acts.'' [407]

[403] *See* 8 CFR 212.22(b).

[404] *See* 8 CFR 212.22(b).

[405] *See* 8 CFR 212.22(a)(1)(iv).

[406] *See* 8 CFR 213a.1 (definition of household income prohibits the sponsor including the intending immigrant's income from unlawful sources as part of the sponsor's household income).

[407] *See* USCIS, ''Instructions for Affidavit of Support Under Section 213A of the INA,'' OMB Control No. 1615–0075 (expires Dec. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-864instr.pdf* (last visited Aug. 16, 2022) (prohibiting the sponsor from ''rely[ing] on a household member's income from illegal acts, such

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A noncitizen's household includes the noncitizen as well as the noncitizen's spouse, children, unmarried siblings under 21 years of age and physically residing with the noncitizen, any other individuals listed as dependents on the noncitizen's Federal income tax return, and any other individual who lists the noncitizen as dependent on their Federal income tax returns.[408]

If the applicant is required to submit an Affidavit of Support Under Section 213A of the INA, and if the sponsor who executed that affidavit is a member of the applicant's household as that term is defined in new 8 CFR 212.21(f), then such sponsor's income would be included in the applicant's household income when making a public charge inadmissibility determination.[409] However, if the sponsor who executed the Affidavit of Support Under Section 213A of the INA is not a member of the applicant's household but nonetheless provides some income to the applicant or another member of the applicant's household, that portion of income would be included in the applicant's household income when making a public charge inadmissibility determination.

DHS disagrees that recently acquired assets should be the only assets considered in a public charge inadmissibility determination. DHS recognizes that some assets are held longer term than others and has not included a time restriction on how long noncitizens have maintained their assets. While considering the assets, resources, and financial status of a noncitizen, DHS will consider the noncitizen's assets alongside the noncitizen's liabilities in order to account for the effect of financial liabilities on an individual's overall financial status in the totality of the circumstances.

DHS recognizes the value of unpaid, volunteer, and other activities individuals undertake without paid compensation. However, DHS is unable to clearly and fairly establish a system that would take into account the labor market and fringe benefits associated with comparable paid positions. DHS acknowledges that some unpaid or volunteer activities may equip a noncitizen with occupational skills, and DHS may therefore consider these skills under the education and skills factor as part of a public charge inadmissibility determination.

Comment: One commenter indicated that DHS should be flexible in the criteria and evidence required to demonstrate assets and income, as many noncitizens are unbanked and lack a credit history, and consider an applicant's particular circumstances especially when considering occupations with seasonal fluctuations, historically low wages, and unpredictable availability, such as agricultural work. A different commenter stated that individuals should be able to provide tax returns, even if filed with an ITIN, and should be able to provide evidence of income that resulted from unauthorized employment.

Response: DHS agrees that noncitizens should be able to present a variety of evidence to demonstrate their assets, resources, and financial status. DHS has not established any required evidence a noncitizen must submit to establish the income, assets, and liabilities of the noncitizen's household, and as such, will consider any evidence a noncitizen chooses to submit regarding this factor. If more information is needed to make a public charge inadmissibility determination, DHS may request an applicant to submit additional evidence prior to making a decision. DHS also emphasizes that a public charge inadmissibility determination is based on the totality of the noncitizen's circumstances and no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, is the sole criterion for determining if a noncitizen is likely at any time to become a public charge.[410]

While DHS will review any evidence a noncitizen chooses to submit to support a finding that the noncitizen is not likely at any time to become a public charge, DHS will not consider income or assets from illegal activities or sources. As DHS stated in the 2019 Final Rule, income derived from illegal activities or sources should be excluded from consideration including, but not limited to, income gained illegally from drug sales, gambling, prostitution, or alien smuggling both because of the strong policy interest in excluding consideration of this type of activity, and because it would likely be unwarranted to make a prospective determination that assumes the noncitizen would continue to receive such income in the future.

As to the suggestion that applicants should be able to provide evidence of income that resulted from unauthorized employment, DHS agrees. Consistent with the approach taken in the 2019 Final Rule, DHS believes that limiting consideration of household income to only income that is derived from authorized employment would go beyond the purpose of this rule, which is aimed at determining whether a noncitizen has the education, skills, or other traits necessary to support themselves in the future. DHS will therefore consider any income derived from employment in the public charge inadmissibility determination in the totality of the circumstances, regardless of whether the household members had employment authorization, as long as the income is not derived from illegal sources, such as illegal gambling. As DHS noted in the 2019 Final Rule, whether or not the applicant or a member of the applicant's household engaged in unauthorized employment, and any immigration consequences flowing from such unauthorized employment, is a separate determination from the public charge inadmissibility determination.[411]

Comment: One commenter stated that DHS should prioritize consideration of a noncitizen's income, not just employment, because, according to the commenter, employment alone is not an accurate indication of an individual's ability to self-support. The commenter recommended that DHS should require noncitizens to demonstrate an ability to earn a wage equal to at least three times the federal poverty level. This level was suggested because section 213A of the INA, 8 U.S.C. 1183a, requires sponsors to demonstrate the means to maintain income of at least 125 percent of the Federal Poverty Guidelines, under which individuals may qualify for many means-tested public benefits, and individuals who make below 250 percent of the poverty level typically pay little to no Federal income tax.

Response: DHS has determined that no one factor, and no one specific element of a factor, will be prioritized over another in a public charge inadmissibility determination, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required.[412] DHS will consider a noncitizen's household's income, assets,

as proceeds from illegal gambling or drug sales, to meet the income requirement even if the household member paid taxes on that income.''). *Cf. also* 8 CFR 204.6(e) and (j)(3) (consistent with section 203(b)(5)(D)(ii) of the INA, 8 U.S.C. 1153(b)(5)(D)(ii), defining ''capital'' for purposes of EB–5 immigrant petitions to exclude ''[a]ssets acquired, directly or indirectly, by unlawful means (such as criminal activities)'').

[408] S*ee* 8 CFR 212.21(f).

[409] S*ee* 8 CFR 212.22(a)(iv).

[410] *See* 8 CFR 212.22(b).

[411] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41420 (Aug. 14, 2019).

[412] *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D); INA sec. 213A(a)(1), 8 U.S.C. 1183a(a)(1).

and liabilities when considering the assets, resources, and financial status factor of a public charge inadmissibility determination. DHS has declined to specify required evidence for each factor, acknowledging that individuals may present a variety of evidence to support that they are not likely to become a public charge, and will consider a noncitizen's circumstances in their totality.

DHS disagrees with establishing a minimum income requirement for noncitizens to establish they are not likely to become a public charge. As stated previously, DHS will consider the noncitizen's household's income, assets, and liabilities. Income is not the sole criterion for establishing noncitizens' assets, resources, and financial status, and noncitizens may include the income, assets, and liabilities of their household members for this factor. DHS believes that considering the entire household creates a more accurate representation of the finances and resources available to a noncitizen, recognizing that multiple household members may contribute to the financial status of the household as a whole.

DHS also disagrees with the commenter's justification that DHS should require individuals to show income of at least 300 percent of the poverty line because individuals who make below 250 percent of the poverty level typically pay little to no Federal income tax. The public charge ground of inadmissibility is not intended to generate tax revenue, but to ensure that an individual is not likely at any time to become a public charge. DHS has interpreted ''likely at any time become a public charge'' as the likelihood of a noncitizen becoming primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[413] This analysis requires a consideration of multiple factors, of which assets, resources, and financial status is only one.

Finally, DHS does not administer the vast majority of public benefits programs and does not control the income eligibility requirements of public benefits programs, which vary from program to program and which may allow for individuals with an income higher than 125 percent of the Federal Poverty Guidelines (FPG) to receive benefits. DHS does not find this concern a persuasive reason to implement a specific minimum income threshold for the public charge inadmissibility determination, however, in part because of the reimbursement requirements of the Affidavit of Support under Section 213A of the INA, and in part because a specific minimum income threshold would be inconsistent with the totality of the circumstances approach taken in this rule. DHS notes that whether a sponsored immigrant ultimately receives public benefits for which they are eligible under PRWORA for which the sponsor should reimburse the benefit-granting agency is an issue addressed by the reimbursement provisions of section 213A of the INA, 8 U.S.C. 1183a, rather than the public charge ground of inadmissibility. Additionally, to the extent that this commenter is suggesting that DHS require an applicant to demonstrate income of at least 300 percent of the FPG because the sponsor's income, which must be at least 125 percent of the FPG, will be attributed to the applicant for determining eligibility for public benefits,[414] DHS notes that such a consideration is not warranted because it is not directly related to the public charge inadmissibility determination.

Comment: One commenter stated that where the immigrant's only income is public benefits, DHS should consider this income neutrally, without reference to specific benefits, such as by stating that the immigrant does not earn income rather than referencing the individual benefits used.

Response: DHS disagrees with this commenter's suggestion. While DHS agrees that income from public benefits should not be considered as income for the purposes of a public charge inadmissibility determination, DHS disagrees that the specific benefits a noncitizen receives should not be considered. DHS defines likely at any time to become a public charge as likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[415] As discussed in the NPRM, DHS believes the ''primarily dependent'' standard is a reasonable interpretation of the statute and properly implements the policy objectives established by Congress.[416] DHS does not believe that the term is best understood to include a person who receives benefits from the government to help to meet some needs but is not primarily dependent on the government and instead has one or more sources of independent income or resources upon which the individual primarily relies.

DHS defines public cash assistance for income maintenance as SSI, TANF, State, Tribal, territorial, or local cash benefit programs for income maintenance.[417] When developing this proposed rule, as in 1999, DHS consulted with benefits-granting agencies, including USDA, which administers SNAP, and HHS, which administers TANF and Medicaid. DHS concluded that cash assistance for income maintenance and long-term institutionalization at government expense constituted the best evidence of whether a noncitizen is primarily dependent on the government for subsistence. By focusing on cash assistance for income maintenance and long-term institutionalization at government expense, DHS can identify those individuals who are likely at any time to become primarily dependent on the government for subsistence, without interfering with the administrability and effectiveness of other benefit programs that serve important public interests.[418]

Comment: To simplify a determination of whether a person is likely to become a public charge, one commenter recommended presuming a noncitizen is not likely to become a public charge if the noncitizen can demonstrate a household income of at least 125 percent of the FPG, or 100 percent of the FPG for noncitizens who are, or have household members who are, on active duty in the Armed Forces of the United States (other than active duty for training). The commenter recommended an income and asset calculation to account for the domestic and international income of all members of the household, including non-wage income such as child support, alimony, Social Security income, or investment income. The commenter also recommended taking into account expected income based on a labor certification and associated prevailing wage or job offer and estimated salary.

Another commenter similarly agreed that DHS should adopt a presumption of admissibility for noncitizens based on household income and the corresponding FPG, or for noncitizens who have submitted a sufficient Affidavit of Support Under Section 213A of the INA. This commenter proposed that if a noncitizen does not meet the requirements for this presumption, for example noncitizens who are not required to submit an

[413] *See* 8 CFR 212.21(a).

[414] 8 U.S.C. 1631(a)(1).

[415] *See* 8 CFR 212.21(a).

[416] *See* 87 FR at 10606 (Feb. 24, 2022).

[417] *See* 8 CFR 212.21(b).

[418] *See* 87 FR at 10610 (Feb. 24, 2022).

Affidavit of Support Under Section 213A of the INA, they may be allowed to submit a Form I–134, Declaration of Financial Support. The commenter said this proposal will consider the noncitizen's employment or valid job offer and strike the proper balance between incorporating the outcomes created by the 1999 Interim Field Guidance and avoiding the overbreadth, confusion, and chilling impacts of the 2019 Final Rule.

Response: With respect to the proposal to establish a presumption that a noncitizen at a specific income level is not likely at any time to become a public charge, DHS declines to make this change. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors include the noncitizen's age; health; family status; assets, resources, and financial status; and education and skills.[419] DHS cannot limit a public charge inadmissibility determination to only one factor, but instead must consider all the factors as set forth by Congress. DHS believes that the establishment of a presumption on the basis of the single criterion proposed by the commenter would be unwarranted.

DHS agrees that considering the entire household creates a more accurate representation of the finances and resources available to a noncitizen, recognizing that multiple household members may contribute to the financial status of the household as a whole. Therefore, DHS will consider the income, assets, and liabilities (excluding any income from public benefits listed in 8 CFR 212.21(b) and income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales) of their household members for this factor.[420] DHS did not specify particular evidence noncitizens may submit to support they are not likely to become a public charge, and will consider all evidence submitted in a public charge inadmissibility determination. Therefore, while DHS will not independently assess a noncitizen's expected income based on a labor certification and associated prevailing wage, DHS may consider this evidence or evidence of a job offer and estimated salary, if submitted, in the totality of a noncitizen's circumstances in a public charge inadmissibility determination. DHS will also not limit the consideration of income to only income that appears on United States Federal income tax forms, and will consider all evidence submitted of income from lawful sources in order to account for income such as child support, alimony, Social Security income, and investment income. DHS will also consider any evidence submitted pertaining to expected future income.

To address the recommendation that DHS accept Form I–134, Declaration of Financial Support,[421] as a substitute for noncitizens who are not required to file an Affidavit of Support Under Section 213A of the INA, DHS notes that the Declaration of Financial Support is intended to demonstrate financial support during an individual's temporary stay in the United States, and is therefore not a valid substitution. As stated previously, DHS will consider all evidence a noncitizen submits to support that the noncitizen is not inadmissible under the public charge ground, but DHS will not create or require a separate information collection or form to establish admissibility. DHS also notes that many commenters recommended a similar presumption that a sufficient Affidavit of Support Under Section 213A of the INA would establish that a noncitizen is not likely at any time to become a public charge and addresses that suggestion in more detail in Section III.I.2, Affidavit of Support Under Section 213A of the INA.

e. Education and Skills

Comment: One commenter disagreed with the consideration of education and skills in a public charge inadmissibility determination.

Response: DHS disagrees that an applicant's education and skills should not be included in a public charge inadmissibility determination. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors include the noncitizen's education and skills.[422]

Comment: Two commenters wrote that an applicant's inability to speak and understand English does not predict whether an applicant can obtain employment in the United States. One of these commenters recommended DHS consider the educational opportunities available in noncitizens' countries of origin, skills should be broadly defined and not limited to definitions of ''high skill'' versus ''low skill,'' and proficiency in English should not be included in the determination of education and skills, as a person's English proficiency or education level does not necessarily predict their ability to obtain employment in the United States.

Response: DHS agrees that the education and skills factor should be broadly defined to include a variety of abilities. Therefore, DHS has determined that education and skills can be evidenced by a noncitizen's degrees, certifications, licenses, skills obtained through work experience (including volunteer and unpaid opportunities) or educational programs, and educational certificates.[423] DHS believes this standard encompasses many abilities that may affect a noncitizen's employability, and therefore may decrease a noncitizen's likelihood of becoming a public charge. DHS also notes that this definition does not specifically define certain skills that would positively or negatively impact a public charge inadmissibility determination, including English language skills. DHS will consider such skills in the context of a totality of the circumstances determination.

Comment: One commenter recommended a detailed framework that would demonstrate qualifications associated with gainful employment and self-sufficiency, such as evidence of employment, self-employment, or a job offer, combined with educational achievements or occupational skills and experience. The commenter suggested that this approach would provide positive steps immigrants could follow to be better prepared if subject to a public charge inadmissibility determination.

Another commenter mentioned the education and work experience standards for diversity visa applicants, noting that this standard provides an already accepted framework for demonstrating that a noncitizen is likely to succeed in the United States and that such a showing should be considered a positive factor, and could be applied to a public charge inadmissibility determination with some modification

[419] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i). The statute also permits, but does not require, the consideration of a sufficient Affidavit of Support Under Section 213A of the INA, if required. *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[420] *See* 8 CFR 212.22(a)(1)(iv).

[421] DHS notes that Form I–134 was previously titled ''Affidavit of Support.''

[422] *See* INA sec. 212(a)(4)(B)(i)(V), 8 U.S.C. 1182(a)(4)(B)(i)(V).

[423] *See* 8 CFR 212.22(a)(1)(v).

to account for experience in occupations that do not require training or experience.

Response: DHS agrees that a noncitizen may demonstrate their relevant education and skills through the noncitizen's degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates. However, given the differences in achievements and skills in occupational fields, DHS does not believe it can create a comprehensive guide that noncitizens should follow to prepare for a public charge inadmissibility determination. DHS acknowledges that certain immigration categories may require a separate determination of education or work experience, but notes that those specific eligibility requirements are separate from an inadmissibility determination. The public charge inadmissibility determination involves the consideration of a variety of factors, including education and skills, that are considered in the totality of a noncitizen's circumstances. Each determination is unique, and DHS cannot establish a specific framework that would encompass every situation or circumstance that would apply to all noncitizens equally and equitably. DHS believes that by identifying basic information that DHS will collect for the factors, including the education and skills factor, and a consideration of the totality of the circumstances accounts for the diversity of noncitizens' backgrounds in the clearest and fairest manner.

DHS agrees with the commenter that some occupations do not require training or previous experience, and accounts for this by including in the standard for education and skills those skills that noncitizens have obtained through overall work experience. This consideration will benefit those noncitizens who hold occupations that do not require official licenses or certifications but whose occupations impart skills that otherwise affect the noncitizen's overall employability. As previously stated, DHS believes that a broad interpretation of the statutory minimum factors best encompasses the diversity of noncitizens' backgrounds and declines to define specific skills that would positively or negatively impact a public charge inadmissibility determination.

Comment: One commenter recommended that DHS create appropriate carve-outs for certain groups of noncitizens who may be adversely affected by their background, including children, primary caregivers, and certain retirees, and stated that it is not appropriate to apply equivalent standards to these groups as they may not have been able to attain an equivalent educational background or level of work experience due entirely to no fault of their own.

Response: DHS disagrees that different standards of the statutory minimum factors should be applied to different groups of people, as determined by their work experience or education background. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These factors include the noncitizen's education and skills.[424] However, DHS appreciates commenters' concerns that a person's lack of education or work experience should not be determinative of their likelihood of becoming a public charge. For this reason, under this rule, determining a noncitizen's likelihood at any time of becoming a public charge must be based on the totality of the individual's circumstances.[425] No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, may be the sole criterion for determining if an individual is likely to become a public charge.[426] Education and skills is not the only factor taken into account in a public charge inadmissibility determination and does not automatically determine if a noncitizen is likely at any time to become a public charge. Additionally, DHS notes that some unpaid labor may equip a noncitizen with occupational skills, and DHS may therefore consider these skills under the education and skills factor as part of a public charge inadmissibility determination.

Comment: One commenter stated that considering statutory minimum factors for the public charge ground of inadmissibility is duplicative and unnecessary for those applicants who are subject to the public charge ground but are not required to provide an Affidavit of Support Under Section 213A of the INA, such as employment-based immigrants who must establish their work skills and diversity visa applicants who must demonstrate that they have a high school diploma (or the equivalent) or work experience.

Another commenter similarly stated that applicants who have previously obtained an H–1B nonimmigrant visa or an approved Form I–140, Petition for Alien Worker, should not need to provide additional information for the education and skills factor because it has already been documented and considered.

Response: DHS disagrees that considering the statutory minimum factors for applicants who are not required to provide an Affidavit of Support Under Section 213A of the INA is duplicative and unnecessary. Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), specifically requires that DHS consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge, which may include an Affidavit of Support Under Section 213A of the INA. The Affidavit of Support Under Section 213A of the INA is a contract between a sponsor and the U.S. Government under which the sponsor agrees that they will provide support to the sponsored immigrant at an annual income not less than 125 percent of the FPG during the period the obligation is in effect, to be jointly and severally liable for any reimbursement obligation incurred as a result of the sponsored immigrant receiving means-tested public benefits during the period of enforcement, and to submit to the jurisdiction of any Federal or State court for the purpose of enforcing the support obligation.[427] The Affidavit of Support Under Section 213A of the INA does not include a consideration of the statutory minimum factors as they relate to a noncitizen's circumstances, and as such, an exemption from this requirement does not automatically indicate that a noncitizen is not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

DHS acknowledges that some noncitizens, including those who have previously obtained nonimmigrant employment visas or those who are applying for adjustment of status based on the diversity visa or employment-based categories, may have previously submitted evidence regarding their work skills, employment history, and education. Under this rule, DHS is updating its information collection to allow applicants for adjustment of status to indicate specifics regarding their education and skills, and will consider all evidence submitted by these noncitizens in order to make a final public charge inadmissibility determination. DHS also reviews the

[424] *See* INA sec. 212(a)(4)(B)(i)(V), 8 U.S.C. 1182(a)(4)(B)(i)(V).

[425] *See* 8 CFR 212.22(b).

[426] *See* 8 CFR 212.22(b).

[427] INA sec. 213A(f)(2), 8 U.S.C. 1183a(f)(2).

noncitizen's record, including previous applications and petitions and the associated evidence, while making a public charge inadmissibility determination. DHS will not specify particular initial evidence that must be submitted for a public charge inadmissibility determination. However, DHS also notes that the education and skills factor is only one part of a public charge inadmissibility determination and, as such, disagrees that a consideration of all the statutory minimum factors for any noncitizen subject to the public charge ground of inadmissibility is duplicative and unnecessary.

Comment: One commenter suggested only requiring applicants to provide evidence of their highest educational degree attained to satisfy the education and skills factor in a public charge inadmissibility determination.

Response: While DHS agrees that evidence of completed degrees is one method of demonstrating a noncitizen's education and skills, DHS also acknowledges that this factor not only includes formal education, but also encompasses other aspects that may be demonstrated through other means. DHS has therefore determined that, while a noncitizen may submit the highest degree achieved to support a finding that the noncitizen is not likely to become a public charge, a noncitizen may also provide evidence of certifications, licenses, skills obtained through work experience or educational programs, and educational certificates.[428]

Comment: One commenter stated that noncitizens with a high school education or less should be required to demonstrate that they hold a skill that is in high demand and can be expected to earn a high enough salary that would largely eliminate the possibility of qualifying for any welfare program, with a skill that will earn at least three times the FPG as the standard that would show they will not need taxpayer-funded assistance. Citing an analysis of SIPP data,[429] the commenter indicated that noncitizen households where the head of household had only a high school education or less received public benefits at a higher rate than households where the head of household had at least some college education. The commenter also stated that, of households receiving public benefits (defined as including the Earned Income Tax Credit), 93 percent of noncitizen-headed households have at least one working member, as do 76 percent of households headed by a U.S.-born citizen.[430] The commenter urged that it is important for DHS to consider both employment and the noncitizen's total income, indicating that the primary focus should be on whether or not an immigrant can demonstrate an ability to earn a wage equal to at least three times the federal poverty level.

Response: DHS disagrees that it should establish a specific standard based on a noncitizen's education or particular skills or require that a noncitizen demonstrate the ability to earn income three times the Federal Poverty Guideline (FPG). DHS acknowledges that different occupations may encompass a variety of skills that may not be evidenced only through educational degrees, licenses, or certifications, but also through skills obtained through work experience or educational programs. DHS also notes that an assessment of whether a skill is in high demand and the corresponding calculation of an expected salary is a very complex assessment and would require detailed analysis, and possibly consultation with the Department of Labor, for each individual case. This suggested evaluation therefore presents an increased evidentiary burden on noncitizens, as well as an increased adjudicative burden on the agency, with no evidence of a corresponding benefit. Furthermore, the commenter did not present evidence that a higher education level equates to high demand skills.

DHS also disagrees that lack of ''high demand'' skills—which the commenter defined as job skills that would enable an individual to earn at least three times the federal poverty rate—indicates that a noncitizen is likely at any time to become primarily dependent on the government for subsistence. While the commenter cited to an analysis of SIPP data as support for the request to focus the public charge analysis on employment and income, the analysis cited is methodologically flawed and does not support the commenter's premise. For one, neither the commenter, nor the analysis it cites, makes any connection between the level of education and ''high demand'' skills, or between education level and earnings, nor does the commenter explain what it means by ''high demand'' skills or how a noncitizen would demonstrate that they possess ''high demand'' skills. While the analysis cited by the commenter shows the percentages of U.S.-born citizen headed and noncitizen headed households that receive benefits relative to the head of household's education level, the analysis does not account for earnings or family size. The analysis also includes a much broader set of public benefits than what would be considered under this rule (*e.g.,* it includes EITC, WIC, school lunch program, SNAP, public housing). For example, rather than 81 percent of noncitizen households headed by a person with a high school degree or less receiving public benefits, as the commenter states, the analysis cited indicates that only 8.9 percent of noncitizen households headed by a person with no more than a high school degree received TANF and/or SSI.[431] In addition, the commenter does not offer any support for the proposition that all ''high demand'' skills equate to high pay, or that other factors that DHS must examine under the totality of the circumstances could not lead to a determination that a highly skilled individual is likely at any time to become a public charge, for example advanced age, or a health condition preventing an applicant from working and using the ''high demand'' skill. DHS therefore disagrees that lack of a college education or ''high demand'' skills would justify a presumption that an applicant would become primarily dependent on the government for subsistence. For that reason, DHS declines to require that applicants demonstrate that they have ''high demand'' skills.

DHS also declines to include a specific income threshold as part of a public charge inadmissibility determination. A public charge inadmissibility determination is made based on the totality of a noncitizen's circumstances. As stated previously, income is not the sole criterion for establishing noncitizens' assets, resources, and financial status, and noncitizens may include the income, assets, and liabilities of their household members for this factor. DHS believes that considering the entire household and their income, assets, and liabilities creates a more accurate representation of the finances and resources available to a noncitizen, recognizing that

[428] *See* 8 CFR 212.22(a)(1)(v).

[429] Steven Camarota and Karen Zeigler, Center for Immigration Studies, ''63% of Non-Citizen Households Access Welfare Programs,'' Table 3 (Nov. 20, 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

[430] Steven Camarota and Karen Zeigler, Center for Immigration Studies, ''63% of Non-Citizen Households Access Welfare Programs,'' Table 6 (Nov. 20, 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

[431] Steven Camarota and Karen Zeigler, Center for Immigration Studies, ''63% of Non-Citizen Households Access Welfare Programs,'' Table 3 (Nov. 20, 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

multiple household members may contribute to the financial status of the household as a whole.

2. Affidavit of Support Under Section 213A of the INA

Comment: One commenter stated that sponsors who execute an Affidavit of Support Under Section 213A of the INA on behalf of an intending immigrant should be held accountable to pay medical and other social welfare debts incurred by those immigrants who use public benefits prior to obtaining lawful status in the United States.

Response: The comment is outside the scope of the rulemaking. DHS did not propose any changes to the Affidavit of Support Under Section 213A of the INA, and did not propose to impose such a condition upon the public charge inadmissibility determination. Under section 213A of the INA, 8 U.S.C. 1183a, most family-based immigrants and certain employment-based immigrants are required to submit an Affidavit of Support Under Section 213A of the INA to avoid being found inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).[432] In most cases, the individual who filed the immigrant petition on behalf of the immigrant must execute the Affidavit of Support Under Section 213A of the INA.[433] By executing an Affidavit of Support Under Section 213A of the INA, the sponsor is creating a contract between the sponsor and the U.S. Government under which the sponsor agrees that they will provide support to the sponsored immigrant at an annual income not less than 125 percent of the FPG during the period of time in which the obligation is in effect, be jointly and severally liable for any reimbursement obligation incurred as a result of the sponsored immigrant receiving means-tested public benefits during the period of enforcement, and submit to the jurisdiction of any Federal or State court for the purpose of enforcing the support obligation.[434] These sponsorship obligations, however, do not go into effect until after the intending immigrant's application for admission as an immigrant or application for adjustment of status is granted.[435] Because the comment is outside the scope of the rulemaking, and because a sponsor is not obligated to pay for medical expenses and other social welfare debts incurred by the noncitizen before the noncitizen became a lawful permanent resident, DHS declines to add this suggestion to the final rule.

Comment: Many commenters supported the favorable consideration of an Affidavit of Support Under Section 213A of the INA in a public charge inadmissibility determination. One such commenter, citing *Matter of Martinez-Lopez,*[436] noted that giving favorable consideration to an Affidavit of Support Under Section 213A of the INA is consistent with case law and longstanding practice, which recognizes that individuals who are or will be able to work, have adequate resources, or have a sponsor or other person willing to assist with their financial support should be presumed to be unlikely to become a public charge.

Response: As noted in the NPRM, DHS believes that treating a sufficient Affidavit of Support Under Section 213A of the INA favorably is consistent with the statute and precedent,[437] and is supported by the fact that sponsored noncitizens are less likely to turn to the government first for financial support because they can and have been known to successfully enforce the statutory requirement that sponsors provide financial support to the sponsored noncitizen at the level required by statute for the period the obligation is in effect.[438] Additionally, as noted in the NPRM, DHS believes that treating a sufficient Affidavit of Support Under Section 213A of INA favorably is supported by the Federal and State deeming provisions of 8 U.S.C. 1631 and 1632, which may reduce the likelihood that a sponsored noncitizen would be eligible for a means-tested benefit, and therefore, less likely to become a public charge at any time in the future.[439] As a result, under this rule, DHS will favorably consider a sufficient Affidavit of Support Under Section 213A of the INA, along with the statutory minimum factors, in the totality of the circumstances when assessing an applicant's likelihood at any time to become a public charge.

Comment: While some commenters suggested that it would be nonsensical to deem an Affidavit of Support Under Section 213A of the INA alone as sufficient to find an applicant is not likely to become a public charge, many other commenters, including a group of 13 United States Senators, stated that the existence of a valid Affidavit of Support Under Section 213A of the INA should be deemed sufficient in itself to overcome a public charge inadmissibility determination except when significant public charge factors are present under the totality of the circumstances. These commenters stated that a presumption for admissibility upon presentation of a valid affidavit of support would be an administratively neutral, straightforward approach. Another commenter said that the existence of a valid Affidavit of Support Under Section 213A of the INA should normally tip the balance in the applicant's favor, supporting a finding that an applicant is not likely at any time to become a public charge. One commenter stated that, consistent with congressional intent, the rule should only require officers to consider the five statutory minimum factors if the applicant failed to submit a sufficient Affidavit of Support Under Section 213A of the INA.

Similarly, one group of commenters suggested that DHS amend the rule to create a rebuttable presumption that a noncitizen is not likely at any time to become a public charge where a sufficient Affidavit of Support Under Section 213A of the of the INA is submitted. The presumption would only be overcome, the commenters said, if, in the totality of the circumstances, clear and convincing evidence indicates that the applicant's age, health, family status, assets, resources, financial status, education, skills, and current or past receipt of public benefits make the noncitizen likely to become a public charge. These commenters stated that over the past two decades, the submission of a sufficient Affidavit of Support Under Section 213A of the INA has generally been sufficient to avoid a public charge inadmissibility determination. These commenters also wrote that their ''[e]xtensive experience indicates that where an applicant for an immigrant visa or adjustment of status has a sufficient Affidavit of Support [Under Section 213A of the INA] or equivalent income or assets, the likelihood that such a person will become a public charge is virtually nonexistent.'' These commenters said

[432] *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D); INA sec. 213A(a)(1), 8 U.S.C. 1183a(a)(1).

[433] INA sec. 213A(f)(1)(D), 8 U.S.C. 1183a(f)(1)(D); INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[434] INA sec. 213A(f)(2), 8 U.S.C. 1183a(f)(2).

[435] *See* INA sec. 213A, 8 U.S.C. 1183a; 8 CFR 213a.2(d); 8 CFR 213a.2(e)(1); 8 CFR 213a.1 (definition for sponsored immigrant).

[436] 10 I&N Dec. 409, 421 (BIA 1962).

[437] *See Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421–22 (BIA 1962) (''A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.'').

[438] *See* INA sec. 213A(a)(1)(A), 8 U.S.C. 1183a(a)(1)(A). *See, e.g., Erler* v. *Erler,* 824 F.3d 1173 (9th Cir. 2016); *Belevich* v. *Thomas,* 17 F.4th 1048 (11th Cir. 2021); *Wenfang Liu* v. *Mund,* 686 F.3d 418 (7th Cir. 2012).

[439] *See* 87 FR at 10619 (Feb. 24, 2022).

that creating this presumption provides applicants with a clear standard against which they can measure the likelihood of success in overcoming the public charge ground of inadmissibility, facilitates streamlined adjudication of applications, and allows officers to focus their time and attention on cases in which substantive issues may exist.

Response: DHS disagrees with the suggestion that a sufficient Affidavit of Support Under Section 213A of the INA, alone, is enough to determine an applicant is not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). DHS further disagrees that it is appropriate to treat a sufficient Affidavit of Support Under Section 213A of the INA as creating a rebuttable presumption that an applicant is not likely at any time to become a public charge. Congress created the statutory minimum factors that DHS must consider as part of a public charge inadmissibility determination, which do not even include the Affidavit of Support Under Section 213A of the INA.[440] Rather, Congress gave DHS the discretion to consider any required Affidavit of Support Under Section 213A of the INA in a public charge inadmissibility determination.[441] Regardless of the existence of a sufficient Affidavit of Support Under Section 213A of the INA, Congress mandated that DHS, in every case, consider all of the statutory minimum factors in assessing whether an applicant is likely at any time to become a public charge without requiring the same for an affidavit.[442] Accordingly, and as noted in the NPRM[443] and the 1999 Interim Field Guidance,[444] DHS believes that a sufficient Affidavit of Support Under Section 213A of the INA does not in and of itself create a presumption that an applicant is not likely at any time to become a public charge or that it should determine the outcome of the public charge inadmissibility determination. Instead, DHS believes a sufficient Affidavit of Support Under Section 213A of the INA should be considered in the totality of the circumstances.[445]

DHS notes that although commenters claim that a sufficient Affidavit of Support Under Section 213A of the INA indicates that the likelihood that such a person will become a public charge is virtually nonexistent, commenters provided no data or evidence to support this statement.

Therefore, DHS declines to add a provision to this rule that directs officers to treat a sufficient Affidavit of Support Under Section 213A of the INA as either outcome determinative or as creating a presumption that the applicant is not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). However, under this rule and as noted in the NPRM, in making public charge inadmissibility determinations, DHS will consider the statutory minimum factors as set forth in the rule and favorably consider a sufficient Affidavit of Support Under Section 213A of the INA (*i.e.,* a positive factor that makes an applicant less likely at any time to become a public charge in the totality of the circumstances), and the applicant's current and past receipt of public benefits in the totality of the circumstances.[446]

Comment: One commenter stated that a legally sufficient Affidavit of Support Under Section 213A of the INA should overcome any public charge concerns that arise from applicants whose health conditions are recorded as a Class B certification by the civil surgeon performing the immigration medical examination. Another commenter suggested that the Affidavit of Support Under Section 213A of the INA should be used to mitigate issues arising under the statutory factors within the totality of the circumstances, such as the health factor, which would consider an applicant's disability.

Response: DHS disagrees that a sufficient Affidavit of Support Under Section 213A of the INA, alone, overcomes any individual factor present in a noncitizen's case, including the health factor. As required under the statute, DHS must consider all of the statutory minimum factors in a public charge inadmissibility determination, including an applicant's health.[447] The statutory minimum factors that must be considered as part of the public charge inadmissibility determination under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), do not include the Affidavit of Support Under Section 213A of the INA.[448] Rather, Congress provided that any Affidavit of Support Under Section 213A of the INA may be considered in the public charge inadmissibility determination.[449] As a result, under this rule, a sufficient Affidavit of Support Under Section 213A of the INA does not, on its own, outweigh the presence of any other factor, but instead, is considered, along with the statutory minimum factors and the receipt of public benefits, as defined in the rule, in the totality of the circumstances.[450]

DHS declines to mandate, as part of this rule, that a sufficient Affidavit of Support Under Section 213A of the INA, alone, overcomes any statutory minimum factor, including the health factor, as this would be inconsistent with the statute. The sufficient Affidavit of Support Under Section 213A of the INA should instead be considered in the totality of the circumstances. As a result, DHS declines to make any changes to the rule in response to this comment.

To the extent that these commenters are concerned with this rule's impact on individuals with disabilities, DHS notes that as reflected elsewhere in this rule, the final rule includes other provisions that are intended to better ensure fair and consistent treatment of individuals with disabilities—for example, clarifying the definition for long-term institutionalization at government expense, and considering evidence submitted by the applicant that the applicant's long-term institutionalization violates federal law, including the Americans with Disabilities Act or the Rehabilitation Act.[451]

Comment: Some commenters recommended that the rule bar immigration officers from questioning the credibility or motives of a sponsor who signs an Affidavit of Support Under Section 213A of the INA, so that officers look only at whether sponsors adequately document their ability to provide support for the sponsored immigrants. Other commenters agreed, arguing that similar to DOS consular officers, USCIS officers should not be permitted to introduce speculation by inquiring about the sponsor's or any joint sponsors' motives or intentions with respect to carrying out their support obligation because an Affidavit of Support Under Section 213A of the INA, is enforceable regardless of the sponsor's actual intent.

Response: DHS agrees with commenters that this rule should not require officers who are favorably considering a sufficient Affidavit of Support Under Section 213A of the INA as part of a public charge

[440] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[441] *See* INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[442] *See* INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[443] *See* 87 FR at 10619 (Feb. 24, 2022).

[444] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28690 (May 26, 1999).

[445] *See* 87 FR at 10619 (Feb. 24, 2022).

[446] 8 CFR 212.22(a)(2), (b).

[447] INA sec. 212(a)(4)(B)(i)(II), 8 U.S.C. 1182(a)(4)(B)(i)(II).

[448] INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[449] INA sec. 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[450] *See* 8 CFR 212.22(b).

inadmissibility determination to consider the sponsor's credibility or underlying motives in executing that Affidavit. While the sponsor's credibility, intent, or underlying motives in executing that Affidavit of Support Under Section 213A of the INA might be relevant to assessing the sufficiency of the Affidavit of Support Under Section 213A of the INA in the first instance,[452] DHS notes that the sufficiency of an Affidavit of Support Under Section 213A of the INA is a separate threshold determination that occurs before an officer determines, under this rule, whether an applicant is likely at any time to become a public charge based on consideration of the statutory minimum factors, a sufficient Affidavit, and current or past receipt of public benefits.[453]

As set forth in the statute, when an applicant is required to submit an Affidavit of Support Under Section 213A of the INA, DHS determines its sufficiency by assessing whether the sponsor has demonstrated the means to maintain income at the required level.[454] In assessing the sufficiency of an Affidavit of Support Under Section 213A of the INA, DHS will consider whether the sponsor engaged in fraud or material concealment or misrepresentation in executing the Affidavit.[455] If DHS finds such fraud or material concealment or misrepresentation, including forgery, counterfeiting, falsification of documents, or the concealment or misrepresentation of any facts material to the Affidavit, DHS will determine that the Affidavit of Support Under Section 213A of the INA is insufficient.[456] If DHS determines that an Affidavit of Support Under Section 213A of the INA, when required, is insufficient, DHS will automatically determine that the applicant is inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), without consideration of the statutory minimum factors.[457]

However, under this rule,[458] once DHS determines that the Affidavit of Support Under Section 213A of the INA is sufficient, DHS would not consider the sponsor's credibility or motives in determining whether the applicant is likely at any time to become a public charge because, as explained more fully in the NPRM,[459] it would be duplicative to evaluate these issues that would be considered in assessing the sufficiency of the Affidavit of Support Under Section 213A of the INA in the first instance. DHS believes that such a reevaluation of a sponsor's credibility or underlying motives would create an unnecessary burden for DHS officers and the public and, accordingly, DHS does not intend to separately consider the sponsor's credibility or motives in executing the sufficient Affidavit of Support Under Section 213A of the INA as part of the totality of the circumstances analysis.

Comment: Several commenters stated that they believed that DHS should do an evaluation of the sponsor's Affidavit of Support Under Section 213A of the INA as part of the public charge inadmissibility determination. One commenter recommended that DHS require officers to assess the likelihood that a noncitizen's sponsor will actually provide financial support by looking at the closeness of the relationship between the noncitizen and sponsor to ensure sponsors will live up to their obligations in the Affidavit of Support Under Section 213A of the INA. One commenter suggested that DHS should add additional considerations regarding the evaluation of an Affidavit of Support Under Section 213A of the INA due to the ''government's longstanding history of failure to hold sponsors accountable and to, where appropriate, take legal action to enforce those contracts.''

Response: DHS disagrees that it should evaluate whether the sponsor who executed the Affidavit of Support Under Section 213A of the INA submitted a sufficient affidavit, *i.e.,* has demonstrated the means to maintain income at the required level [460] again as part of determining whether an applicant is likely at any time to become primarily dependent on the government for subsistence. Because DHS already determines that the sponsor has demonstrated the means to maintain income at the required level and, therefore, that the Affidavit of Support Under Section 213A of the INA is sufficient, prior to favorably considering a sufficient Affidavit of Support Under Section 213A of the INA as set forth in this rule,[461] it would be unnecessary and duplicative to subsequently consider whether or not the sponsor's legally binding Affidavit of Support Under Section 213A of the INA is sufficient when conducting the totality of the circumstances analysis under this rule.

Additionally, DHS disagrees that DHS should evaluate whether a sponsor who executed a sufficient Affidavit of Support Under Section 213A of the INA will actually provide financial support by looking at the relationship between the sponsor and the intending immigrant as part of the totality of the circumstances analysis. Whether a sponsor will actually provide support to the intending immigrant is relevant to assessing the sufficiency of the Affidavit of Support Under Section 213A of the INA,[462] but that is a separate determination that occurs before an officer determines, under this rule, whether an applicant is likely at any time to become a public charge based on consideration of the statutory minimum factors, a sufficient affidavit, and any current and/or past receipt of public benefits.[463]

Accordingly, DHS declines to require its officers to consider whether the sponsor who executed the Affidavit of Support Under Section 213A of the INA will actually carry out their legally binding support obligation as part of the totality of the circumstances analysis.

Comment: One commenter recommended requiring that a sponsored immigrant who has received public benefits sue the sponsor for reimbursement of the public benefits received. The commenter noted that current regulations give the beneficiary this option but do not require it. This commenter said such provisions would incentivize noncitizens to promptly take action to obtain reimbursement.

Response: DHS declines to add a provision in this rule that requires a sponsored immigrant to sue the sponsor who executed the Affidavit of Support Under Section 213A of the INA for reimbursement of public benefits received by the sponsored immigrant. While DHS agrees that section 213A of the INA, 8 U.S.C. 1183a, permits, but does not require, the sponsored immigrant to enforce the support

[452] INA sec. 213A(f)(6)(A), 8 U.S.C. 1183a(f)(6)(A). 8 CFR 213a.2(c)(2)(ii).

[453] INA sec. 212(a)(4)(A) and (B), 8 U.S.C. 1182(a)(4)(A) and (B); 8 CFR 213a.2(c)(2)(iv); 8 CFR 212.22(a), (b).

[454] INA sec. 213A(f)(6)(A), 8 U.S.C. 1183a(f)(6)(A). 8 CFR 213a.2(c)(2)(ii).

[455] 8 CFR 213a.2(c)(2)(vi).

[456] 8 CFR 213a.2(c)(2)(vi).

[457] INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D); INA sec. 213A(a)(1), 8 U.S.C. 1183a(a)(1).

[458] 8 CFR 212.22(c).

[459] 87 FR at 10618–10619 (Feb. 24, 2022).

[460] *See* INA sec. 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E); 8 CFR 213a.2(c)(2)(ii). DHS notes that a sponsor demonstrates the means to maintain income by presenting Federal income tax returns or by demonstrating significant assets of the sponsored immigrant or of the sponsor, if such assets are available for the support of the sponsored immigrant. *See* INA sec. 213A(f)(6), 8 U.S.C. 1183a(f)(6); 8 CFR 213a.2(c)(2).

[461] 8 CFR 212.22(a)(2).

[462] INA sec. 213A(f)(6)(A), 8 U.S.C. 1183a(f)(6)(A). 8 CFR 213a.2(c)(2)(ii).

[463] INA sec. 212(a)(4)(A) and (B), 8 U.S.C. 1182(a)(4)(A) and (B); 8 CFR 213a.2(c)(2)(iv); 8 CFR 212.22(a) and (b).

obligations against the sponsor,[464] this rule is not intended to address sponsorship obligations or enforcement of those obligations. Rather, the purpose of this rule is to prescribe how DHS determines whether a noncitizen is inadmissible to the United States under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), because they are likely at any time to become a public charge. Accordingly, DHS declines to include the proposed provision in this rule, which is outside the scope of the current rulemaking.

To the extent that this commenter is also recommending that DHS include a provision that would require a noncitizen subject to the rule to agree to seek reimbursement as part of the public charge inadmissibility determination, DHS notes that the sponsorship obligation and related reimbursement requirements that arise from executing an Affidavit of Support Under Section 213A of the INA are separate and distinct from the public charge inadmissibility determination, because these obligations and requirements do not go into effect until after the public charge inadmissibility determination has been made and the intending immigrant has been admitted as an immigrant or granted adjustment of status. As a result, DHS declines to include a provision that requires a noncitizen subject to the rule to agree to seek reimbursement as part of the public charge inadmissibly determination.

Comment: One commenter stated that if DHS is going to treat an Affidavit of Support Under Section 213A of the INA as sufficient evidence that the applicant is not inadmissible, then DHS should include provisions in this rule pertaining to the enforceability of the affidavit.

Response: First, as noted above, under this rule, DHS does not treat an Affidavit of Support Under Section 213A of the INA as sufficient evidence on its own that an applicant is not inadmissible as likely at any time to become a public charge. Instead, as required under the statute, DHS will consider all of the statutory minimum factors in a public charge inadmissibility determination.[465] As Congress provided that DHS may consider any Affidavit of Support Under Section 213A of the INA in the public charge inadmissibility determination,[466] under this rule, DHS will favorably consider a sufficient Affidavit of Support Under Section 213A of the INA and the receipt of public benefits, as defined in the rule, in the totality of the circumstances.[467]

Nevertheless, with respect to this commenter's suggestion that DHS include provisions regarding the enforcement of the support obligations, DHS notes that this rulemaking is not intended to address the enforcement of the Affidavit of Support Under Section 213A of the INA. This is because enforcement of the obligations that attach once the application for an immigrant visa or adjustment of status is granted[468] is distinct from and occurs after the actual public charge inadmissibility determination under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). Further, if a sponsor fails to fulfil their support obligations, the sponsored immigrant or any Federal, state, local, or private agency that provided any public benefit to the sponsored immigrant may sue the sponsor to enforce the Affidavit of Support Under Section 213A of the INA.[469] Because the statute already allows any interested parties to sue to enforce an Affidavit of Support Under Section 213A of the INA, and because such changes would be outside the scope of the rulemaking, DHS does not believe that further updates to the enforcement procedures for an Affidavit of Support Under Section 213A of the INA would be appropriate at this time. Therefore, DHS will not, in adjudicating an adjustment of status application, consider the sponsor's potential future reimbursement in a public charge inadmissibility determination when there is not yet a reimbursement obligation. As further explained above, DHS declines to address sponsorship obligations or enforcement of those obligations in this rule.

3. Current and/or Past Receipt of Public Benefits

Comment: Some commenters stated that children should not be penalized for previous or current receipt of benefits by their adult caregivers or other household members, because the receipt of public benefits during periods when children are vulnerable and economically needy is economically and socially helpful for their development and contributes to healthier adults with better employment outcomes. Another commenter also stated that children are generally not responsible for immigrating to the United States or enrolling in benefits and should therefore not be subject to the public charge ground of inadmissibility. Some commenters also recommended DHS state that the use of benefits as a child should not be included in a public charge inadmissibility determination, as this provides no evidence for future reliance on government programs and access to key supports by children has been associated with improvements in future economic outcomes.

Response: DHS appreciates the comments expressing concern about the consideration of past or current public benefit use by children. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), DHS is required to make a predictive assessment of whether a child is likely at any time to become a public charge when a child is applying for admission or adjustment of status unless the child is within one of the categories expressly exempted by Congress. Only those categories designated by Congress are exempt from the public charge ground of inadmissibility.[470] DHS notes that Congress did not exclude children from the public charge ground of inadmissibility and therefore, unless a child is seeking admission or adjustment of status in a classification that Congress expressly exempted from the public charge ground of inadmissibility, for example adjustment of status as a special immigrant juvenile,[471] DHS must apply the ground to applications for admission or adjustment of status and must take into account the factors in the totality of the circumstances. A public charge inadmissibility determination takes into account the totality of a noncitizen's circumstances, including the noncitizen's age.

While DHS will not create a different standard for children, DHS intends to issue guidance as appropriate that will clarify considerations that are relevant to a child's receipt of public benefits in the totality of the circumstances.

With respect to commenters' concern that children will be penalized for benefits received by their adult caregivers or household members, DHS also notes that unless the child was a named beneficiary for the public benefits, those public benefits will not be considered. DHS is defining ''receipt (of public benefits)'' separately from its definition of ''likely at any time to become a public charge.''[472] In this definition, DHS makes clear that the receipt of public benefits occurs when a

[464] *See* INA sec. 213A(a)(1)(B), 8 U.S.C. 1183(a)(1)(B).

[465] INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[466] INA sec. 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[467] *See* 8 CFR 212.22(b).

[468] *See* INA sec. 213A, 8 U.S.C. 1183a.

[469] *See* INA sec. 213A(a)(1)(B), 8 U.S.C. 1183a(a)(1)(B).

[470] *See* 8 CFR 212.23.

[471] INA sec. 245(h)(2)(A), 8 U.S.C. 1255(h)(2)(A).

[472] *See* 8 CFR 212.21.

public benefits-granting agency provides public benefits to a noncitizen, but only where the noncitizen is listed as a beneficiary. DHS recognizes that this policy differs from the policy announced under the 1999 Interim Field Guidance and the IRCA legalization regulations,[473] but notes that the statute does not require a determination that includes benefits where only the applicant's relatives are listed as beneficiaries, and that there are strong public policy reasons to avoid chilling effects in this context.

In addition, and similarly to the 2019 Final Rule, applying for a public benefit on one's own behalf or on behalf of another would not constitute receipt of public benefits by the noncitizen applicant, nor would approval for future receipt of a public benefit on the noncitizen's own behalf or on behalf of another. If, however, a noncitizen has been approved for future receipt of a public benefit that would be considered under this rule, that information may be considered by an officer in the totality of the circumstances. Any evidence of approval for future receipt of a public benefit on behalf of an applicant, while not constituting receipt of public benefits, would indicate a probability of future receipt of public benefits and be considered by DHS as probative of being likely of becoming a public charge in the future. Finally, this definition would make clear that a noncitizen's receipt of public benefits solely on behalf of another, or the receipt of public benefits by another individual (even if the noncitizen assists in the application process), would also not constitute receipt of public benefits by a noncitizen. Therefore, under this rule, noncitizens will not be penalized for previous or current use of benefits by their adult caregivers or other household members where they were not named beneficiaries.

Comment: Some commenters recommended that DHS exclude from consideration in public charge inadmissibility determinations the receipt of public benefits by active-duty U.S. service members and their spouses and children, as was done in the 2019 Final Rule. Although these commenters alleged that the NPRM is generally too lenient, they expressed concern that the NPRM if finalized might operate to the detriment of some active-duty service members and their families. These commenters stated that DHS should provide a special dispensation for service members and their families, regardless of DHS's belief that they would not generally be receiving the benefits that would be considered, given the expansive list of exemptions and exclusions for a number of benefits and classes of noncitizens. The commenters did not provide data regarding the receipt of public benefits by this particular population.

Response: DHS appreciates the commenters' expression of concern for U.S. service members and their spouses and children and shares this concern. The exclusion of consideration of public benefits used by active-duty members of the U.S. military in the 2019 Final Rule relied significantly on the fact that that rule included the consideration of non-cash benefits, in particular SNAP, a supplemental program that this rule does not include in the public charge inadmissibility determination.[474] DHS agrees that receipt of non-cash benefits by U.S. service members and their spouses and children does not provide a good indication that those service member and their families are likely at any time to become public charges. Unlike these commenters, however, DHS believes that the same is also true of other members of the public.

Because this rule generally excludes consideration of non-cash benefits (other than long-term institutionalization at government expense), DHS does not believe that there is a need to create the sort of specialized exception for service members that it determined was required under the 2019 Rule. According to data provided by DOD, as of April 30, 2022, a total of 99 active-duty personnel use TANF and 572 use SSI, out of approximately 1.34 million active-duty service members.[475] Also according to DOD, as of April 30, 2022, a total of 1 active-duty service member who is not a U.S. citizen or U.S. national uses TANF, and no active-duty service members who are not U.S. citizens or U.S. nationals use SSI.[476]

As a result, DHS does not believe that it is necessary to specifically exclude from consideration benefits received by active-duty U.S. service members and their spouses and children in the public charge inadmissibility determination because it does not believe that active-duty U.S. service members would generally be affected by the public benefits considered under this rule. DHS is adopting a standard similar to the one used in the 1999 Interim Field Guidance and NPRM, which defined ''public charge'' based on primary dependence on the government for subsistence as demonstrated by the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. DHS is not considering the receipt of SNAP benefits, which are frequently utilized by service members and their families, in this rule.

USCIS notes that noncitizens must generally be LPRs[477] in order to join the United States military and LPRs only are subject to the public charge ground of inadmissibility in limited circumstances.[478] Further, under section 329 of the INA, 8 U.S.C. 1440, all noncitizens honorably serving in the U.S. military at the present time, which is a specifically designated period of hostilities, may be eligible to naturalize (without spending a specific period of time as an LPR or having been lawfully admitted to the United States for permanent residence) if they meet the other eligibility requirements.[479] In

[473] See discussion in Definitions—Receipt of Public Benefits.

[474] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41371 (Aug. 14, 2019); U.S. Gov't Accountability Office, GAO–16–561, ''Military Personnel: DOD Needs More Complete Data on Active-Duty Servicemembers' Use of Food Assistance Programs'' (July 2016), *https://www.gao.gov/assets/680/678474.pdf* (last visited July 13, 2022) (reporting estimates ranging from 2,000 active duty servicemembers receiving SNAP to 22,000 such servicemembers receiving SNAP). Effective FY16, Congress implemented a recommendation by the Military Compensation and Retirement Modernization Commission to sunset DOD's Family Subsistence Supplemental Allowance Program within the United States, Puerto Rico, the U.S. Virgin Islands, and Guam; SNAP receipt may have increased somewhat following termination of the program. *See* Public Law 114–92, div. A, sec. 602, 129 Stat. 726, 836 (Nov. 25, 2015); Military Comp. & Ret. Modernization Comm'n, Final Report 187 (Jan. 2015) (''The [Family Subsistence Supplemental Allowance Program] should be sunset in the United States, Puerto Rico, Guam, and other U.S. territories where SNAP or similar programs exist, thereby reducing the administrative costs of a duplicative program.'').

[475] Benefit use data provided by the Defense Manpower Data Center to DHS on July 12, 2022. The total number of active-duty service members is publicly available at Defense Manpower Data Center, ''Active Duty Military Strength Summary,'' *https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports* (last visited July 12, 2022).

[476] Benefit use data provided by the Defense Manpower Data Center to DHS on July 14, 2022.

[477] *See USA.gov*, ''Join the Military,'' *https://www.usa.gov/join-military* (last visited July 12, 2022). However, under the Military Accessions Vital to National Interest (MAVNI) program, certain noncitizens who were asylees, refugees, TPS beneficiaries, deferred action beneficiaries, or nonimmigrants in certain categories could enlist. DOD ceased recruiting service members through the MAVNI program in 2016.

[478] LPRs do not apply for adjustment of status and they are generally not considered to be applicants for admission when they return from a trip abroad. However, in certain limited circumstances, an LPR will be considered an applicant for admission and subject to an inadmissibility determination upon their return to the United States. *See* INA sec. 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C).

[479] *See* USCIS Policy Manual, Vol. 12, Part I, Ch. 3, ''Military Service during Hostilities (INA 329),''

Continued

accordance with E.O. 14012, DHS and DOD are working together diligently to facilitate naturalization for eligible noncitizen service members and are dedicated to making naturalization services available to all noncitizen service members as soon as they are eligible.[480]

In summary, noncitizens make up a very small percentage of active duty service members, those who are serving are generally LPRs, those who are serving are eligible to naturalize immediately if they meet the other eligibility requirements, and DHS/DOD are taking steps to make naturalization available to them as soon as they are eligible, and even if not yet naturalized the LPR service members are only subject to the public charge ground of inadmissibility in exceptionally limited circumstances. Finally, as noted above, only one active-duty service member who is not a U.S. citizen or U.S. national uses TANF, and no active-duty service members who are not U.S. citizens or U.S. nationals use SSI. Given these facts, it is highly unlikely that any active-duty noncitizen service member would use SSI or TANF and also be considered an applicant for admission and subject to a public charge inadmissibility determination prior to their naturalization.

Moreover, in all cases, DHS is only considering receipt of public cash assistance for income maintenance received by the applicant and not the receipt of such assistance by the applicant's family members, including the applicant's spouse and children. DHS is defining ''receipt (of public benefits)'' separately from its definition of ''likely at any time to become a public charge.'' [481] In this definition, DHS makes clear that the receipt of public benefits occurs when a public benefit granting agency provides public benefits to a noncitizen, but only where the noncitizen is listed as a beneficiary. In addition, applying for a public benefit on one's own behalf or on behalf of another would not constitute receipt of public benefits by the noncitizen applicant, nor would approval for future receipt of a public benefit on the noncitizen's own behalf or on behalf of another. This definition for receipt (of public benefits) makes clear that the noncitizen's receipt of public benefits solely on behalf of another, or the receipt of public benefits by another individual (even if the noncitizen assists in the application process), will also not constitute receipt of public benefits by the noncitizen. DHS believes that including a further, explicit confirmation that this definition applies to active-duty U.S. military spouses and children may create confusion, because doing so could imply that those benefits would be considered for other non-active duty U.S. military spouses and children when in fact that is not the case.

Finally, to the extent that commenters were suggesting that DHS should fully exempt active-duty service members, their spouses, and their children from the public charge ground of inadmissibility, DHS reiterates the discussion above in section III.G in response to other comments requesting exemptions for certain categories of noncitizens. Only those categories designated by Congress are exempt from the public charge ground of inadmissibility,[482] and although DHS can and will issue guidance that will clarify considerations that are relevant to current and/or past receipt of public benefits by active duty servicemembers and their families, DHS declines to exempt the whole category from the public charge ground of inadmissibility.

Comment: One commenter expressed concern about the DHS statement that the longer a noncitizen had received benefits in the past and the greater the amount of benefits, the stronger the implication that a noncitizen is likely to become a public charge, because the amount of benefits and length of time benefits are available varies by locality and State for TANF, General Assistance, and Guaranteed Income pilots. Furthermore, the commenter stated that a calculation that considers these factors would necessarily discriminate against immigrants living in States or localities with more generous benefits than those with more limited programs available to them, and setting guidelines based on amount and time on aid creates a disproportionate harm to immigrants who live and receive support in States and localities that prioritize their wellbeing through more robust programs. Other commenters also recommended a clarification to the regulatory text that institutionalization at government expense for short periods of time for rehabilitation purposes should not be considered in a public charge inadmissibility determination, and that only Medicaid section 1905(a) institutional services will be considered.

Response: DHS notes and appreciates the commenter's concern about the differences in availability and guidelines pertaining to public benefit programs in different localities and States and how that could impact the public charge inadmissibility determination. DHS believes, however, that consideration of public cash assistance for income maintenance and long-term institutionalization at government expense should remain a part of the public charge inadmissibility determination. Even with the differences that exist throughout the country on the local and State level, past public benefit receipt, including long-term institutionalization at government expense, has long been considered in the public charge inadmissibility determination. During development of this rule, DHS consulted with HHS, which administers TANF and Medicaid. As part of that consultation, HHS provided an on-the-record letter to DHS included with the NPRM expressing their general support for the approach to public charge inadmissibility taken by INS in the 1999 Interim Field Guidance and 1999 NPRM, and specifically supported an understanding of public charge linked to being primarily dependent on the government for subsistence as demonstrated by the receipt of cash assistance for income maintenance or long-term institutionalization at government expense. As suggested by HHS in its on-the-record consultation letter, DHS is replacing the term ''institutionalization for long-term care at government expense,'' used in the 1999 Interim Field Guidance and 1999 NPRM, with ''long-term institutionalization at government expense,'' in order to better describe the specific types of services covered and the duration for receiving them. Consistent with the 1999 Interim Field Guidance and 1999 NPRM, and included in regulation text at section 212.21(c), long-term institutionalization does not include imprisonment for conviction of a crime or institutionalization for short periods or for rehabilitation purposes.

The vast majority of public comments received in response to the 2021 ANPRM and the 2022 NPRM supported excluding past or current use of, or eligibility for, HCBS from the public charge inadmissibility determination. This approach is also supported by HHS. In its on-the-record consultation

https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-3 (last visited July 12, 2022).

[480] *See* ''Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,'' 86 FR 8277 (Feb. 5, 2021). *See* ''Oversight of Immigrant Military Members and Veterans,'' Subcomm. on Immigr. and Citizenship, H. Comm. on the Judiciary, 117th Cong. (2022) (statement of Debra Rogers, Director of the Immigrant Military Members and Veterans Initiative, DHS, and statement of Stephanie P. Miller, Director, Office of Enlisted Personnel Policy, DOD), *https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4935* (last visited July 13, 2022).

[481] *See* 8 CFR 212.21(d) and (a), respectively.

[482] *See* 8 CFR 212.23.

letter included with the NPRM, HHS encouraged DHS to ''consider clarifications to its public-charge framework that would account for advancements over the last two decades in the way that care is provided to people with disabilities and in the laws that protect such individuals.'' Specifically, HHS suggested that HCBS should not be considered in public charge inadmissibility determinations. HHS affirmed, as discussed above, that ''HCBS help older adults and persons with disabilities live, work, and fully participate in their communities, promoting employment and decreasing reliance on costly government-funded institutional care.'' The HHS letter also distinguished HCBS from long-term institutionalization at government expense by stating that HCBS do not provide ''total care for basic needs'' because they do not pay for room and board. In its letter, HHS also encouraged DHS to take into account ''legal developments in the application of Section 504 since 1999,'' including looking at whether a person might have been institutionalized at government expense in violation of their rights. As a result of these considerations, DHS believes that it is important to exclude consideration of HCBS, but continue to include consideration of long-term institutionalization at government expense, as well as public cash assistance for income maintenance.

DHS further notes that ''long-term institutionalization'' is the only category of Medicaid-funded services to be considered in public charge inadmissibility determinations.[483] The 1999 Interim Field Guidance indicates that ''short term rehabilitation services'' are not to be considered for public charge purposes, but it does not otherwise describe the length of stay that is relevant for a public charge inadmissibility determination. Generally, DHS considers ''long-term institutionalization'' to be characterized by uninterrupted, extended periods of stay in an institution, such as a nursing home or a mental health institution. Under this approach, DHS, for example, would not consider a person to be institutionalized long term if that person had sporadic stays in a mental health institution, where the person was discharged after each stay. On the other hand, DHS would consider a person to be institutionalized long-term if the person remained in the institution over a long period of time, even if that period included off-site trips or visits without discharge.

Comment: One commenter said that receiving benefits for a period of time allows people to get their health back on track and can be beneficial to both the individual and society. Commenters also stated that receiving benefits for a short period of time, or receiving temporary benefits, does not show a prospective likelihood of primary dependence on governmental support but did not provide a citation for that statement. One commenter recommended DHS impose a minimum 5-year window for past benefit usage in the public charge inadmissibility determination, which would be in line with PRWORA's 5-year waiting period required for an individual to become a ''qualified alien'' to obtain eligibility for most Federal public benefits, while another commenter suggested a time limit of 1 year.

Another commenter cited a 2017 survey of service providers that showed 85% of respondents said that TANF is a very critical resource for a significant number of domestic violence and sexual assault victims, so the commenter recommended the rule explicitly exclude past benefits use that has been short-term or time-limited, or for emergent needs, including cash assistance for survivors who need short-term income maintenance. One commenter recommended also that if DHS considers past receipt of benefits, the officer should consider whether the assistance was used by survivors of domestic violence, serious crimes, disasters, an accident, pregnant or recently pregnant persons, or children, in that public benefits may have been used to overcome hardships caused by a temporary situation that no longer applies and does not predict future use. Some commenters emphasized that DHS should not consider these benefits at all.

Response: DHS appreciates the comment and concern for individuals who use public benefits on a short-term, set term, or temporary basis. DHS does not believe that it would be fair or equitable to set an arbitrary time frame on the use of benefits (such as five years); rather, DHS believes that short-term or temporary use of benefits is best considered under the totality of circumstances framework that this rule will promulgate and that has been used by DHS (and the former INS) for over 20 years. With this rule, DHS makes clear in the regulatory text that DHS will consider the amount, duration, and recency of receipt, and that the current and/or past receipt of these public benefits is not alone sufficient for determining whether an individual is inadmissible because DHS would also consider the statutory minimum factors in each case before making a determination under the totality of the circumstances.[484]

Furthermore, as for the comment that recommends not considering public benefit use from certain vulnerable populations, DHS clarifies, in this rule, which classes of individuals are exempt from the public charge ground of inadmissibility or for whom a waiver is available. DHS agrees that it is important in this rule to make clear who is exempted from the public charge ground of inadmissibility, such as those who are VAWA self-petitioners under section 212(a)(4)(E)(i) of the Act. A list of those who are exempted from 212(a)(4) of the Act can be found at 8 CFR 212.23. Additionally, in this rule DHS has identified the following groups for exclusion from consideration of receipt of certain public benefits: (1) receipt of public benefits when a noncitizen is in a category exempt from public charge; [485] and (2) receipt of public benefits by those granted refugee benefits.[486] If an applicant is not exempt from the public charge ground of inadmissibility and no waiver is available, the applicant can nonetheless describe their temporary circumstances to DHS, which DHS will consider in the totality of the circumstances.

Comment: A commenter stated that utilization of TANF and SSI alone should not make someone likely to become a public charge. Another commenter stated that cash assistance should not be more heavily weighted than other types of assistance because the totality of the individual's circumstances should be taken into account. Other commenters stated that DHS should explicitly state that use of SSI or TANF alone is not determinative in a public charge inadmissibility determination. One comment also stated that use of such benefits should be considered in the context of why they are received, along with any positive factors under the forward-looking totality of circumstances test.

Response: DHS reiterates, as stated in the NPRM, that it intends to continue the longstanding approach to the public charge ground of inadmissibility that does not rely on any one factor alone in making a public charge inadmissibility determination. DHS understands that there is confusion about how receipt of public benefits is considered as a result of the concept of ''heavily weighted factors'' that was included in the 2019

[483] Defined as institutional services under section 1905(a) of the Social Security Act.

[484] *See* 8 CFR 212.21(a).

[485] *See* 8 CFR 212.22(d).

[486] *See* 8 CFR 212.22(e).

Final Rule. As noted elsewhere in this preamble, that rule is no longer in effect and DHS does not propose any heavily weighted factors in this current rule. DHS appreciates the commenter's suggestion that DHS should explicitly state that use of SSI or TANF alone is not determinative in a public charge inadmissibility determination. Instead of singling out SSI and TANF, however, DHS is making clear in the regulatory text that current and/or past receipt of public cash assistance for income maintenance (as well as long-term institutionalization at government expense) will not alone be a sufficient basis to determine whether an applicant is likely at any time to become a public charge.[487] As the rule defines ''public cash assistance for income maintenance,'' this provision already includes SSI and TANF (as well as State, Tribal, territorial, or local cash benefit programs for income maintenance). The regulatory text further states that DHS will consider such receipt in the totality of the circumstances, along with the other factors, and will consider the amount and duration of receipt, as well as how recently the noncitizen received the benefits,[488] to determine whether the noncitizen is likely at any time to become a public charge. This rule also clearly states that no one factor, including current or past receipt of public benefits, apart from the lack of a sufficient Affidavit of Support Under Section 213A of the INA where required, should be the sole criterion for determining whether an applicant is likely to become a public charge.

Comment: Many commenters stated that DHS should only consider current receipt of TANF and SSI in a public charge inadmissibility determination, as any consideration of past receipt of benefits would create a chilling effect that would harm immigrants and their families and put public health at risk. Similarly one commenter stated that the ability to predict future public benefit use based on past use of SSI is weak because low-income noncitizen immigrants are much less likely to receive SSI benefits than similar U.S.-born adults and their use of benefits lessens over time. The commenter stated that past receipt of public benefits is not relevant in the prospective public charge inadmissibility determination because, generally, a person who has received public benefits in the past and is not receiving them currently has experienced a change in circumstances. For example, a person who previously relied on TANF may have secured employment after completing a degree or vocational program. Moreover, the commenter stated that benefits are not mentioned in the INA's public charge inadmissibility provisions and arguably could be excluded from consideration altogether. One of these commenters stated that DHS should not consider any past use of benefits in the prospective public charge inadmissibility determination and should strike questions about past receipt of public benefits from the I–485 form.

Response: DHS appreciates but disagrees with the comments that stated that past public benefit use should not be considered in the public charge inadmissibility determination. DHS notes that it has limited which past benefits are relevant to the determination that an individual will be likely at any time to become a public charge. Past long-term institutionalization at government expense has long been considered in the public charge inadmissibility determination. DHS will consider past or current long-term institutionalization at government expense in the totality of the circumstances. DHS further notes that changes in an individual's circumstances, as well as changes in the availability of different types of public benefits, can impact an individual's public benefit usage. While DHS agrees that past use is not determinative of future use, it is a factor that DHS believes is necessary to take into account along with the other factors, in the totality of the circumstances. To the extent that the commenter above describes an individual who at one point in the past relied on TANF, but now has steady employment that allows them to support their needs after they gained a degree or vocational program, under the rule, those considerations would be taken into account on a case-by-case basis considering those factors as well as the others set forth in the statute and these regulations in the totality of circumstances. To the extent that circumstances have changed since the period of past long-term institutionalization, those changed circumstances will be considered.

Comment: Several commenters recommended that DHS clarify that only current long-term institutionalization be considered, as past institutionalization may reflect a medical issue that has since been resolved, a lack of access to community-based services that have since been provided, a lack of accessible housing, or other factors that do not suggest a likelihood of future institutionalization.

Response: DHS disagrees that only current long-term institutionalization should be considered. Past long-term institutionalization at government expense has long been considered in the public charge inadmissibility determination. DHS notes that long-term institutionalization is the only category of Medicaid-funded services to be considered in public charge inadmissibility determinations.[489] Although the 1999 Interim Field Guidance indicated that ''short term rehabilitation services'' are not to be considered for public charge purposes, it did not otherwise describe the length of stay that is relevant for a public charge inadmissibility determination. In this rule, generally, DHS will consider ''long-term institutionalization'' to be characterized by uninterrupted, extended periods of stay in an institution, such as a nursing home or a mental health institution. Under this approach, DHS, for example, would not consider a person to be institutionalized long-term if that person had sporadic stays in a mental health institution, where the person was discharged after each stay. On the other hand, DHS would consider a person to be institutionalized long term if the person remained in the institution over a long period of time, even if that period included off-site trips or visits without discharge. DHS would also note that, given advances in alternatives to receiving care in institutional settings, prior receipt of long-term institutional services, even for extended periods of time, is not necessarily determinative of requiring institutional care in the future. In this rule, DHS will consider past or current receipt of long-term institutional services in the totality of the circumstances.

Comment: One commenter stated that immigrants should be allowed to benefit from the same assistance that citizens benefit from, stating that it will be more difficult for immigrants to integrate into society if they are not able to access the same benefits as citizens, imposing an artificial barrier to success for the immigrants. One commenter suggested that consideration of receipt of public benefits is dehumanizing. This commenter said that immigrants are less likely to use government benefits than U.S. citizens and a law that only views them as takers, not givers, is dehumanizing.

Similarly, another commenter stated that the current law punishes poor immigrants by penalizing government assistance usage, which leads to families

[487] *See* 8 CFR 212.22(a)(3).

[488] *See* 8 CFR 212.22(a)(3).

[489] Defined as institutional services under section 1905(a) of the Social Security Act.

not applying for benefits for which they are eligible, making it harder for them to integrate into society due to the economic strain. Another commenter stated that while some people will only need public benefits for a short period, others may need to rely on them indefinitely, and it would be inhumane and discriminatory to uphold regulations that reject people in either circumstance if they are in need of public assistance.

Response: DHS appreciates the comments about the importance of public benefits to immigrants and that taking into account past or current benefit use in the immigration admissibility determination can have negative effects on immigrants subject to the ground of inadmissibility. Congress, however, created the public charge ground of inadmissibility at section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and the ground of inadmissibility must be applied except where Congress indicated otherwise. As discussed elsewhere in this preamble, DHS believes that it is important to consider a noncitizen's past or current receipt of certain benefits, to the extent that such receipt occurs, as part of the public charge inadmissibility determination. DHS opts for an approach in which DHS considers past or current receipt of the benefits most indicative of primary dependence on the government for subsistence but excludes from consideration a range of benefits that are less indicative of primary dependence, and for which applicants for admission and adjustment of status are likely ineligible in any event. This rule is an effort to faithfully implement the public charge ground of inadmissibility without unnecessarily and at this point, predictably, harming separate efforts related to health and well-being of people whom Congress made eligible for supplemental supports.

DHS understands that certain individuals may be less likely to become a public charge in the long term after a certain duration of benefits use and that individuals may use benefits for shorter or longer periods of time. However, the material question in a public charge inadmissibility determination is whether the person is likely to become a public charge at some point in the future. Thus, DHS has chosen not to limit its definition of public charge based on the potential that a noncitizen who is currently a public charge may not remain so indefinitely. Instead, the appropriate way to address that nuance is through the totality of the circumstances prospective determination.

4. Long-Term Institutionalization in Violation of Federal Law

Comment: One commenter stated that USCIS decisionmakers who predict institutionalization in the future for a currently institutionalized person would be incorrectly assuming that the institution is a proper placement and not in violation of Federal law when, in fact, these individuals can and should be receiving HCBS. The commenter stated that the only situation in which institutionalization would not violate Federal law would be when it is directly chosen by the person with a disability, and thus recommends DHS remove the consideration of long-term institutionalization at government expense from the public charge inadmissibility determination.

Response: DHS disagrees that the only institutionalization at government expense that does not violate Federal law would be institutionalization that is directly chosen by the person with a disability, as Federal law does not impose this type of requirement with respect to institutionalization.[490] Indeed, as noted in the NPRM, Federal law requires placement of individuals in the most integrated setting appropriate to their needs, which does not indicate that only patient-requested institutionalization complies with Federal law. While some institutionalization of individuals with disabilities may occur in violation of Federal law, commenters provided no evidence that suggests that institutionalization is almost always in violation of Federal law.[491] To the extent that institutions, including nursing homes and mental health facilities, generally assume total care of the basic living requirements of individuals who are admitted, including room and board,[492] DHS believes that such long-term institutionalization at government expense (at any level of government) is properly considered under this rule because, as noted by HHS in its consultation letter,[493] it is evidence of being or likely to become primarily dependent on the government for subsistence.

DHS notes that, consistent with the NPRM,[494] it has excluded Medicaid-funded HCBS that help older adults and people with disabilities live, work, and fully participate in their communities, as HCBS do not include payments for room and board, and therefore do not provide the total care for basic needs provided by institutions.

Comment: One commenter stated that the provision that officers consider whether a person's current or past institutionalization would violate Federal law does not reflect the true circumstances of institutionalized people and incorrectly assumes there are cases in which institutionalization is ever required. The commenter further stated that there is no reason any person with a disability needs to be institutionalized, citing a study that shows even those with the highest support needs and most significant disabilities can live in the community when the supports and services they need are provided there. The commenter opined that given this, there is never a situation where institutionalization is the most integrated setting appropriate and therefore all institutionalization at government expense would violate the Americans with Disabilities Act's integration mandate as required by *Olmstead* v. *L.C.* and thus Federal law.

Response: DHS disagrees that all institutionalization at government expense is a per se violation of the Americans with Disabilities Act (ADA) and Section 504. As DHS noted in the NPRM,[495] although the ADA requires public entities, and Section 504 requires recipients of Federal financial assistance to provide services to individuals in the most integrated setting appropriate to their needs, DHS understands that some institutionalization of individuals with disabilities may occur in violation of the Federal laws. But DHS does not believe that all institutionalization necessarily violates the ADA and Section 504, and the commenters have not provided evidence that this is the case. As a result, DHS continues to believe that while it is appropriate to consider current or past institutionalization along with the other factors listed in 8 CFR 212.22(a) when determining the likelihood at any time of becoming a public charge in the totality of the circumstances, the best way to ensure that DHS is not considering institutionalization that violates Federal law is to ensure that applicants are provided a meaningful opportunity to provide evidence that current or past institutionalization is in violation of Federal law, including the ADA or the Rehabilitation Act. DHS notes that the fact that an applicant is or has been long-term institutionalized at government expense is not outcome

[490] 87 FR at 10613 (Feb. 24, 2022).

[491] 87 FR at 10613 (Feb. 24, 2022).

[492] *See* Ctrs. for Medicare & Medicaid Services, Medicaid.gov, ''Institutional Long Term Care,'' *https://www.medicaid.gov/medicaid/ltss/institutional/index.html* (last visited Aug. 16, 2022). *See also* 42 CFR 435.700 *et seq.*

[493] 87 FR at 10613 (Feb. 24, 2022).

[494] *See* 87 FR at 10614 (Feb. 24, 2022).

[495] 87 FR at 10614–10615 (Feb. 24, 2022).

determinative under this rule.[496] Instead, under this rule, DHS will, in the totality of the circumstances, take into account all of the statutory minimum factors, the applicant's current or past receipt of public benefits considered in the rule, as well as the sufficient Affidavit of Support Under Section 213A of the INA, if required, in determining the noncitizen's likelihood at any time of becoming a public charge.[497]

5. Other Factors To Consider

Comment: One commenter suggested DHS clearly indicate that it will not consider any submission or receipt of a fee waiver in the public charge inadmissibility determination because USCIS fee waivers are limited to certain forms and applications and this chilling effect punishes noncitizens not subject to the public charge ground of inadmissibility and that DHS should include this information in an update to the instructions for Form I–912, Request for Fee Waiver.

Response: DHS understands the commenter's concern regarding the chilling effects associated with a public charge inadmissibility determination that considers requesting or receiving a fee waiver. Under this rule, DHS will consider the five statutory minimum factors,[498] a sufficient Affidavit of Support Under Section 213A of the INA, when required, and a noncitizen's current and/or past receipt of public cash assistance for income maintenance [499] or long-term institutionalization at government expense,[500] in the totality of the circumstances.[501] However, DHS notes that the totality of the circumstances analysis includes all information or evidence in the record before the officer that is relevant to a public charge inadmissibility determination. DHS is only collecting initial information from applicants as related to the factors as outlined in new 8 CFR 212.22(a) and the accompanying application, which does not ask for information regarding past requests for and receipt of fee waivers. However, DHS may generally consider all evidence and information in the record that is relevant to making a public charge inadmissibility determination, including evidence that the noncitizen previously applied for and received a fee waiver. Such consideration is consistent with the understanding of the totality of the circumstances approach from the administrative decisions, as well as with the approach taken by the former INS when it promulgated 8 CFR 245a.3. Accordingly, DHS declines to adopt the commenter's suggestions regarding fee waivers.

Comment: One commenter suggested that whether a person has paid taxes should be considered in a public charge inadmissibility determination.

Response: DHS appreciates the suggestion that paying taxes should be considered in a public charge inadmissibility determination. While taxes are not a minimum factor designated by Congress or contained in the rule, a public charge inadmissibility determination includes a review of a noncitizen's assets, resources, and financial status. Noncitizens may submit tax documents if they wish to provide additional information about their income or other financial information, however, DHS will not require specific evidence from applicants to make a public charge inadmissibility determination for adjustment of status apart from the questions on the Form I–485, Application to Register Permanent Residence or Adjust Status. Additionally, as noted above, DHS may generally consider all evidence and information in the record that is relevant to making a public charge inadmissibility determination, including evidence that the noncitizen failed to file taxes.

Comment: One commenter stated that country of origin should never be a considered in a public charge inadmissibility determination. Another commenter stated that there are shortcomings with assessing immigration applicants based on race.

Response: DHS agrees that race and country of origin should never be considered in a public charge inadmissibility determination and has not included either as a factor to be considered. DHS will make a public charge inadmissibility determination in the totality of circumstances, considering the statutory minimum factors, an Affidavit of Support Under Section 213A of the INA, when required, and current and/or past receipt of public cash for income maintenance and long-term institutionalization at government expense.[502]

Comment: One commenter stated that even if a person is found to be at risk of becoming a public charge, opportunities in the United States may allow them to learn new skills and can end their dependency on public assistance and suggested this potential for added value to the United States should be considered.

Response: DHS understands that opportunities in the United States may give noncitizens new opportunities to learn skills that may end their primary dependence on public assistance. However, DHS is required to determine if an applicant for admission or adjustment of status is likely at any time to become a public charge, following consideration of the minimum factors established by Congress in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). DHS determined that a reasonable implementation of this statute is to consider the statutory minimum factors, a sufficient Affidavit of Support Under Section 213A of the INA, where required, and a noncitizen's current and/or past receipt of cash assistance for income maintenance and long-term institutionalization at government expense. Noncitizens are inadmissible to the United Sates if they are subject to the public charge ground of inadmissibility and are unable to establish, in the totality of the circumstances, that they are not likely at any time to become primarily dependent on the government for subsistence based on a consideration of these factors, and as noted above, any other information or evidence in the record that is relevant to a public charge inadmissibility determination.

This means that DHS may take into account a noncitizen's potential in certain circumstances, for example a noncitizen's education and skills may suggest potential future employment that would generate sufficient income for that noncitizen to not be primarily dependent on the government for subsistence, but does not mean that potential alone is determinative that a noncitizen is not inadmissible under the public charge ground.

J. Totality of the Circumstances

1. General Comments in Support of the Totality of the Circumstances Language

Comment: One commenter commended DHS on its return to the totality of the circumstances standard, which in their view better aligns with congressional intent than what was promulgated by the past administration in the 2019 Final Rule. Another commenter said that they supported the focus on the totality of the circumstances and favorable consideration of the affidavit of support. Another commenter stated that they support and recommend that DHS retain

[496] 8 CFR 212.22(a)(3); 8 CFR 212.22(b).

[497] 8 CFR 212.22(b).

[498] *See* 8 CFR 212.22(a)(1).

[499] *See* 8 CFR 212.21(b).

[500] *See* 8 CFR 212.21(c).

[501] *See* 8 CFR 212.22(b).

[502] *See* 8 CFR 212.22.

the proposed rule's language that an applicant's use of countable benefits and any one statutory factor do not automatically make an individual a public charge. One commenter stated that they support the proposed language regarding the term, ''totality of the circumstances,'' where no one factor other than the failure to provide a legally sufficient affidavit of support, where one is required, should determine whether the applicant is likely to become a public charge. Commenters stated that the totality of the circumstances framework is straightforward and has resulted in efficient, consistent, and predictable public charge inadmissibility determinations in the past.

Response: DHS appreciates the support for the totality of the circumstances framework proposed in the NPRM. DHS plans to maintain the longstanding and straightforward framework set forth in the 1999 Interim Field Guidance, under which officers consider the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, where required, in the totality of the circumstances, without separately codifying the standard and evidence required for each factor as was done in the 2019 Final Rule. This proposal received widespread support in the comments in response to the NPRM and DHS believes that including elements consistent with the standard previously in place for over 20 years, under which officers will consider the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA (when required) in the totality of the circumstances, along with other elements of the rule, will lead to more consistent and fair inadmissibility determinations.

Comment: A commenter stated that it is inequitable to distinguish between long-term institutionalization and HCBS because States differ in what they offer to treat someone's needs and that the mere presence of someone long-term in an institution should not weigh more heavily than other factors in the public charge inadmissibility determination. That commenter stated that some States are more likely to default to long-term institutionalization even though HCBS are shown to be more effective such as for people with brain injuries, mental illness, developmental disabilities, autism, and older adults, because there are not more appropriate options available.

Response: DHS appreciates the comment and reiterates, as stated in the NPRM, that it intends to continue the longstanding approach to the public charge ground of inadmissibility that does not rely on any one factor alone in making a public charge inadmissibility determination. DHS understands that there is confusion as a result of the heavily weighted factors that were included in the 2019 Public Charge Final Rule. That rule, where heavily weighted factors were included, is no longer in effect and DHS does not propose any heavily weighted factors in this current rule. The fact that an individual is long-term institutionalized will not by itself establish that they are likely to become a public charge. Generally, DHS considers ''long-term institutionalization'' to be characterized by uninterrupted, extended periods of stay in an institution, such as a nursing home or a mental health institution. Under this approach, DHS, for example, would not consider a person to be institutionalized long term if that person had sporadic stays in a mental health institution, where the person was discharged after each stay. On the other hand, DHS would consider a person to be institutionalized long term if the person remained in the institution over a long period of time, even if that period included off-site trips or visits without discharge. Some public comments received in response to the 2021 ANPRM supported excluding past or current use, or eligibility for, HCBS from the public charge inadmissibility determination. In response to the NPRM, many commenters, including this commenter, noted that there is inconsistent access to HCBS, which may affect whether an individual is using HCBS or institutional care. DHS made the decision to exclude HCBS after consultation with HHS. In its on-the-record consultation letter, HHS encouraged DHS to ''consider clarifications to its public-charge framework that would account for advancements over the last two decades in the way that care is provided to people with disabilities and in the laws that protect such individuals.'' Specifically, HHS suggested that HCBS should not be considered in public charge inadmissibility determinations. HHS affirmed, as discussed above, that ''HCBS help older adults and persons with disabilities live, work, and fully participate in their communities, promoting employment and decreasing reliance on costly government-funded institutional care.'' The HHS letter also distinguished HCBS from long-term institutionalization at government expense by stating that HCBS do not provide ''total care for basic needs'' because they do not pay for room and board. In its letter, HHS also encouraged DHS to take into account ''legal developments in the application of Section 504 since 1999,'' including looking at whether a person might have been institutionalized at government expense in violation of their rights.

Comment: One commenter stated that they support the elimination of the provision in the 2019 Final Rule that gave additional negative weight to children under the age of 18 and to an individual's disability or health condition in the ''totality of circumstances'' test, as those additional weights were discriminatory to children who are vulnerable and require specialized medical services. Furthermore, the commenter stated that the reversal of those provisions is a critical and important step to securing the health and well-being of millions of children in immigrant families.

Response: DHS agrees that the rule should not assign particular weight to any individual factor in the totality of the circumstances analysis. In addition to the evidentiary and paperwork burdens established by the 2019 Final Rule and discussed above, DHS has determined that the adjudicative framework established by the 2019 Final Rule was unduly prescriptive. As reflected in Congress's instruction that several factors specific to the applicant must be considered, each public charge inadmissibility determination must be individualized and based on the evidence presented in the specific case, and the relative weight of each factor and associated evidence is necessarily determined by the presence or absence of specific facts. Consequently, the designation of some factors as always ''heavily weighted'' suggested a level of mathematical precision that would be unfounded and inconsistent with the long-standing standard of considering the totality of the individual's circumstances. DHS may periodically issue guidance that will help officers determine how the different factors may affect the likelihood that a noncitizen will become a public charge at any time, including an empirical analysis of the best available data, as appropriate.

2. Recommendations To Improve the Totality of the Circumstances Framework

Comment: Several commenters stated that DHS failed to recognize that the 2019 Final Rule standards better instructed officers how to conduct adjudications instead of providing nothing more than a list of factors absent additional guidance. These commenters appear to suggest that DHS should return to the standards set forth in the 2019 Final Rule. Another

commenter stated that by removing the concept of weighted evidence, and failing to justify any policy determination or provide a reasoned analysis, the proposed rule makes it impossible for an adjudicator to determine that a noncitizen is a public charge. Commenters also stated that the lack of clear guidance for officers led to the underutilization of the public charge ground of inadmissibility.

Response: DHS disagrees with the commenters' suggestion that it should return to the 2019 Final Rule's standards, which codified a limited number of heavily weighted negative and positive factors, but did not provide meaningful guidance as to how such ''heavy weight'' would be applied in the context of an individual case, relative to other factors that would also be assigned weight in the analysis. As noted in the NPRM,[503] DHS believes that the straightforward and clear approach taken in this rule reflects the longstanding approach to making public charge inadmissibility determinations and will reduce the burdensome and unnecessary evidentiary and information collection requirements pertaining to the factors under the 2019 Final Rule. DHS believes the simplified approach in this rule better ensures that DHS officers making public charge inadmissibility determinations make the most efficient and fair decisions. Therefore, DHS declines to adopt these commenters' suggestions.

Comment: One commenter recommended explicit language that warns of the degree to which implicit bias and stereotypes about the quality of life of people with significant disabilities could color any assessment of the total circumstances of a person with a disability, including an undervaluation of that person's education, skills, and present state of health. One commenter further encouraged DHS to incorporate into its regulations or guidance instructions that direct officers, where applicable, to consider the circumstances underlying a person's use of the relevant benefits or limited resources, including having experienced domestic violence or other crimes, a public health or natural disaster or economic downturn, or being pregnant, a child or having a new child. Under these circumstances, the temporary use of benefits can help individuals and families regain stability, health or safety, and does not predict (and may even prevent) an individual's need for this assistance in the future. One commenter further expressed concern that since there is little guidance on how the statutory factors interrelate, officers may bring the same biases against people with disabilities as shared by the general public. Another commenter stated that DHS must make sure to look at the totality of the individual's circumstances in a nondiscriminatory manner. A couple of commenters stated that the evaluation of the likelihood at any time of becoming a public charge is a prospective determination based on the totality of circumstances that requires an officer to guess as to what may happen in the future and guarantees that the officer's own subjective opinions will muddle the analysis.

Response: DHS appreciates the comments that express concern about subjectivity, discrimination, and bias. However, with this rule, DHS intends to maintain the totality of the circumstances framework that has been in place for over 20 years with the 1999 Interim Field Guidance and has been developed in several Service, BIA and Attorney General decisions and codified in INS regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986.[504]

The 1999 Interim Field Guidance required officers to make public charge inadmissibility determinations in the totality of the circumstances and indicated that no single factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, when required, would control the decision.[505] As a departure from the 1999 Interim Field Guidance and the 1999 NPRM, in this rule, DHS also recognizes that there are some circumstances where an individual may be institutionalized on a long-term basis in violation of Federal anti-discrimination laws, including the ADA and Section 504. The possibility that an individual will be confined without justification thus should not contribute to the likelihood that the person will be a public charge, and to this end, the rule provides that officers who are assessing the probative value of past or current institutionalization will take into account, when applicable and in the totality of the circumstances, any evidence that past or current institutionalization is in violation of Federal law, including the ADA or the Rehabilitation Act.[506] In this rule, DHS also clarifies that the presence of a disability, as defined by section 504 of the Rehabilitation Act, is not alone a sufficient basis to determine that a noncitizen is likely at any time to become a public charge, including that the individual is likely to require long-term institutionalization at government expense. Instead, under this rule, DHS will, in the totality of the circumstances, take into account all of the statutory minimum factors, including the applicant's health, as well as the sufficient Affidavit of Support Under Section 213A of the INA, if required, in determining the noncitizen's likelihood at any time of becoming a public charge.

Furthermore, in regards to concerns about bias by individual officers, DHS notes that there is a general regulatory requirement that USCIS officers ''explain in writing the specific reasons for a denial.'' [507] This requirement applies to all applications and petitions adjudicated by USCIS, including denials based on a public charge inadmissibility determination.[508] DHS is now codifying the language set forth in the 1999 Interim Field Guidance that reiterated more specifically the general requirement that every written denial decision issued by USCIS based on the public charge ground of inadmissibility include a discussion of each of the factors. In this rule, DHS intends that every written denial decision issued by USCIS based on the totality of the circumstances will ''reflect consideration of each of the factors . . . and specifically articulate the reasons for the officer's determination.'' [509] Although existing DHS regulations and policy already require USCIS officers to specify in written denials the basis for the denial,[510] DHS believes that a provision explicitly requiring a discussion of the factors considered in

[503] 87 FR at 10617 (Feb. 24, 2022).

[504] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28690 (May 26, 1999); *see also, e.g., Matter of Perez,* 15 I. & N. Dec. 136, 137 (BIA 1974) (''The determination of whether an alien is likely to become a public charge under section 212(a)(15) is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States.'').

[505] ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689, 28690 (May 26, 1999).

[506] *See Olmstead* v. *L.C.,* 421 527 U.S. 581 (1999); U.S. Department of Justice, Civil Rights Division, Disability Rights Section, ''Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead* v. *L.C.*,'' Feb. 25, 2020, *https://www.ada.gov/olmstead/q&a_olmstead.htm* (last visited Aug. 16, 2022).

[507] INA sec. 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B). *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689 (May 26, 1999). *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41502 (Aug. 14, 2019).

[508] 8 CFR 103.3(a)(1)(i).

[509] *See* 8 CFR 212.22(c).

[510] *See* 8 CFR 103.3(a)(1)(i). *See also* USCIS Policy Manual, Vol. 7, Part A, Ch. 11, ''Decision Procedures,'' *https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-11* (last visited Aug. 16, 2022).

the denial is consistent with the statute and is necessary to ensure that any denial based on this ground of inadmissibility is made on a case-by-case basis in light of the totality of the circumstances. DHS believes these safeguards help ensure that the officer's decision is based on the statutory factors and guidance.

Comment: One commenter stated that age and health are statutory factors that cannot be changed through rulemaking, but that those factors, as well as SSI and long-term institutionalization, disproportionately impact older adults and persons with disabilities, with higher rates in communities of color. Therefore, this commenter suggested that to limit the discriminatory impact of the rule, it is important that no one factor be given determinative weight.

Response: DHS designed this rule to adhere to, and implement, congressional instructions. DHS notes that it does not intend for this rule to have a discriminatory effect on applicants with disabilities, and emphasizes that disability, as defined by section 504 of the Rehabilitation Act, will not alone be a sufficient basis to determine whether a noncitizen is likely at any time to become a public charge.[511] Also, as stated previously, for long-term institutionalization at government expense, DHS will consider evidence submitted by noncitizens to support a declaration that their institutionalization violated Federal law.[512] DHS cannot rule out the possibility of disproportionate impacts on certain groups (whether as a consequence of the policy contained in this rule, the 1999 Interim Field Guidance, or any other policy), but this rule is neutral on its face and DHS in no way intends that it will have such impacts on any protected group. DHS is committed to applying this rule neutrally and fairly to all noncitizens who are subject to it and has included a provision requiring that USCIS denials on public charge grounds be accompanied by a written explanation that specifically articulates the reasons for the officer's determination.[513] In addition, and as stated throughout this rule, DHS requires the analysis of the totality of the applicant's circumstances, taking into consideration all of the factors, with no single factor being outcome determinative.

Comment: One commenter recommended that the final rule include guidance that officers consider the impact of domestic violence, sexual assault, human trafficking, and other gender-based violence in the totality of the circumstances, and DHS should provide guidance for limiting consideration of factors that would unfairly penalize survivors for the violence they have experienced, or make it more difficult for them to escape abuse. The commenter also suggested that the final rule consider the supportive and protective effects of access to secure legal status for survivors, as recognized in VAWA, as adjustment of status or admission increases a survivor's ability to escape the violence or overcome trauma as well as provide access to employment and supportive networks.

Response: While DHS appreciates the comments and suggestions as they relate to survivors of domestic violence, sexual assault, human trafficking, and other gender-based violence, in general, these survivors, and those applying for immigration benefits who fall under certain humanitarian categories, are exempt from the public charge ground of inadmissibility. With this rule, DHS intends to clarify that these individuals are exempt by specifically listing the statutory and regulatory exemptions to the ground of inadmissibility in the regulation. For the most part, the categories of individuals mentioned by the commenter are included in the listed exemptions found at 8 CFR 212.23.

Furthermore, Congress expressed a policy preference that individuals in certain categories should be able to receive public benefits without risking adverse immigration consequences. DHS believes that Congress did not intend to later penalize such noncitizens for using benefits while in these categories because doing so would undermine the intent of their exemption. Given the nature of these populations and the fact that if they were applying for admission or, as permitted, adjustment of status under those categories they would be exempt from the public charge ground of inadmissibility, it is reasonable for DHS to exclude from consideration those benefits that an applicant received while in a status that is exempt from the public charge ground of inadmissibility. Therefore, DHS is setting forth a final rule that states that, in any application for admission or adjustment of status in which the public charge ground of inadmissibility applies, DHS will not consider any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as listed in 8 CFR 212.23(a), or for which the noncitizen received a waiver of public charge inadmissibility, as stated in 8 CFR 212.23(c).[514] However, under this rule, any benefits received prior to or subsequent to the noncitizen being in an exempt status would be considered in a public charge inadmissibility determination in the totality of the circumstances, including consideration of any mitigating information that that the applicant may wish to bring to DHS's attention.

Comment: Two commenters stated that DHS should clarify the standards for a public charge inadmissibility determination and how officials will employ them within the rule itself, not in later guidance. One of the commenters remarked that because the rule proposes to issue guidance later as to how the totality of the circumstances should be assessed, those affected still have no knowledge, clarity, or certainty as to how the factors will be weighed, and the use of future guidance to determine who is likely to become a public charge allows DHS to change the standards without the use of the full notice and comment rulemaking process, avoiding accountability and compromising consistency, and further stating that the rule's content regarding the totality of the circumstances test is vague. Another commenter similarly stated that while a totality of the circumstances standard gives USCIS maximum flexibility, the commenter expressed concern that this standard is subject to extreme varying interpretations in agency adjudications and its implementation could subject to the uncertainties of the political process. The commenter stated that an unmodified totality of the circumstances standard is an invitation for policy changes based on arbitrary political interpretations rather than sound legal analysis and established precedent.

Response: DHS appreciates commenters' concern regarding the perceived lack of specificity concerning how the factors will be applied in the totality of the circumstances in the proposed regulatory text. Following receipt of public comments, DHS has made changes to the provisions addressing four out of the five statutory minimum factors to identify information relevant to such factors. In accordance with those changes, DHS has made changes to Form I–485 to implement these provisions. The collection of this relevant information will help officers make public charge inadmissibility determinations without being unnecessarily burdensome for the

[511] *See* 8 CFR 212.22(a)(4).

[512] *See* 8 CFR 212.22(a)(3).

[513] *See* 8 CFR 212.22(c).

[514] *See* 8 CFR 212.22(a) and (c).

public and for DHS, and will provide clarity to the public regarding what information is generally relevant and needed to make public charge inadmissibility determinations. In this final rule, DHS also amended the provisions relating to the consideration of current and/or past receipt of public benefits to provide additional clarity to the public and to officers about what will be considered when making a public charge inadmissibility determination in the totality of the circumstances. In this final rule, DHS is also retaining the regulatory content stating that no one factor described in this rule, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining if a noncitizen is likely to become a public charge.

DHS plans to issue guidance, as well as periodically update guidance, that will consider how these factors may affect the likelihood at any time of becoming a public charge based on an empirical analysis of the best-available data as appropriate.[515] Furthermore, USCIS plans to conduct robust training for officers on the new regulations and guidance. In general, officers receive specialized training in every aspect of the adjudicative process. Public charge inadmissibility determinations are no exception. Furthermore, there are numerous levels of oversight and quality control to provide guardrails and ensure fair and consistent decisions. However, because each noncitizen's individual circumstances constitute a unique fact pattern, outcomes in public charge determinations will appropriately vary. USCIS continues its ongoing data collection efforts on its adjudications as well as other information relevant to the adjudication, to continually assess and improve the adjudication processes, procedures, and training.

Comment: Several commenters stated that the five factors should be used primarily as exculpatory or mitigating considerations that help an applicant overcome any potentially adverse public charge issues. Another commenter stated that the judicial and administrative decisions that informed the codification of the five factors in 1996 overwhelmingly found immigrants not excludable based on one or more of the factors when considering the totality of circumstances. For example, the commenter stated, in *Matter of Martinez-Lopez,* the Attorney General affirmed that the respondent was not excludable as likely to become a public charge because he was ''an able-bodied man in his early twenties, without dependents; that he had no physical or mental [disability] which might affect his earning capacity, and that he had performed agricultural work for nearly 10 years.'' [516] In that case, the respondent's age, family, health, employment, and support from a family member were all favorable factors that justified the finding that he was not likely to become a public charge.[517] The commenter stated that in its review of the legislative history of the public charge ground of inadmissibility, the Second Circuit confirmed that Congress had ratified prior administrative and judicial interpretations in 1996 when it codified the five factors. The panel explained: ''. . . our review of the historical administrative and judicial interpretations of the ground over the years leaves us convinced that there was a settled meaning of 'public charge' well before Congress enacted IIRIRA. The absolute bulk of the case law, from the Supreme Court, the circuit courts, and the BIA interprets 'public charge' to mean a person who is unable to support herself, either through work, savings, or family ties. *See, e.g.,* [*United States ex rel. Iorio* v. *Day,* 34 F.2d 920, 922 (2d Cir. 1929)]; *Harutunian,* 14 I. & N. Dec. at 588–89. Indeed, we think this interpretation was established early enough that it was ratified by Congress in the INA of 1952. But the subsequent and consistent administrative interpretations of the term from the 1960s and 1970s remove any doubt that it was adopted by Congress in IIRIRA.'' [518] The commenter stated that, in other words, the five statutory factors and totality of circumstances test provided ways to demonstrate that an applicant would not be inadmissible as likely at any time to become a public charge and were never intended to be a list of negative and positive factors to be weighed individually in every case.

Response: DHS believes that the commenters' suggested approach would be inconsistent with the longstanding approach to the public charge ground of inadmissibility. The administrative cases cited by the commenter do not stand for the proposition that the factors may only be used to mitigate adverse circumstances. The adverse circumstances themselves are part of the totality of the circumstances determination. DHS notes that the 2019 Final Rule, as one of the commenters noted, had a list of negative and positive factors, which the vast majority of commenters found confusing and which, in DHS's experience, ultimately did little to clarify the operation of the totality of the circumstances analysis. In the end, officers were still required to assess the individual circumstances of each case on their own merits. DHS has not included such a list in this rule because DHS believes that such an approach would very likely result in confusion, and because the statute does not require it and does not indicate the circumstances under which any of the factors are to be treated positively or negatively, how much weight the factors should be given, or what evidence or information is relevant to each of the statutory factors. With this rule, DHS intends to continue with the longstanding approach set forth in the 1999 Interim Field Guidance, which is a totality of the circumstances analysis.

Comment: One commenter stated that officers should be directed to look at all factors holistically, consistent with the settled meaning of public charge and, on balance, give due weight to all circumstances that demonstrate an individual would not be inadmissible as likely at any time to become a public charge.

Response: DHS appreciates the commenter's suggestion that officers should be directed to review the factors holistically and give due weight to all circumstances that demonstrate an individual would not be inadmissible under the public charge ground. As noted in the NPRM, a series of administrative decisions have clarified that a totality of the circumstances review is the proper framework for making public charge inadmissibility determinations.[519] In light of public comments, DHS is clarifying what DHS officers will consider in the totality of the circumstances. The totality of the circumstances includes all information or evidence in the record before the adjudicator relevant to a public charge inadmissibility determination. DHS is only collecting initial information from applicants as related to the enumerated factors as outlined in this rule and accompanying form, and the only initial supporting evidence required of applicants is evidence that their institutionalization violated Federal law, if applicable. However, DHS may generally consider all evidence and information in the record that is relevant to making a public charge inadmissibility determination. Such information or evidence may include evidence that the noncitizen has been certified or approved to receive public

[515] *See* 8 CFR 212.22(b).

[516] 10 I&N Dec. 409, 421 (BIA 1962).

[517] 10 I&N Dec. 409, 421 (BIA 1962).

[518] *New York* v. *DHS,* 969 F.3d 42, 71 (2d Cir. 2020).

[519] *See* 87 FR at 10579–10580 (Feb. 24, 2022).

cash assistance for income maintenance or long-term institutionalization. As noted in response to the comment about the past or current use of public benefits by certain victims when not in an immigration category exempt from the public charge ground of inadmissibility, such information or evidence may also include mitigating information that the applicant may wish to bring to DHS's attention. This approach is consistent with the understanding of the totality of the circumstances approach from the administrative decisions, as well as with the approach taken by the former INS when it promulgated 8 CFR 245a.3.

3. Recommendations for the Creation of Presumptions in the Totality of the Circumstances Analysis

Comment: One commenter expressed concern that the totality of the circumstances standard would be subject to extreme varying interpretations in agency adjudications, and that the implementation of the standard could be subject to the uncertainties of the political process. Instead of using the totality of circumstances standard, they proposed that DHS create legal presumptions that, barring extraordinary facts related to the statutory factors, would simplify a determination of whether a person is likely to become a public charge. They proposed that DHS create presumptions regarding the Affidavit of Support Under Section 213A of the INA and assets and resources. The commenter also suggested that, when a presumption exists, a finding by DHS that a noncitizen is likely to become a public charge must explain the clear and convincing factual evidence relevant to the statutory factors that led to a determination of inadmissibility.

Response: As addressed elsewhere in this preamble, the plain language of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), calls for the consideration of, at a minimum, age, health, family status, assets, resources and financial status, and education and skills, and allows DHS to also consider an Affidavit of Support under Section 213A of the INA. As DHS explained when responding to comments suggesting that it create weighted factors akin to those codified in the 2019 Final Rule, DHS believes that the totality of the circumstances approach without assigning weight to any particular facts or circumstance is more effective than specific codified presumptions (or weighted factors), as it accounts for varying individual circumstances of applicants. Such an approach also enables officers to adapt the public charge inadmissibility determination to the specific facts of each case, and all relevant information in the record. DHS has decided to proceed without presumptions because in many circumstances any specific presumption (such as a presumption with respect to assets and resources) would likely be overcome in any event (such as by an applicant's age, health, and/or education and skills). That said, the NPRM and this final rule do state that DHS will favorably consider in the totality of the circumstances a sufficient Affidavit of Support Under Section 213A of the INA, where such affidavit is required. DHS believes that the long-standing totality of the circumstances framework allows officers to adequately consider the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA (when required), and past and/or current receipt of public benefits, in the totality of the circumstances, while also allowing for the consideration of empirical data, where relevant and appropriate.

As indicated throughout this final rule, DHS intends to issue guidance to generally inform the predictive nature of the factors set forth in this rule as an objective aspect of the analysis, declining to take a categorical approach of weighing the relevant factors or creating presumptions. DHS believes this will best enable officers to fully consider the applicant's individual circumstances and evidence presented, thereby better achieving the goals of the public charge inadmissibility determination. Therefore, DHS declines to codify specific regulatory presumptions.

Comment: One commenter suggested that DHS clearly state that incoming international graduate students, medical residents, physicians, scientists, and researchers, with a letter from a sponsoring institution stating that the individual will meet federal income and insurance requirements be given a presumption that they are not likely to become a public charge at any time under the totality of circumstances.

Response: DHS believes that the long-standing totality of the circumstances framework allows officers to consider the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA (when required) in the totality of the circumstances, while also allowing for an empirical element as appropriate. Even where an Affidavit of Support Under Section 213A of the INA is not required, DHS will consider the other statutory factors concerning those individuals, including education and skills and assets, resources, and financial status of those individuals. DHS intends to issue guidance to generally inform the predictive nature of the statutory factors as an objective aspect of the analysis, declining to take a categorical approach of weighting the relevant factors or creating presumptions. DHS believes this will best enable officers to fully consider the applicant's individual circumstances and evidence presented, thereby better achieving the goals of the public charge inadmissibility determination. However, and as stated throughout this rule, although DHS is not requiring the submission of initial supporting evidence (except in the case of disability discrimination), and is not creating new presumptions, DHS has the discretion to consider relevant information in the record in the totality of the circumstances. Such information may include a letter from a sponsoring institution related to the applicant's income or benefits, since this information would be relevant to the public charge inadmissibility determination, and the assets, resources, and financial status factor, in particular.

Comment: One commenter suggested DHS presume that a noncitizen applying for an immigrant visa or adjustment of status under section 203(c)(18) of the INA, 8 U.S.C. 1153(c)(18), the Diversity Visa Program, is unlikely to become a public charge where the noncitizen meets the educational and/or employment experience requirements of section 203(c)(2) of the INA, 8 U.S.C. 1153(c)(2).

Response: DHS believes that the long-standing totality of the circumstances framework allows officers to consider the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA (when required) in the totality of the circumstances, while also allowing for an empirical element as appropriate. As stated previously, DHS acknowledges that certain immigration categories may require a separate determination of education or work experience, but notes that those specific eligibility requirements are separate from an inadmissibility determination. The public charge inadmissibility determination involves the consideration of a variety of factors, including education and skills, that are considered in the totality of a noncitizen's circumstances, and DHS will consider such factors for all noncitizens subject to the public charge ground of inadmissibility who are applying for adjustment of status.

Comment: One commenter recommended that DHS require officers to give more weight to the education and income factors in determining whether a noncitizen is likely to become a public charge, as a noncitizen's education and income levels are the

most reliable predictors of whether a noncitizen is likely to become a public charge, according to an analysis of data from the Survey of Income and Program Participation (SIPP), from the U.S. Census Bureau.

Response: DHS disagrees that the education and income factors should be given different weight than other factors under the rule. DHS disagrees that the SIPP data shows that a noncitizen's education and income level are the most reliable predictors of whether a noncitizen is likely to become a public charge.

In support of their claims about the relative significance of education in a public charge inadmissibility determination, the commenter pointed to an analysis that examined SIPP data to show welfare utilization by different education levels. The analysis examined benefit use by ''non-citizen-headed households'' rather than by noncitizens themselves.[520] While that analysis showed generally low use of SSI and TANF by such households, even those low rates of use are misleading in the context of a public charge inadmissibility determination. Under both the 2019 Final Rule, favored by the commenter, and this rule, only public benefits received by the noncitizen, where the noncitizen is listed as a beneficiary, are considered in a public charge inadmissibility determination. Although the analysis cited by the commenter attributes to the noncitizen ''head of household'' any receipt of benefits by any member of the household, including U.S. citizens, the rates of SSI and TANF receipt by such households, as such, does not correspond to public charge inadmissibility determinations under both the 2019 Final Rule and this rule. Since Congress sharply limited the eligibility for public benefits for noncitizens in PRWORA (and, as noted, provided exceptions to the public charge ground of inadmissibility for most categories of noncitizens eligible for benefits), the members of the ''non-citizen-headed households'' actually receiving the SSI and TANF in this analysis are most likely not the noncitizen heading the household but rather other members of the family, such as U.S. citizen children. The analysis cited by the commenter, however, only looks at the education level of the head of the household, rather than the education level of the person receiving the benefits.

The analysis cited by the commenter, in defense of the ''household'' approach, argued that since eligibility for benefits (or at least means-tested benefits) is generally based on the income of the entire household, and that since benefits provided to a household member lessen the need for other members of the household to financially support them, all benefit use in a household should be attributed to all of the members. This is in line with the suggestion of this commenter that DHS should expand the ''receipt (of public benefits)'' definition to attribute all benefit use by dependents to a noncitizen applicant. However, DHS largely rejected such an approach to the attribution of benefit use by others in the 1999 Interim Field Guidance, wholly rejected it in the 2019 Final Rule, and has wholly rejected it again in this rule. DHS responded to those comments suggesting that benefit use by other household members be attributed to the applicant in the Definitions section above. As other analysts have noted, the ''household'' is not the proper unit of analysis when examining public benefits use, particularly for households with a mixture of native-born U.S. citizens, naturalized or derived U.S. citizens, and noncitizens.[521]

Since Congress sharply limited the eligibility for public benefits for noncitizens in PRWORA (and, as noted, provided exceptions to the public charge ground of inadmissibility for most categories of noncitizens eligible for benefits), the members of the ''non-citizen-headed households'' actually receiving the SSI and TANF in this analysis are most likely not the noncitizen heading the household but rather other members of the family, such as U.S. citizen children. The analysis cited by the commenter, however, only looks at the education level of the head of the household, rather than the education level of the person receiving the benefits.

Finally, although the commenter recommended that DHS give significant weight to education and income, the commenter did not offer an analysis of these factors relative to most of the other statutory factors, or an analysis of the actual likelihood that a noncitizen will become a public charge based on these factors.

In short, the analysis does not support the commenter's statement that education is one of the most reliable predictors (along with income) of whether a noncitizen is likely at any time to become a public charge.

As for the commenter's statement that income is one of the two reliable predictors (alongside education) of whether a noncitizen is likely to become a public charge, the analysis cited by the commenter did not contain any quantitative evidence regarding the connection between income and benefit use.[522]

Finally, the commenter and the analysis cited by the commenter does not compare education and income to other factors (such as age; health; skills; and assets, resources, and financial status) to predict a person's likelihood of becoming a public charge. While the analysis cited by the commenter shows that education might be important, it does not show that it is more important than any other factors, and as noted it does not address income at all. In summary, the analysis fails to support the commenter's conclusion that income and education are the most reliable predictors of public benefit use.

DHS does agree that evidence should inform the public charge analysis and, as indicated in the rule, DHS may periodically issue guidance to officers to inform the totality of the circumstances assessment and such guidance will consider how these factors affect the likelihood that the noncitizen will become a public charge at any time based on an empirical analysis of the best-available data as appropriate.[523]

4. Empirical Analysis of Best Available Data

Comment: One commenter stated that DHS could collect data on denials based on the public charge ground of inadmissibility, regularly analyze the data for disproportionate negative impacts, and use the data to better train and supervise officers to avoid explicit and implicit bias.

Response: USCIS adjudicative systems do not currently allow the agency to collect comprehensive data concerning public charge inadmissibility determinations in a fully automated way, *i.e.,* without at least some manual review of administrative

[520] Steven Camarota and Karen Zeigler, Center for Immigration Studies, ''63% of Non-Citizen Households Access Welfare Programs,'' Table 6 (Nov. 20, 2018), *https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs* (last visited Aug. 16, 2022).

[521] *See* CATO Institute, ''Center for Immigration Studies Overstates Immigrant, Non-citizen, and Native Welfare Use'' (Dec. 6, 2018), *https://www.cato.org/blog/center-immigration-studies-overstates-immigrant-non-citizen-native-welfare-use* (last visited Aug. 16, 2022). *See also* National Academies of Sciences, Engineering, and Medicine, ''The Economic and Fiscal Consequences of Immigration'' (2017), *https://nap.nationalacademies.org/catalog/23550/the-economic-and-fiscal-consequences-of-immigration* (last visited Aug. 16, 2022)

[522] The analysis included two tables examining benefit use by households ''with at least one worker,'' but did not include any analysis based on household or individual income.

[523] *See* 8 CFR 212.22(b).

files. Only a portion of adjustment of status applications are currently adjudicated in our Electronic Immigration System (ELIS), which allows officers to indicate ''212(a)(4) Public Charge'' as a denial reason. When adjudicating applications in the older CLAIMS3 system, officers are unable to indicate whether a denial under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), was based on a review of the factors identified in section 212(a)(4)(B) of the INA, 8 U.S.C. 1182(a)(4)(B), as well the receipt of any other factors identified in a public charge rule, or was based on the lack of a sufficient Affidavit of Support Under Section 213A of the INA without a manual review of the case.[524] In addition, the CLAIMS3 system does not track the race/ethnicity of applicants (though other data points relevant to the suggestion, including sex and country of birth, are available). Once all varieties of adjustment of status applications are transitioned into ELIS, DHS will be able to regularly analyze the data for disproportionate negative impacts as the commenter suggests.

Comment: Another commenter emphasized that any analysis of various statutory factors must include the perspective of experts in those fields, such as medical researchers for an analysis of the health factor, and cautioned against any approaches that would consider a noncitizen as a member of a specific group for purposes of analysis, for example, noncitizens with diabetes considered as an aggregate. This commenter also suggested DHS collect data on who is determined to be a public charge so the data can be examined by both DHS and in collaboration with external scientific collaborators. Another commenter stated that DHS could adjust its guidance and its standardized procedures regarding the totality of the circumstances based on the latest data available and fine-tune the process as needed.

Response: DHS appreciates the support for using available data, as appropriate, to guide the public charge inadmissibility determination. DHS has included a provision in the final rule stating that DHS may periodically issue guidance that will consider how these factors affect the likelihood that the noncitizen will become a public charge at any time based on an empirical analysis of the best-available data as appropriate.[525] DHS also appreciates the request to use external scientific collaborators and notes that DHS has internal economists that process both internal and external data to determine its utility for the public charge inadmissibility determination, and may engage the public in a variety of ways in developing and seeking input on guidance. Additionally, DHS appreciates the suggestion that it use external experts in particular regarding the health factor. DHS notes that it will collect information relevant to the statutory minimum factors from existing information collections (*e.g.,* information pertaining to the health factor will be obtained from Form I–693, Report of Medical Examination and Vaccination Record, which, when completed in the United States, is prepared by a civil surgeon). Civil surgeons assess whether applicants have any health conditions that could result in exclusion from the United States.[526] USCIS designates certain doctors (also known as civil surgeons) to perform the medical exam required for most individuals applying for adjustment of status in the United States; these professionals, however, are not employees of the U.S. government.

DHS also requested data and information from the public during this rulemaking process for consideration in the development of this final rule. For instance, as early as the ANPRM, DHS solicited comment on a published article that sought to use available data and machine-learning tools to estimate the probability of a noncitizen becoming a public charge (as that term was defined under the 2019 Final Rule).[527] DHS also asked for any data and information it should consider about the direct and indirect effects of past public charge policies in this regard. In addition, DHS asked about data that it could use to estimate any potential direct and indirect effects, economic or otherwise, of the public charge ground of inadmissibility related to the 2019 Final Rule. DHS also specifically sought information from State, territorial, local, and Tribal benefit granting agencies regarding impacts of the 2019 Final Rule on the application for or disenrollment from public benefit programs. The majority of the data received concerned the chilling effects of the 2019 Final Rule.

Regardless, DHS will consider the request to collect and analyze data concerning who is likely to become a public charge. Once all varieties of adjustment of status applications are transitioned into ELIS, DHS may be able to more easily analyze the data and potentially share it with external analysts to the extent appropriate and consistent with law. DHS may also consider adjusting its policy, if appropriate, in response to new data and analyses.

K. Receipt of Public Benefits While Noncitizen Is in an Immigration Category Exempt From Public Charge Inadmissibility

Comment: One commenter did not agree with this exemption and recommended that DHS consider a noncitizen's past and current use of public benefits, regardless of the noncitizen's previous or current immigration status; the commenter stated that not considering all benefits received would require officers to ignore relevant information with significant evidentiary value for the determination of whether the noncitizen will be able to provide for their own needs in the future.

Response: DHS disagrees that officers should consider public benefits received while a noncitizen is in an immigration category exempt from the public charge ground of inadmissibility. Although many noncitizens who are eligible for Federal, State, Tribal, territorial, or local benefits receive those benefits while present in an immigration classification or category that is exempt from the public charge ground of inadmissibility or after the noncitizen obtained a waiver of the public charge ground of inadmissibility, such noncitizens may later apply for an immigration benefit that subjects them to the public charge ground of inadmissibility. For example, a noncitizen admitted as a refugee may have received benefits on that basis but may later apply for adjustment of status based on marriage to a U.S. citizen and will be subject to the public charge ground of inadmissibility.

The 1999 Interim Field Guidance did not expressly address how to treat an applicant's receipt of public benefits while present in an immigration category that is exempt from the public charge ground of inadmissibility or for which the noncitizen received a waiver of the public charge ground of

[524] DHS notes that the data presented in this rule that reflects that no cases were ultimately denied based on the totality of the circumstances analysis under the 2019 Final Rule was obtained by identifying cases denied under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and manually reviewing each of the cases to ascertain whether they were denials based solely on the totality of the circumstances approach.

[525] *See* 8 CFR 212.22(b).

[526] USCIS Policy Manual, Vol. 8, Part C, Ch. 1, ''Purpose and Background,'' *https://www.uscis.gov/policy-manual/volume-8-part-c-chapter-1* (last visited Aug. 16, 2022).

[527] *See* ''Public Charge Ground of Inadmissibility,'' 86 FR 47025, 47028 (Aug. 23, 2021) (citing Mitra Akhtari et al., ''Estimating the Empirical Likelihood of Becoming a 'Public Charge,' '' N.Y.U. J. Legis. & Pub. Pol'y Quorum (Aug. 2, 2021), *https://nyujlpp.org/quorum/estimating-the-empirical-likelihood-of-becoming-a-public-charge/* (last visited Aug. 17, 2022)).

inadmissibility. The 2019 Final Rule, however, excluded from consideration the receipt of such public benefits in public charge inadmissibility determinations.[528]

Congress, not DHS, has specified which categories of noncitizens are subject to or are exempt from the public charge ground of inadmissibility. Congress did not exempt from the public charge ground of inadmissibility noncitizens who are applying for admission or adjustment in a category subject to the public charge ground but who, in the past, were in a category of noncitizen exempt from the ground. However, as DHS concluded in 2019, DHS believes that it has the authority, in promulgating the public charge inadmissibility framework, to determine which public benefits should be considered as part of a public charge inadmissibility determination.[529]

A review of the categories of noncitizens that are exempt from the public charge ground of inadmissibility or eligible for waivers provides an indication of the concerns that Congress had when establishing these exemptions and waivers. The categories comprise a long list of vulnerable populations or groups of noncitizens of particular policy significance for the United States.[530] Congress expressed a policy preference that individuals in these categories should be able to receive public benefits without risking adverse immigration consequences. DHS believes that Congress did not intend to later penalize such noncitizens for using benefits while in these categories because doing so would undermine the intent of their exemption. Given the nature of these populations and the fact that if they were applying for admission or, as permitted, adjustment of status under those categories they would be exempt from the public charge ground of inadmissibility, it is appropriate for DHS to exclude from consideration those benefits that an applicant received while in a status that is exempt from the public charge ground of inadmissibility.

This rule will prohibit DHS from considering any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as set forth in proposed 8 CFR 212.23(a), or for which the noncitizen received a waiver of public charge inadmissibility, as set forth in proposed 8 CFR 212.23(c).[531] However, under the rule, any public cash assistance for income maintenance or long-term institutionalization at government expense received prior to or subsequent to the noncitizen's being in an exempt status would be considered in a public charge inadmissibility determination.

Comment: Many commenters supported DHS's proposal that benefits received while in an exempt status will not be considered in a public charge inadmissibility determination. However, a number of those commenters recommended that DHS also include other noncitizens such as those granted withholding of removal or deportation, Deferred Enforced Departure (DED), deferred action, and parolees among those for whom benefits received will not be considered in a public charge inadmissibility determination because immigrants granted such humanitarian relief are qualified immigrants for many federal and State benefits. The commenters also recommended DHS clarify that officers may not consider underlying reasons for which these exempt groups receive benefits and instead expressly state that these benefits will not be considered in a public charge inadmissibility determination, to mitigate the risk of officers misapplying this provision or allowing the officers' personal bias or animus against applicants to affect the determination.

Response: DHS agrees with the many commenters who support exempting consideration of the receipt of public benefits while a noncitizen is in a category exempt from a public charge inadmissibility determination. However, DHS disagrees with the recommendation to expand this exemption to other populations such as those granted withholding of removal or deportation, DED, deferred action or other general parolees. Congress expressly exempted certain vulnerable populations from the public charge ground of inadmissibility by statute such as refugees, asylees, and applicants for admission based on refugee or asylee status.[532] The categories comprise a long list of vulnerable populations or groups of noncitizens of particular policy significance for the United States.[533] The examples of categories mentioned by commenters are not populations that Congress has chosen to expressly exempt from the public charge ground of inadmissibility. Thus, DHS will not further expand the population of noncitizens whose receipt of public benefits will not be considered in a public charge ground of inadmissibility.

DHS also disagrees with the commenters who recommend a clarification that officers may not consider underlying reasons for which these exempt groups receive benefits. DHS does not believe that rule requires any further clarification as the language in 8 CFR 212.22(d) is clear, precise, and absolute in stating that DHS will not consider any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility or for which the noncitizen received a waiver of public charge inadmissibility in a public charge inadmissibility determination.[534] If benefits were received by a noncitizen when they were in one of the exempt categories or categories eligible for an inadmissibility waiver identified in 8 CFR 212.23, USCIS will not consider the benefits they received while in those categories. When they apply for admission or adjustment of status in a category to which the public charge ground of inadmissibility applies, DHS will still consider the other factors set forth in this rule in the totality of the circumstances in order to determine whether the noncitizen is likely at any time to become a public charge. As stated throughout this final rule, no single factor alone will be dispositive, and to the extent there is evidence of temporary health issues USCIS adjudicators will be able to take the surrounding circumstances into consideration.

L. Receipt of Public Benefits by Those Granted Refugee Benefits

Comment: Many commenters supported the exclusion of the receipt of public benefits by those granted refugee benefits from consideration under a public charge inadmissibility determination, as it will provide vulnerable populations with safer access to the benefits they may need to recover from the conditions that qualified them for humanitarian protection.

Response: DHS agrees that the receipt of public benefits by those granted refugee benefits should not be considered in a public charge

[528] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41501 (Aug. 14, 2019).

[529] *See* INA sec. 103, 8 U.S.C. 1103; *see also* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292 (Aug. 14, 2019).

[530] For example, refugees, asylees, Afghans and Iraqis employed by the U.S. government, special immigrant juveniles, Temporary Protected Status recipients, and trafficking and crime victims.

[531] *See* 8 CFR 212.22(a) and (c).

[532] *See* INA secs. 207, 208, and 209; 8 U.S.C. 1157, 1158, and 1159.

[533] For example, refugees, asylees, Afghans and Iraqis employed by the U.S. government, special immigrant juveniles, Temporary Protected Status recipients, and trafficking and crime victims.

[534] *See* 8 CFR 212.22(d).

inadmissibility determination. Under this rule, when making public charge inadmissibility determinations, DHS will not consider any public benefits that were received by noncitizens who are eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the INA, 8 U.S.C. 1157, including services described under section 412(d)(2) of the INA, 8 U.S.C. 1522(d)(2), provided to an ''unaccompanied alien child'' as defined under section 462(g)(2) of the HSA, 6 U.S.C. 279(g)(2).[535] This provision would only apply to those categories of noncitizens who are eligible for all three of the types of support listed (resettlement assistance, entitlement programs, and other benefits) typically reserved for refugees.

As these commenters stated, DHS believes that Congress intended to encourage these vulnerable populations to apply for and receive the benefits they may need to recover from the conditions that qualified them for humanitarian protection. For example, the U.S. government has resettled and continues to resettle our Afghan allies. This is a population invited by the government to come to the United States at the government's expense in recognition of their assistance over the past two decades or their unique vulnerability were they to remain in Afghanistan.[536] In recognition of the unique needs of this population and the manner of their arrival in the United States, Congress explicitly extended benefits normally reserved for refugees to our Afghan allies. DHS serves as the lead for coordinating the ongoing efforts, across the Federal Government, to support vulnerable Afghans under Operation Allies Welcome (OAW). As such, DHS has been actively communicating and promoting the various benefits that this vulnerable population may be eligible for depending on their admission, status in the United States, or both, including SSI, TANF, and various other public benefits.

Similarly, the U.S. government has expressed its strong concern for the victims of severe forms of trafficking in persons and a dedication to stabilizing them. The Trafficking Victims Protection Act (TVPA), part of the Victims of Trafficking and Violence Protection Act of 2000, was enacted to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute trafficking in persons, while offering protections to victims of such trafficking, including temporary protections from removal, access to certain federal and State public benefits and services, and the ability to apply for T nonimmigrant status. With the passage of the TVPA, Congress intended to protect victims of trafficking and to take steps to try to meet victim's needs regarding health care, housing, education, and legal assistance.[537]

DHS strongly encourages these populations to access any and all services and benefits available to them without fear of a future negative impact. Thus, this rule will exempt from consideration receipt of public benefits by those granted refugee benefits by Congress, even when those individuals are not refugees admitted under section 207 of the INA, 8 U.S.C. 1157, such as the Afghans that have been recently resettled in the United States pursuant to OAW and noncitizen victims of a severe form of trafficking in persons.

M. Denial Decision

Comment: Many commenters supported DHS's proposed language that every denial decision be in writing, reflect consideration of each of the five statutory minimum factors, as well as the affidavit of support, and articulate a reason for the determination, as it will reduce the risk of officers applying the wrong standards and provide sufficient justification for the decision.

Response: DHS appreciates commenters' support and believes that requiring every written denial decision issued by USCIS reflect consideration of each of the factors outlined in this rule and specific articulation of the reasons for the officer's determination will help ensure that public charge inadmissibility determinations will be fair, transparent, and consistent with the law.

Comment: One commenter recommended DHS maintain these records in a way that allows public access to the decision-making behind the denials and tracking of outcomes through Freedom of Information Act requests.

Response: DHS will not be establishing a mechanism in which the public may request all denials related to denials for adjustment of status under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), due to the privacy implications and potential administrative burden.

Comment: One commenter stated that DHS should consider including a specific requirement that written denial decisions include documentation that age and health or disability status were not unduly weighted to ensure that denials are not discriminatory to children, including those with special health care needs or disabilities. Another commenter recommended that all denial decisions be written in plain language or Easy Read format so that the decisions may be read by immigrants with significant cognitive disabilities or who do not speak or read English well.

Response: DHS agrees that denial decisions should include relevant information that reflects consideration of each of the factors outlined in this rule and specific articulation of the reasons for the officer's determination. DHS notes that, as discussed above, public charge inadmissibility determinations are based on the totality of a noncitizen's circumstances. No one factor described in this rule, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining if a noncitizen is likely to become a public charge.[538] Although the commenter expressed concern that an officer may unduly weigh age and health or disability status unfairly for children, including those with special health care needs or disabilities, DHS believes that the regulatory language directing officers to demonstrate their consideration of each factor, including age and health, already addresses this concern.

To the suggestion that DHS issue denial decisions in a plain, easy to read format, DHS notes that it is bound by the Plain Writing Act of 2010,[539] which requires DHS, in issuing ''any document that is necessary for obtaining any Federal Government benefit or service . . .'' [540] to use ''writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.'' [541] Consistent with the Plain Writing Act of 2010, USCIS has an internal plain language program to help improve the clarity of USCIS communications. USCIS follows the policies and procedures established by the USCIS plain language program for all of its denial decisions so that they are easy to read and understand, and includes citations to relevant sections of

[535] *See* 8 CFR 212.22(e).

[536] DHS, ''Operation Allies Welcome'' (2021), *https://www.dhs.gov/sites/default/files/publications/21_1110-opa-dhs-resettlement-of-at-risk-afghans.pdf* (last visited Aug. 16, 2022).

[537] *See* Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, sec. 102(b), 114 Stat. 1464, 1466 (2000).

[538] *See* 8 CFR 212.22(b).

[539] Public Law 117–274 (Oct. 13, 2010).

[540] Public Law 117–274 Sec. 3(2) (Oct. 13, 2010).

[541] Public Law 117–274, Sec. 3(3) (Oct. 13, 2010).

law or court decisions to support officers' decisions.

Comment: One commenter recommended that officers should be required to provide a written explanation that specifically articulates each factor considered in the determination and the reason for the officer's determination in all cases in which the public charge ground of inadmissibility applies, regardless of whether the adjudicator finds that the noncitizen is inadmissible under the public charge ground or not. The commenter reasoned that only requiring a written analysis for cases where a noncitizen is found to be inadmissible under the public charge ground of inadmissibility, coupled with USCIS' initiatives to address the agency backlog and impose new internal cycle time goals,[542] would incentivize officers to provide positive public charge inadmissibility determinations for noncitizens who may not warrant such determination.

Response: The commenter's argument that requiring a written analysis by an officer for a determination that a noncitizen is not inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), coupled with USCIS' internal goals, incentivizes officers to fail to correctly apply the law is without basis. The requirement that officers write decisions explaining the specific reasons for denials of adjustment of status is a long-standing requirement that has been in the regulation for decades.[543] This rule does not expand or contract the circumstances when officers are required to issue a written decision explaining the specific reason for a decision regarding the public charge ground. This rule adds the requirement that officers include a discussion of each of the statutory factors in the already required written denial decision.

DHS does not agree that the long-standing requirement that officers explain in writing the specific reasons for denials inappropriately incentivizes officers to issue approvals. First, a requirement for an administrative agency to provide notice and an opportunity to respond is a common feature of administrative practice, and is intended to promote fairness and consistency, not to incentivize particular outcomes. Second, USCIS officers are dedicated to USCIS' core values of integrity, respect, innovation, and vigilance, and, to that end, officers strive to deliver fair decisions that are consistent with the law, regardless of internal cycle time goals. USCIS officers receive specialized training and regularly adjudicate a variety of immigration benefit applications. Further, requiring written decisions stating the specific reasons for approvals in all cases where a USCIS officer determines that an applicant is not inadmissible under the public charge ground would be unnecessarily burdensome and inconsistent with USCIS practice for all other grounds of inadmissibility. By granting a person adjustment of status to lawful permanent resident, the USCIS officer is confirming that they have reviewed the eligibility requirements and any applicable grounds of inadmissibility, including the public charge ground of inadmissibility, where applicable, and determined that the applicant is admissible to the United States.

N. Information Collection (Forms)

Comment: Several commenters recommended that DHS not change the initial evidence adjustment of status applicants currently provide on Form I–485 and recommended against additional questions being added to the form, stating that all of the information needed is already included in the information collection.

Some commenters stated that if DHS chooses to include any questions, DHS should ensure that any additional questions are on their face related to a statutory ground and do not elicit potentially extraneous information or evidence, and recommended that applicants be given an opportunity to provide a substantive answer to explain any additional circumstances. One of those commenters also suggested that the instructions to Form I–485 should provide a detailed explanation related to which noncitizen applicants are exempt from the public charge ground for inadmissibility.

Other commenters stated that asking if a person has used public assistance from any source is overly broad and irrelevant and creates unnecessary work for applicants, officers, and State benefit granting agencies, as well as contributing to the chilling effect.

Response: DHS disagrees that additional questions are not required on Form I–485. DHS reviewed the current form and has decided to add several additional questions regarding the factors used to make a public charge inadmissibility determination that were not already included in the form's information collection, including information about an applicant's household size, income, assets, liabilities, an applicant's education or skills, an applicant's use of TANF or SSI, and any long-term institutionalization of the applicant at government expense. The form also informs applicants that additional space is available if applicants need to provide more information. Additionally, USCIS policy instructs officers to issue Requests for Evidence in cases involving insufficient evidence before denying such cases unless the officer determined that there was no possibility that the benefit requestor could overcome a finding of ineligibility by submitting additional evidence.[544] DHS did not include additional questions or request additional evidence from applicants that is not related to a public charge inadmissibility determination. In order to reduce the burden on applicants not subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), DHS also included a question asking applicants if they are subject to the public charge ground of inadmissibility and, if not, directing them that they may skip the subsequent related questions.

DHS disagrees that a full list of applicants who are not subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), should be included in the Form I–485 instructions. New 8 CFR 212.23 lists 29 classes of noncitizens who are exempt from the public charge ground of inadmissibility. Including this full list in the form instructions would impose a burden on all applicants reviewing them. DHS instead included the list in the regulations, and will include a list of exemptions within sub-regulatory guidance.

DHS agrees that asking applicants within the form if they have used any public assistance is overly broad and would contribute to chilling effects. DHS therefore limited any additional questions to the use of public benefits that would be considered in a public charge inadmissibility determination: TANF; SSI; State, Tribal, territorial, or local cash benefit programs for income maintenance (which often are called ''General Assistance'' in the State context but also exist under other names); and long-term institutionalization at government expense. Due to the variety of State, Tribal, territorial, or local noncash benefit programs, DHS is unable to

[542] *See* USCIS, ''USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders'' (Mar. 29, 2022), *https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work* (last visited Aug. 16, 2022).

[543] 8 CFR 103.3(a)(1)(i); *see also* ''Oral Argument and Appeals,'' 31 FR 3062 (Feb. 24, 1966).

[544] *See* USCIS Policy Manual, Vol. 1, Part E, Ch. 6, Section F, ''Requests for Evidence and Notices of Intent to Deny,'' *https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6* (last visited Aug. 16, 2022).

provide within the form or instructions an exhaustive list of noncash public benefits programs, but plans to issue future guidance with some examples to address widely used noncash programs such as SNAP, CHIP, and Medicaid, other than Medicaid for long-term institutionalization.

Comment: One commenter recommended that USCIS continue to use the questions included in the current Form I–864 and Form I–864A to calculate household size, income from the household, and, if needed, assets from the household. The commenter stated that this information should only be collected in cases subject to the public charge ground of inadmissibility in which an Affidavit of Support is not otherwise filed.

The commenter also stated that USCIS should consider whether the creation of a Form I–485 supplement form to collect this information is warranted in this specific scenario in order to provide both the agency and applicants with a simple, efficient, and familiar method of providing required information and achieves DHS's goal of not unduly imposing barriers on noncitizens seeking adjustment of status or admission to the United States as lawful permanent residents.

Response: DHS notes that no changes have been proposed to Form I–864, Affidavit of Support Under Section 213A of the INA, or Form I–864A, Contract Between Sponsor and Household Member. DHS also notes that the Affidavit of Support Under Section 213A of the INA and the Contract Between Sponsor and Household Member collect information regarding the household size, income, and assets of the sponsor and household members, respectively. These forms do not collect information regarding the intending immigrant. DHS also notes that some noncitizens applying to adjust status to lawful permanent resident may not be required to submit an Affidavit of Support Under Section 213A of the INA but are still subject to the public charge ground of inadmissibility, for example, applicants applying under the Diversity Visa program.

In the NPRM, DHS proposed changes to Form I–485 to include questions that would collect public charge-related information from applicants who are subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). The first of these questions asks applicants to indicate if they are subject to the public charge ground of inadmissibility, and if they are not, directs that they may skip the subsequent related questions. Therefore, noncitizens who are not subject to a public charge inadmissibility determination, which includes most noncitizens not required to file an Affidavit of Support Under Section 213A of the INA, will not need to provide information specifically related to making this determination.

DHS has determined that the Form I–485 sufficiently collects information regarding the factors that will be considered in a public charge inadmissibility determination. Further, DHS believes the creation of a supplement to Form I–485 would increase the burden on the agency and applicants, as it would require additional consideration by stakeholders and officers in order to complete and submit any additional evidence. Therefore, DHS believes that not creating a supplement for Form I–485 is reducing barriers on noncitizens seeking adjustment of status.

DHS has reduced the estimated time burden for completing the revised Form I–485 from 7.92 hours to 7.16 hours. Open-ended questions requiring narrative-style responses that were proposed in the information collection instrument (Form I–485) associated with the NPRM have been changed to multiple-choice style questions that will require less time for an applicant to answer.

O. Bonds and Bond Procedures

Comment: One commenter stated that if a sponsor on an Affidavit of Support Under Section 213A of the INA cannot meet the threshold amount for income/assets and the applicant has no qualifying joint sponsor, the applicant should be permitted to post a negligible bond amount of $100 in lieu of providing tax returns or pay stubs in order to overcome the public charge ground of inadmissibility.

Response: DHS disagrees that it should permit an applicant for adjustment of status who has failed to submit a required Affidavit of Support Under Section 213A of the INA, and is therefore per se inadmissible under section 212(a)(4)(A) of the INA, 8 U.S.C. 1182(a)(4)(A), to post a negligible bond of $100 to overcome inadmissibility. As noted above, under section 213A of the INA, 8 U.S.C. 1183a, most family-based immigrants and certain employment-based immigrants are required to submit an Affidavit of Support Under Section 213A of the INA to avoid being found inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).[545] Under section 213 of the INA, 8 U.S.C. 1183, subject to the requirement to submit an Affidavit of Support Under Section 213A of the INA, a noncitizen who is inadmissible under only section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), can be admitted at DHS's discretion upon the giving of a suitable and proper bond, in the amount and conditions set by DHS in its discretion. Additionally, under this rule, and for consistency with prior agency practice with respect to the bond amount (with the exception of the period in which the 2019 Final Rule was in effect), the minimum bond amount that DHS will set is $1,000, which reflects the minimum amount to ensure that Federal, State, local, and tribal governments are held harmless against the noncitizen becoming a public charge.[546] DHS believes that setting the bond amount to a minimum of $1,000 is a reasonable starting point. Accordingly, DHS declines to set the bond amount at $100.

Comment: One commenter appears to suggest that immigration bonds should be used to pay for such medical care and other social welfare debts incurred by those who enter the United States.

Response: To the extent that this commenter is suggesting that DHS utilize public charge bonds to ensure that any medical expenses and benefits paid by the government are reimbursed, DHS notes that the purpose of a public charge bond is to hold the United States, States, territories, counties, towns, and municipalities, and districts harmless against bonded immigrants becoming public charges.[547] Consistent with this purpose, under the rule, receiving public cash assistance for income maintenance or long-term institutionalization at government expense, would result in a breach determination.[548] This provision ensures that the purpose of public charge bonds is carried out.

Comment: One commenter agreed that DHS should utilize its discretion to offer bonds, noting that this would only impact a small number of cases.

Response: DHS agrees that it should exercise its bond authority under section 213 of the INA, 8 U.S.C. 1183, and has included a provision in this rule that would permit officers to consider offering public charge bonds, in their discretion, to adjustment of status applicants inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).[549] To the extent that this commenter suggests that DHS limit offering bonds to a small number of cases, DHS notes that the decision to

[545] *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D); INA sec. 213A(a)(1), 8 U.S.C. 1183a(a)(1).

[546] 8 CFR 213.1(c).

[547] INA sec. 213, 8 U.S.C. 1183.

[548] 8 CFR 103.6(c).

[549] 8 CFR 213.1.

offer an adjustment of status applicant a public charge bond is determined on a case-by-case basis in the exercise of discretion. Each decision is an individualized determination and as a result, DHS will not mandate that its bond authority be limited only to a specific number of cases, as DHS believes that this would unreasonably exclude from the possibility of a public charge bond adjustment of status applicants who might otherwise warrant our discretion.

Comment: Some commenters disagreed with DHS's statement in the NPRM that existing public charge bonds are adequate and opposed DHS's decision against adding any public charge bond provisions to existing regulations. One commenter reasoned that the existing bond regulations are only adequate if DHS intends to never issue public charge bonds. Other commenters stated that public charge bonds are tools to ensure compliance with the immigration laws and that, by not amending the regulations to include public charge bond provisions, DHS is ignoring its discretion under this authority without justification, and in the process, eviscerating the public charge ground of inadmissibility. These commenters requested that DHS reconsider its position on public charge bonds and amend the regulations in the same manner as was found in the 2019 Final Rule.

Response: DHS disagrees that this rule ignores its public charge bond authority or eliminates a key part of public charge ground of inadmissibility. On the contrary, DHS acknowledged its discretionary bond authority in the NPRM,[550] and DHS reiterates, in this rule, that it has authority, under section 213 of the INA, 8 U.S.C. 1183, to consider whether to exercise its discretion on a case-by-case basis to admit noncitizens who are inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), upon the submission of a suitable and proper public charge bond. But DHS acknowledges that, as noted by commenters, existing regulations that implement the statutory public charge bond provisions do not address the manner in which USCIS will exercise this discretion.

Accordingly, following consideration of public comments received, DHS has determined, similar to the 2019 Final Rule, that it is appropriate to include provisions in the rule pertaining to USCIS' exercise of its public charge bond authority in adjustment of status applications, as well as provisions pertaining to public charge bond cancellation and breach determination. These provisions will ensure that USCIS is exercising its discretionary public charge bond authority in the context of adjustment of status applications, and will ensure that public charge bonds remain operationally feasible in such cases.

Under this rule, DHS will consider offering adjustment of status applicants who are inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), to submit a bond as a condition of adjustment of status.[551] When USCIS determines, in its discretion, to offer an adjustment of status applicant a public charge bond, USCIS will set the bond amount at an amount of no less than $1,000 and provide instructions for the submission of a public charge bond.[552] USCIS will provide officers with guidance and training to ensure that this discretionary authority is exercised in a fair, efficient, and consistent manner.

P. Economic Analysis Comments & Responses

Comment: One commenter remarked that while the rule seems to have a high cost for codifying a policy already in place, the benefits of the rule outweigh the costs. The commenter stated that most changes do not appear to have an associated cost, but in turn create benefits for noncitizens without taking away their rights, and that the benefits of changes that do have associated costs outweigh those costs.

Response: DHS acknowledges this commenter's support of the rule. However, as explained at length in the section below on E.O. 12866 (Regulatory Planning and Review) and E.O. 13563 (Improving Regulation and Regulatory Review), DHS is unable to provide a full quantified estimate of the rule's costs and benefits due to data availability and the qualitative nature of some of the costs and benefits identified for this final rule.

Comment: One commenter cited the estimated savings to States' social-welfare budgets from the 2019 Final Rule and stated that the proposed rule ignores substantial effects on the States, costing significant funds rather than conserving Medicaid and related social-welfare budgets. An advocacy group, a State representative, and some State Attorneys General stated that while DHS focuses on a reduction of transfer payments as a net negative, it fails to explore the savings to State or Federal taxpayers, and that the 2019 Final Rule estimated an approximate savings for States of $1.01 billion annually. The commenters remarked that any reduction in payments due to a DHS rule concerning implementation of the public charge ground of inadmissibility must result in a savings to taxpayers that is quantifiable and should be included to provide a more complete analysis.

Response: As an initial matter, to the extent the commenters suggest that the 2019 Final Rule is the existing baseline against which the effects of this rule should be evaluated, DHS disagrees. The 2019 Final Rule is no longer in effect. The 2019 Final Rule does not represent the agency's best assessment of ''the way the world would look absent the proposed action,'' which is the OMB Circular A–4 [553] definition of an analysis' baseline. Therefore, the 2019 Final Rule is not the baseline against which DHS is directed to compare the rule's effects for purposes of OMB Circular A–4.

The distinction does not affect DHS's analysis, however, because in both the NPRM and Section IV.A.5.d of this Final Rule, DHS has considered a similar rule to the 2019 Final Rule as a regulatory alternative (the Alternative) and discussed its effects. Specifically, a decrease in State public benefit expenditures due to chilling effects was discussed as a transfer payment in that section. Transfer payments are reallocations of money from one group to another that do not affect total resources. A reduction of transfer payments is a reallocation of money from individuals to Federal or State governments.

The commenter stated that the 2019 Final Rule estimated an approximate savings for States of $1.01 billion annually. As discussed in the 2019 Final Rule, however, the $1.01 billion was the estimated State-level share of reduction in the annual transfer payments, not an estimated net savings, and represents a significantly broader effect than any disenrollment that would result among people actually regulated by the rule.

DHS acknowledged in the 2019 Final Rule that the reduction in transfer payments due to disenrollment or forgone enrollment in a public benefit program would have lasting impacts on the health and safety of our communities. As described in Section IV.A.5.d. of this rule, disenrollment or forgone enrollment in public benefit programs due to fear or confusion—*i.e.,*

[550] 87 FR at 10597 (Feb. 24, 2022).

[551] *See* 8 CFR 213.1(a) and (c).

[552] 8 CFR 213.1(a) and (c).

[553] *See* OMB, ''Circular A–4'' (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

the chilling effect—could lead to worsening health outcomes, increased use of emergency rooms and emergency care as a method of primary health care due to delayed treatment, increased prevalence of communicable diseases, increased uncompensated care, increased rates of poverty and housing instability, and reduced productivity and educational attainment. DHS also recognized that reductions in Federal and State transfers under Federal benefit programs may have impacts on State and local economies, large and small businesses, and individuals. For example, the chilling effect might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.[554]

The commenter also stated that any reduction in payments due to a DHS rule concerning implementation of the public charge ground of inadmissibility must result in a savings to taxpayers. DHS disagrees that any reduction in public benefit payments must result in a savings to taxpayers. Transfer payments associated with disenrollment or forgone enrollment in public benefit programs represents only one of many potential consequences for taxpayers. The reduction in public benefit payments could be reallocated in many different ways. It is out of the scope of this rule to determine how any reduction in public benefit payments is ultimately reallocated.

This public charge rule intends to administer the statute faithfully and fairly, while avoiding predictable adverse and indirect consequences such as disenrollment or forgone enrollment by individuals who would not be subject to the public charge ground of inadmissibility in any event. The 2019 Final Rule was associated with widespread indirect effects, primarily with respect to those who were not subject to the 2019 Final Rule in the first place, such as U.S.-citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status. A rule similar to the 2019 Final Rule would likely produce similar adverse effects on vulnerable populations not subject to the public charge ground of inadmissibility, and DHS has sought to avoid such effects in this rulemaking while remaining entirely faithful to the statute and historical practice.

Comment: Other commenters stated that the 2019 Final Rule increased the administrative costs to the States and caused economic harm to immigrant families and the entities that serve them. In particular, commenters stated that the inclusion of core health, nutrition, and housing assistance programs in the 2019 Final Rule caused a chilling effect, and the subsequent disenrollment or forgoing of benefits imposed significant costs as families were deprived of benefits from Medicaid and SNAP, and costs on society from worsened health outcomes, increased use of emergency rooms, increased uncompensated health care, increased rates of poverty and homelessness, and reduced productivity and educational attainment. Commenters stated that the inclusion of SNAP, Medicaid, and housing benefits in the 2019 Final Rule and the accompanying documentation requirements for immigrants also created a substantial administrative burden on State staff and resulted in significant costs in addressing the needs of immigrant-serving community organizations. One commenter added that in fiscal year 2019, they provided $1.3 million in grants to establish capacity within community organizations across their State to conduct community education and individual family counseling, and for fiscal years 2020 and 2021, they funded $2.1 million in grants to ensure continued capacity to provide those services related to the 2019 Final Rule.

Response: DHS acknowledges the impact of the 2019 Final Rule. A discussion of the impact of the 2019 Final Rule is described in Section IV.A.5.d. as the Alternative. Although DHS is not able to quantify all the effects of the Alternative, for many of the effects that are not quantifiable DHS provides qualitative discussion. DHS incorporated the detailed information on the State administrative costs due to the 2019 Final Rule provided by the commenter into Section IV.A.5.d. Also, DHS provided detailed information in the 2019 Final Rule Regulatory Impact Analysis on familiarization costs and compliance costs as indirect effects of the 2019 Final Rule.[555] DHS believes that under this rule, the types of effects described by the commenter are likely to decrease over time.

Comment: Multiple commenters, writing separately but in substantially similar language, stated that the economic analysis provided in the NPRM fails to consider the actual administrative burdens placed on each State, which undertake much of the responsibility in administering the public benefits considered in the analysis. The commenters remarked that the economic analysis focuses on the chilling effect of implementing a public charge definition more expansive than what is proposed and contends that disenrollment or forgoing enrollment would have downstream economic impacts that would negatively affect the economy. The commenters stated that DHS acknowledged that it is unable to quantify the State portion of the transfer payment due to a lack of data related to State-level administration of these public benefit programs. The commenter stated that the economic analysis performed by DHS was therefore incomplete. The commenter also stated that DHS failed to analyze the effect of any alternative that in the commenter's opinion was more consistent with Congressional intent and ensures a noncitizen seeking admission or other benefits does not become a public charge. The commenter stated that such an analysis should not be limited to the chilling effect for noncitizens already present in the United States, but also consider the benefit for the taxpayers and the lessening burdens on already overwhelmed systems of public benefits. The commenter said that DHS's limited analysis belied its true intent to facilitate mass migration and ignored DHS's charge to faithfully execute U.S. immigration laws.

Response: DHS does not agree with the commenter's claim that its intent with this rulemaking is to facilitate mass migration. This final rule establishes regulations to align public charge policy with the statute and Congressional purpose and collect the appropriate information to make public charge inadmissibility determinations. The rule is designed, in part, to avoid the unnecessary indirect effects that would be associated with a rule similar to the 2019 Final Rule.

DHS does not agree with the commenter's claim that the NPRM's analysis is incomplete. DHS completed the analysis consistent with OMB standards—the same standards that applied to the 2019 Final Rule—and the analysis is informed by a range of sources and information received in

[554] *See* DHS, ''Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds Final Rule,'' RIN 1615–AA22, at 6 (Aug. 2019), *https://www.regulations.gov/document/USCIS-2010-0012-63741 (hereinafter 2019 Final Rule RIA).*

[555] *See 2019 Final Rule RIA.*

response to the 2021 ANPRM, NPRM and otherwise collected in connection with the rulemaking. DHS notes that none of the above-referenced commenters provided the data that would be necessary to fully quantify the administrative costs associated with this or any other public charge rule, nor did the commenters participate in the comment period for the 2021 ANPRM.

It is not at all uncommon for a regulatory analysis to address matters quantitatively and where a quantitative analysis is not possible, to address matters qualitatively. This was the case for the 2019 Final Rule as well. In the NPRM and again in Section IV.A.5.d. of this preamble, DHS estimates State annual transfer payments for Medicaid and the proportion of State contributions for SNAP and TANF but cannot estimate State contributions to SSI and Federal Rental Assistance because the proportion of State contributions varies widely across States and by year. DHS notes that the analysis presented in the NPRM and below represents DHS's best effort to assess the costs, benefits, and transfers of the regulatory alternative.

The commenter stated that DHS failed to analyze the effect of any alternative. However, commenters did not provide any actionable alternative with which DHS could consider. DHS considered an alternative similar to the 2019 Final Rule, and also assessed the effects of the rule against two baselines. DHS believes that the analysis presented in this final rule is more than sufficient.

As it relates to alternative contained in the NPRM analysis, DHS considered the costs, benefits, and transfer effects associated with a potential rulemaking similar to the 2019 Final Rule (the Alternative). Like the 2019 Final Rule, the Alternative would expand the definition of ''public charge'' by providing that receipt of the certain designated benefits for more than 12 months in the aggregate within a 36-month period would render a person a public charge and designating a broader range of public benefits for consideration. Detailed analysis of the Alternative is included in Section IV.A.5.D.

Comment: A commenter asserted that there is no functional or economic difference between a cash benefit and a non-cash benefit received in-kind such as Medicaid benefits and that the rule therefore wholly ignores State costs, specifically the costs of States providing Medicaid to low-income individuals. The commenter stated that the analysis should focus on how much the government spends on benefits received by noncitizens, not simply whether the benefit is income-deriving, and emphasized that there is no practical or economic distinction between the simple provision of benefits in cash or in-kind.

Response: DHS is drawing a reasonable line between cash assistance for income maintenance that alone can be indicative of primary dependence on the government for subsistence, and supplemental and special-purpose non-cash benefits that are less probative of such dependence. As noted above, Congress itself previously distinguished between cash and non-cash benefits in the same manner as this rule in the IRCA legalization provision, which provided that ''[a]n alien is not ineligible for adjustment of status under [that provision] due to being [a public charge] if the alien demonstrates a history of employment in the United States evidencing self-support *without receipt of public cash assistance.*'' [556] Further, INS made this same distinction in the 1999 Interim Field Guidance, after which Congress amended the applicability of section 212(a)(4) of the INA multiple times, but only to limit the application of the ground of inadmissibility to certain populations or to limit consideration of certain benefits in certain circumstances.[557] As noted previously, Congress has long deferred to the Executive to interpret the meaning of ''likely at any time to become a public charge.'' DHS is not treading new ground by exercising that discretion in the way presented in this rule.

As a technical matter, DHS disagrees that the provision of Medicaid to low-income individuals is a cost of the rule, for two reasons. First, payments made by State or Federal governments are considered transfer payments rather than costs or cost savings for the purposes of the RIA.[558] A reduction in Medicaid enrollment is a reallocation of money from individuals to State governments. Second, the reduction in transfers payments referred to by the commenter represents the difference between the commenters' preferred policy and the policy outlined here. They are therefore presented in the discussion of the Alternative, rather than as an effect of the rule itself as compared to the No Action Baseline or the Pre-Guidance baseline.

In Section IV.A.5.d. of this rule, DHS discussed the consequences of individuals' disenrollment or forgone enrollment in Medicaid as distributional effects. As DHS explained, the inclusion of non-cash benefits in the 2019 Final Rule had a chilling effect on enrollment in State and Federal public benefits, including Medicaid, resulting in fear and confusion in the immigrant community. Chilling effects in public benefit programs could lead to significant indirect effects on State and local economies, large and small businesses, and individuals. Although the analysis quantifies transfer effects as proposed by the commenter, it also considers other downstream effects. Such effects may include worsening health outcomes, increased use of emergency rooms and emergency care as method of primary health care due to delayed treatment, increased prevalence of communicable diseases, increased uncompensated care, increased rates of poverty and housing instability, and reduced productivity and educational attainment. DHS also recognized that reductions in federal and State transfers under federal benefit programs may have impacts on State and local economies, large and small businesses, and individuals. In light of the evidence of the effects of the 2019 Final Rule, DHS takes the prospect of such outcomes seriously, particularly as it relates to populations that this rule does not regulate, such as U.S. citizen children in mixed-citizenship households.

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

Comment: Regarding methodology and adequacy, some State Attorneys General, and an advocacy group wrote that DHS did not adequately analyze the effect of alternative versions of the rule that, in the commenters' view, would be consistent with congressional intent to ensure noncitizens seeking admission do not become public charges. They stated that an analysis of the public charge rule should not be limited to chilling effects and suggested that the analysis include the benefits for taxpayers and reduction of burdens on the public benefit systems.,

Response: In the analysis of the Alternative referenced above, DHS considers the reduction in transfer payments and the potential reduction of burdens on the public benefit system in

[556] Public Law 99–603, tit. II, sec. 201 (Nov. 6, 1986) (codified at section 245A(d)(2)(B)(ii)(IV) of the INA, 8 U.S.C. 1255a(d)(2)(B)(ii)(IV)) (emphasis added); *see also id.* at sec. 302, 303 (similar provision for Special Agricultural Workers).

[557] *See, e.g.,* Public Law 113–4, sec. 804 (2013) (codified as amended at section 212(a)(4)(E)(i)–(iii) of the INA, 8 U.S.C. 1182(a)(4)(E)(i)–(iii)); Public Law 106–386, sec. 1505(f). (2000) (codified as amended at section 212(s) of the INA, 8 U.S.C. 1182(s)).

[558] *See* OMB, ''Circular A–4'' (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Section IV.A.5.d. However, under OMB Circular A–4, the reduction of burdens on the public benefit system is not a benefit, but rather appropriately accounted for as transfer payments. Transfer payments are neither costs nor savings; they do not affect total resources available to society. They are payments from one group to another. A decrease in transfer payments from the Federal or State government reduces burdens on the public benefit system but at the same time increases burden to the individuals. Therefore, the reduction in transfer payments increases indirect costs to the Federal or State government. DHS considers the costs and benefits of available regulatory alternatives as discussed in Section IV.A.5.d.

The Alternative would also impose new costs on the population applying to adjust status using Form I–485 that are subject to the public charge ground of inadmissibility who would be required to file Form I–944, Declaration of Self-Sufficiency, as part of the public charge inadmissibility determination. In addition, the Alternative would impose additional costs for completing Forms I–485, I–129, I–129CW, and I–539 as the associated time burden estimate for completing these forms would increase. Moreover, the Alternative would impose additional costs associated with the public charge bond process, including costs for completing and filing Forms I–945 and I–356. DHS estimates the total annual direct costs of the Alternative would be approximately $62 million compared to $6 million under the Final Rule.

Under the Alternative, DHS estimates that the total annual transfer payments from the Federal Government to public benefits recipients who are members of households that include noncitizens would be approximately $3.79 billion lower due to disenrollment or forgone enrollment of the public benefit programs. DHS understands that some commenters may view this outcome as preferable, potentially due to its implications for government spending on public assistance programs. At the same time, DHS notes that these transfer payments largely affect populations that are not subject to public charge inadmissibility determinations, such as U.S. citizen children in mixed-status households. DHS also recognizes that many of the indirect effects of the Alternative could lead to worsening health outcomes, increased use of emergency rooms and emergency care as method of primary health care due to delayed treatment, increased prevalence of communicable diseases, increased uncompensated care, increased rates of poverty and housing instability, and reduced productivity and educational attainment. DHS also recognizes that, under the Alternative, reductions in federal and State transfers under federal benefit programs may have impacts on State and local economies, large and small businesses, and individuals. Other indirect costs of the Alternative include administrative costs incurred by States. DHS received a detailed comment on State administrative costs. The commenter stated that the State incurred significant costs in addressing the needs of immigrant-serving community organizations, responding to the fear and confusion caused by the 2019 Final Rule, conducting community education and individual family counseling, and planning and training the State caseworkers related to 2019 Final Rule. Since the Alternative is similar to the 2019 Final Rule, DHS believes these administrative costs in this comment are similar to administrative costs that would be imposed by the Alternative.

Comment: Citing numerous studies, some of which DHS included in the proposed rule, an advocacy group described un-insurance trends fueled by the 2019 Final Rule that reversed substantial gains in insurance rates leading up to 2019. The advocacy group and a research organization cited findings from a 2020 Urban Institute survey,[559] which indicated that immigrant families avoided noncash public benefit programs in 2020, despite facing hardships resulting from the COVID pandemic. The research organization further remarked that a variety of sources, including individual surveys, reports from service providers, and analyses of enrollment data demonstrate the chilling effect of the previous public charge rule on participation across public benefit programs. Citing data from a New York City focus group and a Protecting Immigrant Families Campaign and BSP Research survey, the commenter underscored the widespread and lasting impact of the 2019 public charge rule on families that include immigrants. Also citing numerous studies, an advocacy group provided data contextualizing the impact of the 2019 Final Rule on Asian American and Pacific Islander (AAPI) communities, including Compact of Free Association (COFA) migrants and survivors of violence. Relatedly, a healthcare provider and an advocacy group commented on the negative impacts of the 2019 Final Rule on eligible immigrants. They stated that the 2019 Final Rule harmed marginalized immigrants and increased burdens on the nation's healthcare system.

Response: DHS acknowledges that the 2019 Final Rule caused fear and confusion among U.S. citizens and noncitizens and had chilling effects on the use of public benefits by noncitizens and U.S. citizens in mixed-status families. As several commenters mentioned, numerous studies have discussed the impact of the 2019 Final Rule on immigrants, families of immigrants, and marginalized immigrants.

Comment: An individual commenter expressed concern with the increase in costs for applicants affected by the proposed rule, reasoning that the cost of the application is already inflated and that any additional increase would prevent applicants from obtaining legal status.

Response: DHS did not propose and is not increasing the I–485 fee through this final rule. Similarly, DHS does not expect the number of applicants will decrease due to the increase in time burden to complete Form I–485. DHS estimated the direct costs of the rule to complete Form I–485 for applicants who are subject to the public charge ground of inadmissibility. The increase in cost to the applicants is due to the 0.75 hour increase in time burden to complete Form I–485, not a fee increase. The time burden includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application. Additionally, DHS does not expect the increase in time burden to complete the form will prevent applicants from obtaining legal status.

The 2019 Final Rule imposed additional costs on the population applying to adjust status using Form I–485 by requiring the applicants to file Form I–944, Declaration of Self-Sufficiency. The 2019 Final Rule also imposed additional costs for completing Forms I–485, I–129, I–129CW, and I–539 as the associated time burden estimate for completing each of these forms was projected to increase. In contrast to the 2019 Final Rule, this final rule only increases the time burden for completing Forms I–485 and does not introduce a Form I–944 or change the Forms I–129, I–129CW, or I–539 at all.

[559] Hamutal Bernstein et al., ''Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019,'' Urban Institute (2020), *https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf* (last visited Aug. 16, 2022).

Comment: In response to DHS's request for comments on ways to estimate the value of non-paid time, an individual commenter stated that a fair assessment of unpaid, volunteer, and other non-paid activities individuals undertake may be based on effective minimum wage or rates consistent with those paid for similar work in the candidate's relevant labor market, whichever is highest. The commenter further suggested that DHS include ''reasonable'' paid fringe benefits in the valuation, reasoning that this approach would be consistent with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR 200.306(e).

Response: DHS uses the effective minimum wage but declines to consider in this analysis rates consistent with those paid for similar work in the candidate's relevant labor market. DHS uses the effective minimum wage rate as a single objective measure since it is difficult to estimate the value of the time associated with the wide variety of non-paid activities an individual could pursue. In addition, DHS uses the benefits-to-wage multiplier, which incorporates the full cost of benefits, including paid leave, supplemental pay, insurance, retirement, and savings.

Comment: Multiple commenters, including State governments, an attorney, and an advocacy group, said that the proposed rule's narrow definition of a public charge places heavy costs on Federal, State, Tribal, or local governments that administer benefits to immigrants. These commenters remarked that the proposed rule's economic analysis fails to consider the administrative burdens placed on each State that undertakes the responsibility of administering the public benefits. However, a legal services provider said that the rule's detractors who focus on the savings to State and local governments from being able to avoid providing benefits to eligible noncitizens and their families make the inappropriate objection that the NPRM should be revised to allow State and local governments to reap the benefits of frightening their residents into forgoing benefits that those governments are obligated to provide.

Response: In the proposed rule, DHS gave more thorough consideration to the potential chilling effects of promulgating regulations governing the public charge inadmissibility determination. In considering such effects, DHS took into account the former INS's approach to chilling effects in the 1999 Interim Field Guidance and the 1999 NPRM, the 2019 Final Rule's discussion of chilling effects, judicial opinions on the role of chilling effects, evidence of chilling effects following the 2019 Final Rule, and public comments on chilling effects following the August 2021 Advance Notice of Proposed Rulemaking (ANPRM).

DHS acknowledges that the 2019 Final Rule caused fear and confusion among U.S. citizens and noncitizens and had a chilling effect on the receipt of public benefits, even among those who were not subject to the rule and with respect to public benefits that were not covered by the rule such as U.S. citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status. DHS estimates the reduction in transfer payments due to the chilling effects in Section IV.A.5.d. Commenters stated that this reduction in transfer payments from the Federal and State government to public benefit recipients are savings. DHS recognizes the commenters' observation that the reduction in transfer payment will reduce State expenditures on public benefit programs. However, DHS analyzes this effect as a transfer payment under OMB Circular A–4.[560] As OMB Circular A–4 prescribes, changes in transfer payments are neither costs nor benefits of the rule and are treated separately in the analysis. The impacts to States of the potential change in transfer payments is also discussed in Section IV.A.5.d. Also, disenrollment or forgone enrollment in public benefit programs could lead to worsening health outcomes, increased use of emergency rooms and emergency care as methods of primary health care due to delayed treatment, increased prevalence of communicable diseases, increased uncompensated care, increased rates of poverty and housing instability, and reduced productivity and educational attainment. DHS also recognizes that reductions in federal and State transfers under federal benefit programs may have impacts on State and local economies, large and small businesses, and individuals.

Moreover, DHS emphasizes that neither the statutory public charge ground of inadmissibility nor this final rule governs eligibility for public benefits. This final rule does not address which noncitizens are, or should be, eligible to receive public benefits. DHS is committed to making clear in this rule and in any communication materials and implementing guidance who is and is not subject to the public charge ground of inadmissibility. With this final rule, DHS intends to faithfully apply the public charge ground of inadmissibility without causing undue confusion among the public. This final rule implements the statute lawfully while minimizing chilling effects in order to avoid widespread societal issues that result from food insecurity, forgone medical care, and uncompensated healthcare costs among immigrant and mixed status families.

Comment: A State health department said that while it expects some additional costs to be incurred due to additional changes in the proposed rule, these costs are likely to be modest. Overall, the commenter said State costs would be minimized by a simple, clearly understandable rule that excludes all benefits and does not require detailed analyses of which programs are and are not considered in a public charge assessment. Further, the commenter expressed support for language in the NPRM stating that the only receipt that counts is the intending immigrant being named as a beneficiary for one or more of the countable benefits themselves.

Response: DHS agrees that the direct cost of the rule is relatively modest. This is in part due to similarities between the rule and the approach taken in the 1999 Interim Field Guidance. DHS agrees that a simple and clearly understandable rule would minimize familiarization costs as well as administrative costs incurred by planning and training caseworkers and call center workers and by decreasing the number of customers to the caseworker services. However, as discussed elsewhere in this rule, DHS is declining to exclude from consideration past or current receipt of all public benefits.

Comment: A State government remarked that the removal of consideration of past receipt of public benefits from the proposed rule would save Federal, State, and local benefit granting agencies significant funding each year and allow for simpler and more effective administration of public benefit programs. The commenter stated that in 2018, it awarded a State-fund grant of $1.2 million to provide technical assistance and training materials for legal service providers and community advocates on public charge. An additional $1 million was issued in 2019, among other funding. The commenter emphasized the complex nature of immigration law and the

[560] *See* OMB, ''Circular A–4'' (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

difficulty encountered by the commenter in developing public engagement materials due to the complex nature of immigration law and repeated changes to public charge policy.

Response: DHS acknowledges that some States have chosen to engage in outreach to social service providers and the general public regarding public charge matters. DHS agrees that the removal of consideration of past receipt of public benefits from the proposed rule may mitigate the need for such outreach. Such an approach could also simplify the administration of public benefit programs to the extent that public benefit granting agencies would not need to respond to recipient or applicant inquiries regarding immigration consequences of public benefit receipt. DHS also acknowledges that collecting information from applicants for adjustment of status on past or current benefit use has resulted in an increase to the time burden for completing the Form I–485. Also, the revised Form I–485 may indirectly increase administrative costs for benefit granting agencies due to an increase in workload to respond to some beneficiaries who may inquire about their history of public benefit receipts. However, DHS notes that under this final rule, it has streamlined this information collection, and the increase in time burden is less than the time burden increase under the 2019 Final Rule when applicants were required to complete Form I–944 Declaration of Self Sufficiency and provide supporting evidence.

As explained in more detail earlier in this preamble, DHS has determined that it should continue to consider past and current receipt of public cash assistance for income maintenance and long-term institutionalization at government expense because these may be indicative of primary dependence on the government for subsistence. DHS has consistently considered the past and current receipt of such benefits in making public charge inadmissibility determinations and has consistently considered such receipt in the totality of the circumstances, taking into account the amount, duration, and recency of the receipt. DHS has also consistently stated that the past or current receipt of benefits alone is not a sufficient basis to determine whether an applicant is likely at any time to become a public charge.

Comment: A State government and a local government commented that DHS should remove all Medicaid coverage and services from public charge inadmissibility determinations, reasoning that when patients lose coverage, overall costs to State or city governments increase.

Response: DHS acknowledges that when patients lose medical coverage, overall costs to State or local governments may increase, and there may be long-term consequences for patients and their families and communities. As described in Section IV.A.5.d., disenrollment or forgoing enrollment in Medicaid due to a chilling effect could lead to worse health outcomes, increase use of emergency rooms and emergent care as methods of primary health care due to delayed treatment, increase prevalence of communicable diseases, increase uncompensated care, and reduce productivity and educational attainment. DHS also recognizes that reductions in Medicaid coverage might result in reduced revenues for healthcare providers participating in Medicaid and companies that manufacture medical supplies or pharmaceuticals. DHS notes that it is excluding from consideration nearly all forms of Medicaid, except for long-term institutionalization at government expense.

DHS has determined that, like cash assistance for income maintenance, long-term institutionalization at government expense is indicative of primary dependence on the government for subsistence. However, DHS also recognizes that there may be instances when individuals are institutionalized in violation of federal law due to the unavailability of alternative services, such as HCBS. Recognizing that some instances of institutionalization may violate federal law, DHS will accept evidence that institutionalization violates the individual's rights under disability laws, including the ADA and section 504. In addition, this final rule retains a clarification that disability will never alone form the basis for determining that a noncitizen is likely at any time to become a public charge. DHS does not have data to assess how many individuals are both subject to the public charge ground of inadmissibility and are institutionalized on a long-term basis at government expense (including when such services are covered by Medicaid) so is unable to quantify the impact of retaining this long-standing policy in the final rule. However, DHS believes that the impact is small.

Comment: A State government agency stated that it had experienced the immense administrative burden of the 2019 Final Rule and expressed concern over staff and customers continuing to be adversely affected by the administrative burden of implementing measures aimed at mitigating the chilling effect of a public charge rule, by the need to counsel eligible enrollees and recipients of their rights to receive benefits, and by the expected loss of enrollees and recipients.

Response: DHS acknowledges the concerns over staff and customers continuing to be adversely affected by the administrative burden of implementing measures aimed at mitigating the chilling effect of a public charge rule. DHS is keenly aware of the established effects of its actions in this policy area and wishes to ensure that the final rule faithfully applies the public charge ground of inadmissibility without causing undue confusion among the public.

Comment: An advocacy group acknowledged that the ''proposed rule would not have a significant economic impact on a substantial number of small entities.''

Response: DHS agrees that the rule does not directly regulate small entities and is not expected to have a direct effect on small entities. It does not mandate any actions or requirements for small entities in the process of filing a Form I–485 Adjustment of Status by a requestor seeking immigration benefits. This rule regulates individuals, who are not defined as ''small entities.''

Comment: One commenter stated that immigrants create economic growth and increase tax revenue to better the nation, and in general, having immigrants become successful is better for the country.

Response: DHS acknowledges the economic impact of immigrants as many researchers have discussed. While DHS agrees that having immigrants become successful is better for the country, DHS does not expect that this rule would change the overall level of immigration as DHS does not expect the population seeking adjustment of status or admission at a port of entry would change due to this rule.

Comment: An advocacy group remarked that, given the positive impact immigrants have on the U.S. economy, the changes in the proposed rule are sensible and would further support the success of immigrants and their contributions to the U.S. economy. An anonymous commenter said the proposed rule positively effects supply and demand in the United States, as ''. . . immigrants who increase the supply of labor also demand goods and services, causing the demand for labor to increase.''

Response: For the regulatory analysis, DHS estimated the No Action Baseline using existing policy and compared the estimated costs and benefits of the provisions set forth in the rule to this

baseline. DHS estimated that the projected average annual total population of adjustment of status applicants and applicants for admission that would be subject to review for inadmissibility on the public charge ground would not change due to the rule. DHS does not expect that the rule would change the overall level of immigration.

Comment: A few commenters, including a group of Attorneys General, State governments, and an anonymous commenter, said that compared to the 2019 Final Rule, the proposed rule would increase access to health care and nutritional services, resulting in long-term net benefits for the States and their residents. Similarly, a local government remarked that broad access to public benefits by eligible individuals leads to better health outcomes for individuals and communities, while minimizing costs of emergency care often borne by local governments.

Response: This final rule would implement a different policy from the 2019 Final Rule. DHS believes that, in contrast to the 2019 Final Rule, this rule would effectuate a more faithful interpretation of the statutory phrase ''likely at any time to become a public charge''; avoid unnecessary burdens on applicants, officers, and benefits-granting agencies; and mitigate the possibility of widespread ''chilling effects'' with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially with respect to individuals who are not subject to the public charge ground of inadmissibility.

2. Family Assessment

Comment: One commenter stated that DHS must issue an assessment explaining the benefits of the proposed rule on family well-being, stating that section 654 of the Treasury and General Government Appropriations Act, 1999 directs federal agencies to issue a family policymaking assessment for any rule that may affect family well-being and that, under the law, the agency must evaluate a regulatory action's impact on the stability or safety of the family, on the family's ability to perform its function, and on disposable income, poverty, or any other financial impact for families and children. This commenter stated that DHS incorrectly assumed that a family well-being assessment must only be issued if a rule negatively impacts family well-being, but that the legislative language makes clear that agencies' assessment should look at both positive and negative impacts.

Response: Section 654 of the Treasury and General Government Appropriations Act, 1999 requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether: (1) The action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

In the NPRM, DHS stated that ''DHS has analyzed this proposed regulatory action in accordance with the requirements of section 654 and determined that this proposed rule does not affect family well-being, and therefore DHS is not issuing a Family Policymaking Assessment.'' [561] In the NPRM and in this Final Rule, DHS has focused on all of the effects of the rule, not just the negative effects, nor does DHS misunderstand the requirements applicable to this assessment. DHS agrees that not generally considering non-cash benefits in public charge inadmissibility determinations may reduce chilling effects for low-income individuals enrolling or remaining enrolled in such programs and may indirectly support children and families' access to health care, nutrition, and housing assistance by excluding those benefits from consideration for a public charge inadmissibility determination. This final rule also includes a definition of receipt of public benefits that clarifies that only public cash assistance for income maintenance and long-term institutionalization at government expense received by a noncitizen applying for admission or adjustment of status will be considered in a public charge inadmissibility determination, but not if received by a noncitizen's family members. The final rule similarly clarifies that applying for these public benefits on behalf of another would not be considered as receiving the public benefit unless the noncitizen is also a named recipient.

When issuing the 2019 Final Rule, DHS determined that the 2019 Final Rule might result in decreased disposable income and increased the poverty of certain families and children, including U.S. citizen children, and that the rule would likely increase the number of noncitizens found inadmissible on the public charge ground. DHS ultimately decided that it was justified in issuing the 2019 Final Rule notwithstanding the potential financial impact on the family and increase in the number of inadmissibility determinations.

In contrast, the determination reflected in the NPRM that no Family Policy Assessment is required was based on the fact that DHS proposed a rule that, as it relates to the potential effects on the family, is substantively similar to how DHS is currently administering the public charge ground of inadmissibility under section 212(a)(4) of the INA, consistent with the 1999 Interim Field Guidance. Therefore, DHS determined that this rule would not affect family well-being.

Comment: One commenter disagreed that the proposed rule does not affect family well-being due to the documented chilling effects and families subsequently choosing to not enroll eligible children into public benefits programs.

Response: DHS acknowledges the documented chilling effects described by the commenter. However, the documented chilling effects are impacts of previous public charge policies enacted by the now vacated 2019 Final Rule. This final rule is similar to the approach outlined in the 1999 Interim Field Guidance, which is the basis for USCIS' current operations regarding public charge. Relative to the No Action Baseline of this final rule, DHS does not believe this new rule would have a substantial chilling effect. Therefore, DHS determined that this rule will not have a deleterious effect on family well-being.

Q. Out-of-Scope Comments

Comment: Several commenters provided comments outside the scope of this rulemaking. These included support for increasing the capacity of the Executive Office for Immigration Review (EOIR). Another commenter stated that immigrants who come to the United States have lower delinquency and are better behaved than individuals who are raised in the United States. One commenter indicated that benefit-granting agencies should improve their systems to better detect fraud used to

[561] 87 FR at 10667 (Feb. 24, 2022).

obtain benefits. This commenter also indicated that the FPG should be adjusted to account for current inflation.

Response: The comments are outside the scope of the rulemaking.

Comment: One commenter stated the rule punishes victims of the United States' historical economic and immigration policies with respect to Mexico, which, according to the commenter, damaged the Mexican economy and encouraged Mexicans to leave their country and seek assistance in the United States.

Response: To the extent that the comment seeks changes in U.S. policy towards Mexico or an assessment of historical policies, it is outside the scope of the rulemaking.

Comment: One commenter suggested a range of outreach activities to educate immigrants and their families about this rulemaking, including joint grant initiatives between multiple federal agencies.

Response: Comments about such implementation activities are outside the scope of the rulemaking, but DHS has taken the comment under advisement as it relates to post-rule implementation and outreach activities.

Comment: Two commenters suggested allowing immigrants to apply for citizenship at the U.S. border, with one commenter proposing the rule allow immigrants to file for citizenship as a family group, rather than individually, in order to slow the separation of families at the border and allow families to enter the United States together. Another commenter suggested a program through which noncitizens could obtain citizenship through volunteering in communities. Similarly, one commenter stated that systemic changes in the immigration system are needed and stated that DHS should consider the disadvantages of returning to a system created in the 1990s and consider creating a path for undocumented immigrants to become full citizens to improve the efficiency of the labor market, allow for creation of new businesses, and the filling in of less desirable labor positions.

Response: The comments are outside the scope of the rulemaking.

Comment: One commenter suggested immigrants be provided easier access to jobs that accept non-English speaking workers. Similarly, a commenter stated that the solution to allow immigrants to help with the economy is to give immigrants access to government-funded job opportunities such as community service.

Response: The commenters' proposals are outside the scope of the rulemaking.

Comment: One commenter questioned why DHS is making immigration more difficult when many terrorist plots and attacks in the United States are committed by white supremacists and other like-minded extremists born in the United States. This commenter also stated that the U.S. economy will be negatively impacted if immigrant workers feel that their livelihoods are in jeopardy. Another commenter also stated that immigration regulations were too strict, and described a family circumstance involving a completely different provision of the immigration laws.

Response: To the extent that the comments suggest that DHS should avoid enforcing the public charge ground of inadmissibility entirely, DHS has addressed them earlier in the preamble. To the extent that the comments suggest revising implementation of other provisions of the INA or providing a greater sense of security to immigrants in their work, they are outside the scope of the rulemaking.

Comment: One commenter suggested DHS work with the Rehabilitation Services Administration to ensure immigrants with disabilities applying for admission can access vocational rehabilitation services that will help them support themselves.

Response: While interagency discussions are a part of the internal deliberative process associated with the rulemaking, this suggestion is outside the scope of this rule.

Comment: One commenter indicated that any changes made to a public charge inadmissibility determination by DHS should be made in an identical manner by DOS in the Foreign Affairs Manual. Another commenter similarly requested DOS also participate in rulemaking to establish a consistent public charge inadmissibility determination process and reduce burdens on applicants.

Response: This rule only pertains to DHS operations, and regulates noncitizens who seek admission into the United States as a nonimmigrant, or as an immigrant, or who seek adjustment of status.

IV. Statutory and Regulatory Requirements

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

E.O. 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, to the extent permitted by law, to proceed only if the benefits justify the costs. They also direct agencies to select regulatory approaches that maximize net benefits while giving consideration, to the extent appropriate and consistent with law, to values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. In particular, E.O. 13563 emphasizes the importance of not only quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility, but also considering equity, fairness, distributive impacts, and human dignity.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this final rule is an economically significant regulatory action under section 3(f)(1) of E.O. 12866. Accordingly, OMB has reviewed this regulation.

1. Summary of the Final Rule

The final rule describes how DHS will determine whether a noncitizen is inadmissible because they are likely at any time to become a public charge (*i.e.,* likely to become primarily dependent on the government for subsistence). The final rule also clarifies the types of public benefits that are considered in public charge inadmissibility determinations. This rule will limit such consideration to public cash assistance for income maintenance and long-term institutionalization at government expense.[562] [563] Public cash assistance for income maintenance would include cash assistance provided under TANF, SSI, and general assistance. This is the same list of public benefits that are considered under the 1999 Interim Field Guidance, which served as the operative standard for nearly 20 years until the 2019 Final Rule (no longer in effect) was promulgated. This rule also defines key terms and codifies a list of categories of noncitizens who are statutorily exempt from the public charge ground of inadmissibility, or eligible for a waiver.

The final rule uses a framework similar to the one set forth in the 1999 Interim Field Guidance, under which officers consider past or current receipt of certain public benefits, as well as the statutory minimum factors (the noncitizen's age; health; family status; assets, resources, and financial status;

[562] *See* 8 CFR 212.21(a).

[563] As noted in the public benefits section above, DHS is replacing the term ''institutionalization for long-term care at government expense'' with ''long-term institutionalization,'' which better describes the specific types of services covered and the duration for receiving them. The terms are not meant to be substantively different.

and education and skills) and the Affidavit of Support Under Section 213A of the INA, where required, as part of a totality of the circumstances framework. The final rule maintains the language set forth in the 1999 Interim Field Guidance that reiterated more specifically the general requirement that every written denial decision issued by USCIS based on the public charge ground of inadmissibility include a discussion of each of the statutory factors.

The final rule establishes three exclusions from consideration of public benefits received by certain noncitizens. First, the final rule clarifies that, in any application for admission or adjustment of status in which the public charge ground of inadmissibility applies, DHS will not consider any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility. Second, when making a public charge inadmissibility determination under the final rule, DHS also will not consider any public benefits that were received by noncitizens who are eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the INA, 8 U.S.C. 1157, including services described under section 412(d)(2) of the INA, 8 U.S.C. 1522(d)(2), provided to an ''unaccompanied alien child'' as defined under section 462(g)(2) of the HSA, 6 U.S.C. 279(g)(2). This exclusion would only apply to those categories of noncitizens who are eligible for all three of the types of support listed (resettlement assistance, entitlement programs, and other benefits) typically reserved for refugees. Third, applying for a public benefit on one's own behalf or on behalf of another would not constitute receipt of public benefits by the noncitizen applicant. This definition would make clear that the noncitizen's receipt of public benefits solely on behalf of another, or the receipt of public benefits by another individual (even if the noncitizen assists in the application process), would also not constitute receipt of public benefits by the noncitizen.

Summary of Changes From the NPRM to the Final Rule

In light of public comments, DHS is making several changes from the NPRM to the final rule. DHS does not expect these changes will affect the population consisting of individuals who are applying for adjustment of status using Form I–485 as these changes are additional provisions to include a public charge bond process, additional definitions, and clarifications pertaining to the statutory minimum factors and consideration of receipt of public benefits. The rest of this section discusses these changes in detail.

DHS is adding a provision in this rule that would permit officers to consider offering public charge bonds, in its discretion, to adjustment of status applicants inadmissible only under section 212(a)(4) of the INA, 8 U.S.C. 1183.[564] DHS is including provisions in the rule pertaining to public charge bond cancellation and breach determination. These provisions will ensure that DHS is exercising its discretionary public charge bond authority in the context of adjustment of status applications and will ensure that public charge bonds remain operationally feasible in such cases. Also, these provisions will enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. With the creation of a form designated by USCIS for the purpose of public charge bond and using the Form I–356, Request for Cancellation of Public Charge Bond, DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population of using the public charge bond form designated by USCIS and Form I–356 to be de minimis. DHS expects the population of using these forms to be de minimis because while the 2019 Final Rule was in effect DHS did not receive any filings of the public charge bond form and I–356 form.

Following review of public comments, DHS is also modifying provisions related to statutory minimum factors (health, family status, assets, resources, and financial status, and education and skills) from the NPRM.

DHS will consider the noncitizen's health using the Report of Medical Examination and Vaccination record (Form I–693). This report of medical examination would normally be in an adjustment of status applicant's record because an adjustment applicant is required to undergo an immigration medical examination conducted by a USCIS-designated civil surgeon or the applicant is exempt from the Form I–693 requirement because they were previously examined by a panel physician prior to entering the United States and has a report of medical examination completed by a panel physician overseas in their record. Since the Form I–693 is already required for filers of Form I–485, using the Form I–693 as evidence for the noncitizen's health condition does not impose additional direct cost to the public. This change will provide direct benefits to the public by reducing uncertainty over what DHS will consider as part of the health factor, while minimizing burdensome information collection associated with this factor. DHS will consider the noncitizen's family status using household size. DHS will consider the noncitizen's assets, resources, and financial status using household's income, assets, and liabilities (excluding any income from public benefits listed in 8 CFR 212.21(b) and income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales). DHS will consider the noncitizen's education and skills using degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates. DHS is adding a definition of household to be used in connection with the family status and assets, resources, and financial status factors. For the changes to provisions addressing these statutory minimum factors to identify information relevant to such factors, DHS made changes to Form I–485 to effectuate the relevant information collection. In the final rule compared to the NPRM, DHS has reduced the estimated increase in the time burden for completing the revised Form I–485 from 1.5 hours to 0.75 hours (thereby reducing the estimated total time burden for completing the revised Form I–485 from 7.92 hours to 7.17 hours). Open-ended questions requiring narrative-style responses that were proposed in the information collection instrument (Form I–485) associated with the NPRM have been changed to multiple-choice style questions that will require less time for an applicant to answer. Therefore, the final rule cost estimate has changed since the NPRM cost estimate. DHS estimates the annual direct cost of the final rule will be approximately $6,435,755, rather than $12,856,152, based on the change in the opportunity cost for the I–485.

Finally, in the final rule, DHS clarified in the regulatory text that DHS will not consider the receipt of, or certification or approval for future receipt of, public benefits not referenced in 8 CFR 212.21(b) or (c), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits,

[564] 8 CFR 213.1.

any benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits. This clarification will reduce uncertainty and confusion for those who make decisions on whether to adjust status or to enroll or disenroll in public benefit programs.

This final rule makes important clarifications and changes as compared to the 1999 Interim Field Guidance. This rule clarifies DHS's approach to consideration of disability and long-term institutionalization at government expense; states a bright-line rule against considering the receipt of public benefits by an applicant's dependents (such as a U.S. citizen child in a mixed-status household); and changes the Form I–485 to collect additional information relevant to the public charge inadmissibility determination. DHS also added streamlined provisions to clarify acceptance, form, and amount of USCIS public charge bonds, as well as cancellation of public charge bonds. Finally, later in this preamble, in response to public comments, DHS further clarifies that primary dependence connotes significant reliance on the government for support and means something more than dependence that is merely transient or supplementary.

2. Summary of the Costs and Benefits of the Final Rule

The final rule will result in new costs, benefits, and transfers. To provide a full understanding of the impacts of the final rule, DHS considers the potential impacts of this final rule relative to two baselines, as well the potential impact of a regulatory alternative. The No Action Baseline represents a state of the world under the 1999 Interim Field Guidance, which is the policy currently in effect. The second baseline is the Pre-Guidance Baseline, which represents a trajectory established before the issuance of the 1999 Interim Field Guidance (*i.e.,* a state of the world in which the 1999 Interim Field Guidance did not exist). The alternative analysis presented below relates to an alternative consistent with the 2019 Final Rule.

Relative to the No Action Baseline, the primary source of quantified new direct costs for the final rule is the increase in the time required to complete Form I–485. DHS estimates that the final rule will impose additional new direct costs of approximately $6,435,755 annually to applicants filing Form I–485. In addition, the final rule results in an annual savings for a subpopulation of affected individuals: T nonimmigrants applying for adjustment of status will no longer need to submit Form I–601 to seek a waiver of the public charge ground of inadmissibility. DHS estimates the total annual savings for this population will be approximately $15,359. DHS estimates that the total annual net costs will be approximately $6,420,396.[565]

Over the first 10 years of implementation, DHS estimates the total net costs of the final rule will be approximately $64,203,960 (undiscounted). In addition, DHS estimates that the 10-year discounted total net costs of this final rule will be approximately $54,767,280 at a 3-percent discount rate and approximately $45,094,175 at a 7-percent discount rate.

DHS expects the primary benefit of this final rule to be the non-quantified benefit of increased clarity in the rules governing public charge inadmissibility determinations. By codifying into regulations, the current practice under the No Action Baseline (the 1999 Interim Field Guidance) with some changes, the final rule reduces uncertainty and confusion.

The following two tables provide a more detailed summary of the provisions and their impacts relative to the No Action Baseline and Pre-Guidance Baseline, respectively.

[565] Calculations: Total annual net costs ($6,420,396) = Total annual costs ($6,435,755) – Total annual savings ($15,359).

Table 4. Summary of Major Provisions and Economic Impacts of the Rule, FY 2022 – FY 2032 (Relative to the No Action Baseline)		
Provision	**Purpose**	**Expected Impact of Rule**
Revising 8 CFR 212.18. Application for Waivers of Inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of noncitizens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** Cost Savings: • Total savings of approximately $15,359 in costs to the government (reimbursed by fees paid by applicants) and reduced time burden annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I-601 seeking a waiver of public charge ground of inadmissibility. Costs • None
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of noncitizens that are subject to the public charge inadmissibility determination.	**Qualitative**: Benefits • The rule will reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. Costs • None
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including "likely at any time to become a public charge," "receipt (of public benefits)," "public cash assistance for income maintenance," "long-term institutionalization at government expense," and "government."	**Quantitative**: Benefits • None Costs • None **Qualitative**: Benefits • None Costs • None **Transfer Payments**: • The final rule could lead to an increase in transfer payments,

		primarily due to increased public benefit participation by individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations.
Adding 8 CFR 212.22. Public charge inadmissibility determination.	To clarify the prospective totality of the circumstances analysis, the analysis of the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, consideration of an applicant's current and/or past receipt of public benefits.	**Quantitative**: Benefits • None Costs • Total annual direct costs of the rule will be approximately $6,435,755 to applicants applying to adjust status using Form I-485 with an increased time burden. **Qualitative**: Benefits • By clarifying standards governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the rule may reduce time spent by the affected population in deciding whether to apply for adjustment of status or enroll in or disenroll from public benefit programs. Costs • Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the rule and subsequently

		determine applicability of the rule's provisions. DHS estimates that the time to read this rule in its entirety will be 8 to 9 hours per individual. **Transfer Payments**: • The rule could lead to an increase in transfer payments associated with public benefit participation, predominantly by individuals who would not be subject to the public charge ground of inadmissibility in any event. This increase would be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility, and which benefits are considered under this rule.
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	**Qualitative**: <u>Benefits</u> • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. <u>Costs</u> • None **Transfer Payments**: • The rule could lead to an increase in public benefit participation and an increase in transfer payments. Some noncitizens who are in a status that is exempt from the public charge ground of inadmissibility or who are made eligible by Congress for certain benefits made available to refugees, may be more likely to participate in public benefit programs for the limited period that they are in such status or eligible for such benefits.

Amending 8 CFR 103.6. Immigration bonds. Amending 8 CFR 213.1. Admission under bond or cash deposit.	To clarify cancellation and breach of public charge bonds. To add specifics to the public charge bond provision for noncitizens who are seeking adjustment of status for a public charge bond.	**Qualitative**: Benefits • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. Costs • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.
Source: USCIS analysis.		

Table 5. Summary of Major Provisions and Economic Impacts of the Rule, FY 2022 – FY 2032 (Relative to the Pre-Guidance Baseline)		
Provision	**Purpose**	**Expected Impact of Rule**
Revising 8 CFR 212.18. Application for waivers of inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of noncitizens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** Cost Savings: • Total savings of approximately $15,359 in costs to the government (reimbursed by fees paid by applicants) and reduced time burden annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I-601 seeking a waiver of public charge ground of inadmissibility. Costs • None
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of noncitizens that are subject to the public charge inadmissibility determination.	**Qualitative**: Benefits • The rule would reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. Costs • None
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including "likely at any time to become a public charge," "receipt (of public benefits)," "public cash assistance for income maintenance," "long-term institutionalization at government expense," and "government," and "household."	**Quantitative**: Benefits • None Costs • None **Qualitative**: Benefits • None Costs • None **Transfer Payments**: • The final rule could lead to an increase in transfer payments,

		primarily due to increased public benefit participation by individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations.
Adding 8 CFR 212.22. Public charge inadmissibility determination.	To clarify the prospective totality of the circumstances analysis, the analysis of the statutory minimum factors and the Affidavit of Support Under Section 213A of the INA, consideration of an applicant's current and/or past receipt of public benefits.	**Quantitative**: Benefits • None Costs • Total annual direct costs of the rule will be approximately $6,435,755 to applicants applying to adjust status using Form I-485 with an increased time burden. **Qualitative**: Benefits • By clarifying standards governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the rule may reduce time spent by the affected population in deciding whether to apply for adjustment of status or enroll in or disenroll from public benefit programs. Costs • Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the rule and subsequently

		determine applicability of the rule's provisions. DHS estimates that the time to read this rule in its entirety will be 8 to 9 hours per individual. **Transfer Payments**: • The rule could lead to an increase in transfer payments associated with public benefit participation, predominantly by individuals who are not subject to the public charge ground of inadmissibility in any event. This increase would be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility and which benefits are considered under the rule.
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	**Qualitative**: <u>Benefits</u> • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. <u>Costs</u> • None **Transfer Payments**: • The primary economic impact of the rule relative to the Pre-Guidance Baseline will be an increase in transfer payments from the Federal and State governments to individuals. However, DHS is unable to quantify these effects given how much time has passed between the issuance of the 1999 Interim Field Guidance and this rulemaking. • The rule could lead to an increase in public benefit participation and an increase in transfer payments. Some noncitizens who are in a status that is exempt from the public charge ground

		of inadmissibility or who are made eligible by Congress for certain benefits made available to refugees, may be more likely to participate in public benefit programs for the limited period that they are in such status or eligible for such benefits.
Amending 8 CFR 103.6. Immigration bonds. Amending 8 CFR 213.1. Admission under bond or cash deposit.	To clarify cancellation and breach of public charge bonds. To add specifics to the public charge bond provision for noncitizens who are seeking adjustment of status for a public charge bond.	**Qualitative**: Benefits • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. Costs • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.
Source: USCIS analysis.		

In addition to the impacts summarized above, and as required by OMB Circular A–4, the following two tables present the prepared accounting statement showing the costs associated with this final rule.[566]

Table 6. OMB A-4 Accounting Statement ($ in millions, 2021; No Action Baseline, FY 2022 – FY 2032)				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A			RIA
Annualized quantified, but un-monetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	• By clarifying rules governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the final rule will reduce time spent by the affected population who are making decisions on applying for adjustment of status or enrolling or disenrolling in public benefit programs. • The final rule will reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS.			RIA
COSTS				
Annualized monetized net costs (discount rate in parenthesis)	(3%) $6.4	N/A	N/A	
	(7%) $6.4	N/A	N/A	RIA
Annualized quantified, but un-monetized, costs	N/A			

[566] *See* OMB, ''Circular A–4'' (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Qualitative (unquantified) costs	• Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the final rule and subsequently determine applicability of the rule's provisions. DHS estimates that the time to read this final rule in its entirety will be 8 to 9 hours per individual. DHS estimates that the opportunity cost of time will range from about $316.40 to $355.95 per individual who will read and review the final rule. However, DHS cannot determine the number of individuals who will read the final rule. • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.	RIA

TRANSFERS

Relative to the No Action Baseline, the final rule could lead to an increase in transfer payments, primarily due to increased public benefit participation by individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations. This increase in transfer payments would also be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility, and which benefits are considered under this rule.

Annualized monetized transfers: "on budget"	N/A	N/A	N/A	RIA
From whom to whom?				RIA
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	
From whom to whom?				

Miscellaneous Analyses/Category	***Effects***	***Source Citation***
Effects on State, local, and/or Tribal governments	The potential increase in transfer payments will produce indirect impacts such as administrative costs to the State and local benefit granting agencies. However, DHS is	None

	unable to quantify the net effect on States' administrative costs.	
Effects on small businesses	None	RIA
Effects on wages	None	None
Effects on growth	None	None

Table 7. OMB A-4 Accounting Statement ($ in millions, 2021; Pre-Guidance Baseline, FY2022-FY2032)				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A			RIA
Annualized quantified, but un-monetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	• By clarifying rules governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the final rule will reduce time spent by the affected population who are making decisions on applying for adjustment of status or enrolling or disenrolling in public benefit programs. • The final rule will reduce uncertainty and confusion among the affected population by providing clarity on inadmissibility on the public charge ground. • The rule will reduce uncertainty and confusion among the affected population by providing outlines of exemptions and waivers for inadmissibility on the public charge ground. • Potentially enable a noncitizen who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS.			RIA
COSTS				
Annualized monetized costs (discount rate in parenthesis)	(3%) $ 6.4	N/A	N/A	
	(7%) $ 6.4	N/A	N/A	RIA
Annualized quantified, but un-monetized, costs	N/A			

Qualitative (unquantified) costs	• Costs to various entities and individuals associated with regulatory familiarization with the rule. Costs will include the opportunity cost of time to read the final rule and subsequently determine applicability of the rule's provisions. DHS estimates that the time to read this final rule in its entirety will be 8 to 9 hours per individual. DHS estimates that the opportunity cost of time will range from about $316.40 to $355.95 per individual who will read and review the final rule. However, DHS cannot determine the number of individuals who will read the final rule. • DHS expects that there will be a cost to bond applicants associated with completing the forms. However, DHS expects the population using the public charge bond form and bond cancellation form to be de minimis.	RIA

TRANSFERS

- The primary economic impact of the rule relative to the Pre-Guidance Baseline will be an increase in transfer payments from the Federal and State governments to individuals. However, DHS is unable to quantify these effects given how much time has passed between the issuance of the 1999 Interim Field Guidance and this rulemaking.
- The final rule could lead to an increase in transfer payments, primarily due to increased public benefit participation by individuals who are not subject to the public charge ground of inadmissibility, but for whom the final rule offers some additional measure of clarity or certainty regarding the immigration-related effects of public benefits enrollment. This could include, for instance, U.S. citizen children in mixed status families, who would receive greater assurance that their receipt of public benefits may not be considered in their relatives' public charge inadmissibility determinations. This increase in transfer payments would also be the result of better clarity around which noncitizens are exempt from the public charge ground of inadmissibility, and which benefits are considered under this rule.

Annualized monetized transfers: "on budget"	N/A	N/A	N/A	RIA
From whom to whom?				RIA
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	
From whom to whom?				

Miscellaneous Analyses/Category	*Effects*	*Source Citation*
Effects on State, local, and/or Tribal governments	DHS believes that the rule may have indirect effects on State, local, and/or Tribal government, but DHS does not know the full extent of the effect on State, local, and/or Tribal governments as compared to the Pre-Guidance Baseline. There may be costs to various entities associated with familiarization of and compliance with the provisions of the rule, including salaries and opportunity costs of time to monitor and understand regulation requirements, disseminate information, and develop or modify information technology (IT) systems as needed. It may be necessary for many government agencies to update guidance documents, forms, and web pages. It may be necessary to prepare training materials and retrain staff at each level of government, which will require additional staff time and will generate associated costs. However, DHS is unable to quantify these effects.	RIA
Effects on small businesses	DHS believes that the rule may have indirect effects on small businesses and nonprofits in the form of increased revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits. However, DHS is unable to quantify these effects.	RIA
Effects on wages	None	None
Effects on growth	None	None

3. Background and Purpose of the Rule

As discussed in the preamble, DHS seeks to administer the public charge ground of inadmissibility in a manner that will be clear and comprehensible and will lead to fair and consistent adjudications. Under the INA, a noncitizen who, at the time of application for a visa, admission, or adjustment of status, is deemed likely at any time to become a public charge is ineligible for a visa, inadmissible, or ineligible for adjustment of status.[567]

While the INA does not define public charge, Congress has specified that, when determining if a noncitizen is likely at any time to become a public charge, immigration officers must, at a minimum, consider certain factors, namely the noncitizen's age; health; and family status; assets, resources, and financial status; and education and skills.[568] Additionally, DHS may consider any affidavit of support submitted under section 213A of the INA, 8 U.S.C. 1183a, on behalf of the applicant when determining whether the applicant may become a public charge.[569] For most family-based and some employment-based immigrant visas or adjustment of status applications, applicants must have a sufficient affidavit of support or they will be found inadmissible as likely to become a public charge.[570]

The estimation of costs and benefits for this final rule focuses on individuals applying for adjustment of status with USCIS using Form I–485. Such individuals would be applying from within the United States, rather than applying for a visa from a DOS consular officer at a U.S. embassy or consulate abroad. Moreover, DHS notes that CBP may incur costs pursuant to this final rule, but it is unable to determine this potential cost at this time due to data limitations. DHS is not able to quantify the number of noncitizens who would possibly be deemed inadmissible at or between the ports of entry based on a public charge determination pursuant to this final rule. DHS is qualitatively acknowledging this potential impact.

4. Population

This final rule will affect individuals who are present in the United States who are seeking adjustment of status to that of a lawful permanent resident. By statute, an individual who is seeking adjustment of status and is at any time likely to become a public charge is ineligible for such adjustment, unless the individual is exempt from or has received a waiver of the public charge ground of inadmissibility.[571] The grounds of inadmissibility set forth in section 212 of the INA, 8 U.S.C. 1182, also apply when certain noncitizens

[567] *See* INA sec. 212(a)(4); 8 U.S.C. 1182(a)(4).

[568] *See* INA sec. 212(a)(4)(B)(i); 8 U.S.C. 1182(a)(4)(B)(i).

[569] *See* INA sec. 212(a)(4)(B)(ii). When required, the applicant must submit Form I–864, Affidavit of Support Under Section 213A of the INA.

[570] *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[571] *See* INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4).

seek admission to the United States, whether for a temporary purpose or permanently. However, the public charge inadmissibility ground (including ineligibility for adjustment of status) does not apply to all applicants since there are various categories of applicants that Congress expressly exempted from the public charge inadmissibility ground. Within USCIS, this final rule will affect individuals who apply for adjustment of status because these individuals would be required to be reviewed for a determination of inadmissibility based on public charge grounds as long as the individual is not in a category of applicant that is exempt from the public charge ground of inadmissibility. DHS notes that the population estimates are based on noncitizens present in the United States who are applying for adjustment of status and, due to data limitations, does not include individuals seeking admission at or between a port of entry. These limitations could result in underestimation of the cost, benefit, or transfer payments of the final rule. However, DHS is unable to quantify the magnitude.

a. Population Seeking Adjustment of Status

The population affected by this rule consists of individuals who are applying for adjustment of status using Form I–485. Under the final rule, a subset of these individuals (*i.e.,* those who are not exempt from the public charge ground of inadmissibility) will undergo review for determination of inadmissibility based on public charge grounds, unless an individual is in a category of applicant that is exempt from the public charge ground of inadmissibility. The following table shows the total number of Form I–485 applications received for FY 2014 to FY 2021. DHS selects the period FY 2014–FY 2018 to project the number of applications to be filed for the next 10 years for the reasons discussed below. Between FY 2014 and FY 2018, the population of individuals applying for adjustment of status ranged from a low of 637,138 in FY 2014 to a high of 763,192 in FY 2017. In addition, the average population of individuals who applied for adjustment of status over this period was 690,837.

Table 8. Total Population that Applied for Adjustment of Status, FY 2014 to FY 2021.

Fiscal Year	Total Population Applying for Adjustment of Status
2014	637,138
2015	638,018
2016	711,431
2017	763,192
2018	704,407
2019	600,079
2020	577,920
2021	726,566
Total (FY 2014 – FY 2018)	**3,454,186**
5-year average (FY 2014 – FY 2018)	**690,837**

Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022)

For this analysis, DHS projects the affected population for the 10-year period from the beginning of FY 2022. DHS bases its population projection on the historical number of Form I–485 applications received over the period FY 2014–FY 2018.[572]

[572] USCIS excluded data from FY 2019–FY 2021 due to data anomalies similar to trends that affected other form types during this timeframe (such as Form I–765, Form N–400, Form I–130, and Form I–131). Generally, the trend for these forms is a peak in receipts in FY 2016–2018, followed by a decrease in FY 2019, a sharp reduction at the beginning of the pandemic, and a recovery to previous levels since that time. As shown in the table, the population of adjustment of status applicants in FY 2019 and FY 2020 decreased significantly, followed by an increase beginning at the end of FY 2020 and beginning of FY 2021. By far the most significant increase in FY 2021 occurred in October 2020, during which receipts reached 184,779, as compared to 86,911 in October 2019, and 55,483 in October 2018. The level of receipts in October 2020 was substantially higher than the level of receipts for any other month since FY 2014. This increase in receipts appears to have been driven in part by the publication of the October 2020 Visa Bulletin by DOS, which allowed many noncitizens to apply for adjustment of status in the employment-based categories. Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022); USCIS analysis of data provided by USCIS, Office of Performance and Quality (Aug. 15, 2022).

i. Exemptions From Determination of Inadmissibility Based on Public Charge Ground

There are exemptions and waivers for certain categories of noncitizens that are not subject to a determination of inadmissibility based on the public charge ground. The following table shows the classes of applicants for admission, adjustment of status, or registry according to statute or regulation that are exempt from inadmissibility based on the public charge ground.

Table 9. Categories of Applicants for Admission, Adjustment of Status, or Registry Exempt from Inadmissibility Based on Public Charge According to Statute or Regulation.	
• Refugees and asylees as follows: at the time admission under section 207 of the Act (refugees) or grant under section 208 of the Act (asylees); for both refugees and asylees, at the time of adjustment of status to lawful permanent resident under sections 207(c)(3) and 209(c) of the Act;	• Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202, 101 Stat. 1329-183, sec. 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note 5;
• Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Pub. L. 109–163 (Jan. 6, 2006), as amended, section 602(b) of the Afghan Allies Protection Act of 2009, Pub. L. 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended, Pub. L. 110-181 (Jan. 28, 2008);	• Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;
• Aliens applying for adjustment of status under the Cuban Adjustment Act, Pub. L. 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;	• Nicaraguans and other Central Americans applying for adjustment of status under section 202(a) and section 203 of NACARA, Pub. L. 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;
• Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;	• Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

• Special immigrant juveniles as described in section 245(h) of the Act;	• Aliens who entered the United States prior to January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under section 249 of the INA, 8 U.S.C. 1259, and 8 CFR part 249 (Registry);
• Aliens applying for or reregistering for Temporary Protected Status, pursuant to section 244(c)(2)(ii) of the INA, 8 U.S.C. 1254a(c)(2)(ii) and 8 CFR 244.3(a)	• Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983)
• Nonimmigrants described in section 101(a)(15)(A)(i) and (ii) of the INA, 8 U.S.C. 1101(a)(15)(A)(i) and (ii) (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), pursuant to section 102 of the INA, 8 U.S.C. 1102, and 22 CFR 41.21(d)	• Nonimmigrants classifiable as C-2 (alien in transit to U.N. Headquarters) or C-3 (foreign government official), pursuant to 22 CFR 41.21(d)
• Nonimmigrants described in section 101(a)(15)(G)(i), (ii), (iii), and (iv), of the INA (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), 8 U.S.C. 1101(a)(15)(G)(i), (ii), (iii), and (iv), pursuant to section 102 of the INA, 8 U.S.C. 1102, and 22 CFR 41.21(d)	• Nonimmigrants classifiable as a NATO representatives and related categories, pursuant to 22 CFR 41.21(d)
• Individuals with a pending application that sets forth a prima facie case for eligibility for nonimmigrant status under section 101(a)(15)(T) of the INA (Victim of Severe Form of Trafficking), 8 U.S.C. 1101(a)(15)(T), pursuant to section 212(d)(13)(A) of the INA, 8 U.S.C. 1182(d)(13)(A), as well as individuals in T nonimmigrant status who are seeking an	• Petitioners for, or individuals who are granted, nonimmigrant status under section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U) (Victim of Criminal Activity), pursuant to section 212(a)(4)(E)(ii) of the INA, 8 U.S.C. 1182(a)(4)(E)(ii), who are seeking an immigration benefit for which inadmissibility is required

immigration benefit for which inadmissibility is required	
• Certain Syrian nationals adjusting status under Pub. L. 106-378	• Applicants adjusting status who qualify for a benefit under Liberian Refugee Immigration Fairness, pursuant to Section 7611 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Pub. L. 116-92, 113 Stat. 1198, 2309 (Dec. 20, 2019), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension)
• Noncitizens who are VAWA self-petitioners as defined in section 101(a)(51) of the INA, 8 U.S.C. 1101, pursuant to section 212(a)(4)(E)(i) of the INA, 8 U.S.C. 1182(a)(4)(E)(i)	• A "qualified alien" described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), in accordance with section 212(a)(4)(E)(iii) of the Act;
• Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents)	• American Indians Born in Canada as described in section 289 of the INA, 8 U.S.C. 1359;
• Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Pub. L. 106-429 under 8 CFR 245.21	• Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989, to December 31, 1991, under section 646(b) of IIRIRA, Pub. L. 104-208, div. C, title VI, subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note
• Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).	
Source: USCIS.	

To estimate the annual total population of individuals seeking to adjust status who would be subject to review for inadmissibility based on the public charge ground, DHS examined the annual total population of

individuals who applied for adjustment of status for FY 2014–FY 2018. As noted above, the most recent fiscal years, FY 2019–FY 2021, are not considered for this analysis because they may include data anomalies.

For each fiscal year, DHS removed individuals from the population whose category of applicants is exempt from review for inadmissibility on the public charge ground, as shown in Table 9 below, leaving the total population that would be subject to such review. Further discussion of these exempt categories can be found in the preamble.

Table 10 shows the total estimated population of individuals seeking to adjust status under a category of applicant that is exempt from review for inadmissibility on the public charge ground for FY 2014–FY 2018 as well as the total estimated population that would be subject to public charge review.[573] In FY 2018, for example, the total number of persons who applied for adjustment of status across various classes of admission was 704,407. After removing individuals from this population whose category of applicant is exempt from review for inadmissibility on the public charge ground, DHS estimates the total population of adjustment of status applicants in FY 2018 who would be subject to review for inadmissibility on the public charge ground is 524,228.[574]

Table 10. Total Estimated Population of Individuals Seeking Adjustment of Status Who Were Exempt from or Subject to Public Charge Inadmissibility.

Fiscal Year	Total Population Applying for Adjustment of Status	Total Population Seeking Adjustment of Status that is Exempt from Review for Inadmissibility on the Public Charge Ground	Total Population Subject to Review for Inadmissibility on the Public Charge Ground
2014	637,138	178,007	459,131
2015	638,018	170,681	467,337
2016	711,431	196,090	515,341
2017	763,192	221,629	541,563
2018	704,407	180,179	524,228
Total	**3,454,186**	**946,586**	**2,507,600**
5-year average	**690,837**	**189,317**	**501,520**

Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022).

DHS estimates the projected annual average total population of adjustment of status applicants that would be subject to review for inadmissibility on the public charge ground is 501,520. This estimate is based on the 5-year average of the annual estimated total population subject to review for inadmissibility on the public charge ground from FY 2014–FY 2018. Over this 5-year period, the estimated population of individuals who applied for adjustment of status subject to review for inadmissibility on the public charge ground ranged from a low of 459,131 in FY 2014 to a high of 541,563 in FY 2017. DHS notes that the population estimates are based on noncitizens present in the United States who are applying for adjustment of status, rather than noncitizens who apply for an immigrant visa through consular processing at a U.S. embassy or consulate abroad.

ii. Requirement To Submit an Affidavit of Support Under Section 213A of the INA

Certain noncitizens seeking immigrant visas or adjustment of status are required to submit an Affidavit of Support Under Section 213A of the INA executed by a sponsor on their behalf. This requirement applies to most family-sponsored immigrants and some employment-based immigrants.[575] Even within the family-sponsored and employment-based classes of admission, some noncitizens are not required to submit an Affidavit of Support Under Section 213A executed by a sponsor on their behalf. A failure to meet the requirement for a sufficient Affidavit of Support Under Section 213A of the INA will result in the noncitizen being found inadmissible under the public charge ground of inadmissibility without review of the statutory minimum factors discussed above.[576] When a sponsor executes an Affidavit of Support Under Section 213A of the INA on behalf of an applicant, they establish a legally enforceable contract between the sponsor and the U.S. Government with an obligation to financially support the applicant and reimburse benefit granting agencies if the sponsored

[573] Calculation of total estimated population that would be subject to public charge review: (Total Population Applying for Adjustment of Status) − (Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility) = Total Population Subject to Public Charge Review for Inadmissibility.

[574] Calculation of total population subject to public charge review for inadmissibility for fiscal year 2018: 704,407 − 180,179 = 524,228.

[575] *See* INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[576] *See* INA secs. 212(a)(4)(C) and (D), 213A(a), 8 U.S.C. 1182(a)(4)(C) and (D), 1183a(a).

immigrant receives certain benefits during the period of enforceability.[577]

Table 11 shows the estimated total population of individuals seeking adjustment of status who were required or not required to have a sponsor execute an Affidavit of Support Under Section 213A of the INA on their behalf over the period FY 2014–FY 2018. The estimated annual average population of individuals seeking to adjust status who were required to have a sponsor submit an affidavit of support on their behalf over the 5-year period was 297,998. Over this 5-year period, the estimated total population of individuals required to submit an affidavit of support from a sponsor ranged from a low of 268,091 in FY 2014 to a high of 329,011 in FY 2017.

Table 11. Total Estimated Population of Individuals Seeking Adjustment of Status Who Are Required or Not Required to Submit an Affidavit of Support.

Fiscal Year	Total Population Not Required to Submit Affidavit of Support	Total Population Required to Submit Affidavit of Support
2014	369,047	268,091
2015	365,066	272,952
2016	391,035	320,396
2017	434,181	329,011
2018	404,865	299,542
Total	**1,964,194**	**1,489,992**
5-year average	**392,839**	**297,998**

Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022)

5. Cost-Benefit Analysis

DHS expects this final rule to produce costs and benefits associated with the procedures for administering the public charge ground of inadmissibility.

For this final rule, DHS generally uses the effective minimum wage plus weighted average benefits of $17.11 per hour ($11.80 effective minimum wage base plus $5.31 weighted average benefits) as a reasonable proxy of the opportunity cost of time for individuals who are applying for adjustment of status.[578] DHS also uses $17.11 per hour to estimate the opportunity cost of time for individuals who cannot or choose not to participate in the labor market as these individuals incur opportunity costs, assign valuation in deciding how to allocate their time, or both. This analysis uses the effective minimum wage rate since approximately 80 percent of the total number of individuals who applied for lawful permanent resident status were in a category of applicant under the family-sponsored categories (including immediate relatives of U.S. citizens) and other non-employment-based classifications such as diversity, refugees and asylees, and parolees.[579] Even when an individual is not working for wages, their time has value. For example, if someone performs childcare, housework, or other activities without paid compensation, that time still has value. Due to the wide variety of non-paid activities an individual could pursue, it is difficult to estimate the value of that time. DHS requested comments on this issue and received one comment. The commenter suggested that DHS consider rates consistent with those paid for similar work in the candidate's relevant labor market. However, the commenter did not provide any more detailed suggestions on such rates. DHS elected to use the effective minimum wage rate for this time as a general measure since it is difficult to estimate the value of the time associated with the wide variety of activities an individual could pursue.

The effective minimum wage of $11.80 is an unweighted hourly wage that does not account for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor, Bureau of Labor Statistics (BLS) report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45, which incorporates employee wages and salaries and the full cost of benefits, such as paid leave, insurance, and retirement.[580] DHS notes that there is no requirement that an individual be employed in order to file Form I–485 and many applicants may not be employed. Therefore, in this final rule, DHS calculates the total rate of compensation for individuals applying for adjustment of status as $17.11 per hour in this final rule using the benefits-to-wage multiplier, where the mean

[577] *See* INA sec. 213A(a) and (b), 8 U.S.C. 1183a(a) and (b).

[578] *See* Ernie Tedeschi, ''Americans Are Seeing Highest Minimum Wage in History (Without Federal Help),'' New York Times (Apr. 24, 2019), *https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html* (last visited Aug. 17, 2022).

[579] USCIS analysis of data provided by USCIS, Policy and Research Division (Dec. 2021).

[580] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $39.55/$27.35 = 1.446 = 1.45 (rounded). *See* BLS, Economic News Release, ''Employer Cost for Employee Compensation,'' Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, (September 2001) *https://www.bls.gov/news.release/archives/ecec_09162021.pdf* (viewed Aug. 17, 2022).

hourly wage is $11.80 per hour worked and average benefits are $5.31 per hour.[581]

a. Establishing the Baselines

DHS discusses the potential impacts of this final rule relative to two baselines. The first baseline is a No Action Baseline that represents a state of the world in which DHS is implementing the public charge ground of inadmissibility consistent with the 1999 Interim Field Guidance.

The second baseline is a Pre-Guidance Baseline, which represents a state of the world in which the 1999 NPRM,[582] the 1999 Interim Field Guidance,[583] and the 2019 Final Rule were not enacted.

b. No Action Baseline

The No Action Baseline represents the current state of the world in which DHS applies the public charge ground of inadmissibility consistent with the 1999 Interim Field Guidance. For this final rule, DHS estimates the No Action Baseline according to current operations and requirements and compares the estimated costs and benefits of the provisions set forth in this final rule to this baseline. DHS notes that costs detailed as part of the No Action Baseline include all current costs associated with completing and filing Form I–485, including required biometrics collection and medical examination (Form I–693), as well as any affidavits of support (Forms I–864, I–864A, I–864EZ, and I–864W) or requested fee waivers (Form I–912). These costs are part of the baseline costs and are not attributable to the rule.

As noted previously in this analysis, DHS estimates the projected average annual total population of adjustment of status applicants that would be subject to review for inadmissibility on the public charge ground is 501,520. This estimate is based on the 5-year average of the annual estimated total population subject to review for inadmissibility on the public charge ground from FY 2014–FY 2018. Table 12 shows the estimated population and annual costs of filing for adjustment of status for the final rule. These costs primarily result from the process of applying for adjustment of status, including filing Form I–485 and Form I–693 as well as filing an affidavit of support or Form I–912 or both, if necessary.

[581] The calculation of the weighted Federal minimum hourly wage for applicants: $11.80 per hour * 1.45 benefits-to-wage multiplier = $17.11 (rounded) per hour.

[582] *See* ''Inadmissibility and Deportability on Public Charge Grounds,'' 64 FR 28676 (May 26, 1999).

[583] *See* ''Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,'' 64 FR 28689 (May 26, 1999). Due to a printing error, the **Federal Register** version of the Field Guidance is dated ''March 26, 1999,'' even though the guidance was signed May 20, 1999, became effective May 21, 1999, and was published in the **Federal Register** on May 26, 1999.

Table 12. Average Annual No Action Baseline (Current) Costs.

Form	Estimated Average Annual Population	Annual Cost
I-485, Application to Register Permanent Residence or Adjust Status	**501,520**	**$715,613,873**
Filing Fee		$571,732,800
Opportunity Cost of Time (OCT)		$55,091,972
Biometrics Services Fee		$42,629,200
Biometrics Services OCT		$31,490,441
Biometrics Services Travel Costs		$14,669,460
I-693, Report of Medical Examination and Vaccination Record	**501,520**	**$269,080,526**
Medical Exam Cost		$247,625,500
Opportunity Cost of Time (OCT)		$21,455,026
I-912, Request for Fee Waiver	**69,194**	**$1,385,264**
Opportunity Cost of Time (OCT)		$1,385,264
Affidavit of Support Forms (I-864, I-864A, I-864EZ, I-864W)	**297,998**	**$70,714,925**
Opportunity Cost of Time (OCT)		$70,714,925
Total Annual No Action Baseline Costs		**$1,056,794,588**
Source: USCIS analysis.		

i. Forms Relevant to This Final Rule

Form I–485, Application To Register Permanent Residence or Adjust Status

The basis of the quantitative costs estimated for this final rule is the cost of filing for adjustment of status using Form I–485, the opportunity cost of time for completing this form, any other required forms, and the cost for any other incidental costs (*e.g.,* travel costs) an individual must bear that are required in the filing process. DHS reiterates that costs examined in this section are not additional costs that the final rule will impose; rather, they are costs applicants incur as part of the current application process to adjust status. The current filing fee for Form I–485 is $1,140. The fee is set at a level to recover the processing costs to DHS. As previously discussed in the population section, the estimated average annual population of individuals who apply for adjustment of status using Form I–485 is 501,520. Therefore, DHS estimates that the annual filing fee costs associated for Form I–485 is approximately $571,732,800.[584]

DHS estimates the time burden of completing Form I–485 is 6.42 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[585] Using the total rate of compensation for minimum wage of $17.11 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–485 will be $109.85 per applicant.[586] Therefore, using the total population estimate of 501,520 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing Form I–485 is approximately $55,091,972 annually.[587]

USCIS requires applicants who file Form I–485 to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is $85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 501,520 individuals applying for

[584] Calculation: Form I–485 filing fee ($1,140) * Estimated annual population filing Form I–485 (501,520) = $571,732,800 annual cost for filing Form I–485.

[585] USCIS, ''Instructions for Application to Register Permanent Residence or Adjust Status (Form I–485),'' OMB No. 1615–0023 (expires Mar. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf* (last visited Aug. 17, 2022).

[586] Calculation for opportunity cost of time for filing Form I–485: ($17.11 per hour * 6.42 hours) = $109.85 (rounded) per applicant.

[587] Calculation: Form I–485 estimated opportunity cost of time ($109.85) * Estimated annual population filing Form I–485 (501,520) = $55,091,972 (rounded) annual opportunity cost of time for filing Form I–485.

adjustment of status is approximately $42,629,200.[588]

In addition to the biometrics services fee, the applicant will incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting their biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.[589] Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have their biometrics collected at an ASC,[590] adding up to a total biometrics-related time burden of 3.67 hours. Using the total rate of compensation of the effective minimum wage of $17.11 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I–485 is $62.79 per applicant.[591] Therefore, using the total population estimate of 501,520 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I–485 is approximately $31,490,441 annually.[592]

In addition to the opportunity cost of providing biometrics, applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is approximately $29.25 per trip, based on the estimated average 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of $0.585 per mile.[593] DHS assumes that each applicant will travel independently to an ASC to submit their biometrics, meaning that this rule will impose a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual population of 501,520 individuals applying for adjustment of status is approximately $14,669,460.[594]

In sum, DHS estimates the total current annual cost for filing Form I–485 is $715,613,873, which includes Form I–485 filing fees, biometrics services fees, opportunity cost of time for completing Form I–485 and submitting biometrics information, and travel cost associated with biometrics collection.[595] DHS notes that a medical examination is generally required as part of the application process to adjust status. Costs associated with the medical examination are detailed in the next section. Moreover, costs associated with submitting an affidavit of support and requesting a fee waiver are also detailed in subsequent sections since such costs are not required for every individual applying for an adjustment of status.

Form I–693, Report of Medical Examination and Vaccination Record

USCIS requires most applicants who file Form I–485 seeking adjustment of status to submit Form I–693 as completed by a USCIS-designated civil surgeon. Form I–693 is used to report results of an immigration medical examination to USCIS. For this analysis, DHS assumes that all individuals who apply for adjustment of status using Form I–485 will also submit Form I–693. DHS reiterates that costs examined in this section are not additional costs that the final rule will impose, but costs that applicants currently incur as part of the application process to adjust status. Form I–693 is required for adjustment of status applicants to establish that they are not inadmissible to the United States on health-related grounds. While there is no filing fee associated with Form I–693, the applicant is responsible for paying all costs of the immigration medical examination, including the cost of any follow-up tests or treatment that is required, and must make payments directly to the civil surgeon or other health care provider. In addition, applicants bear the opportunity cost of time for completing the applicant portions of Form I–693, as well as sitting for the immigration medical exam and the time waiting to be examined.

USCIS does not regulate the fees charged by civil surgeons for the completion of an immigration medical examination. In addition, immigration medical examination fees vary widely by civil surgeon, from as little as $20 to as much as $1,000 per applicant (including vaccinations, additional medical evaluations, and testing that may be required based on the medical conditions of the applicant).[596] DHS estimates that the average cost for these activities is $493.75 and that all applicants will incur this cost.[597] Since DHS assumes that all applicants who apply for adjustment of status using Form I–485 must also submit Form I–693, DHS estimates that based on the estimated average annual population of 501,520 the annual cost associated with filing Form I–693 is approximately $247,625,500.[598]

DHS estimates the time burden associated with filing Form I–693 is 2.5 hours per applicant, which includes understanding and completing the form, setting an appointment with a civil surgeon for a medical exam, sitting for the medical exam, learning about and understanding the results of medical tests, allowing the civil surgeon to report the results of the medical exam on the form, and submitting the medical

[588] Calculation: Biometrics services processing fee ($85) * Estimated annual population filing Form I–485 (501,520) = $42,629,200 annual cost for associated with Form I–485 biometrics services processing.

[589] *See* ''Employment Authorization for Certain H–4 Dependent Spouses,'' 80 FR 10284 (Feb. 25, 2015); and ''Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives,'' 78 FR 536, 572 (Jan. 3, 2013).

[590] Source for biometric time burden estimate: USCIS, ''Instructions for Application to Register Permanent Residence or Adjust Status (Form I–485),'' OMB No. 1615–0023 (expires Mar. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf* (last visited Aug. 17, 2022).

[591] Calculation for opportunity cost of time to comply with biometrics submission for Form I–485: ($17.11 per hour * 3.67 hours) = $62.79 (rounded) per applicant.

[592] Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I–485 ($62.79) * Estimated annual population filing Form I–485 (501,520) = $31,490,441 (rounded) annual opportunity cost of time for filing Form I–485.

[593] *See* U.S. General Services Administration, ''Privately Owned Vehicle (POV) Mileage Rates (Archived),'' Previous automobile rates (January 1, 2022) *https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-mileage-rates/pov-mileage-rates-archived* (last visited Aug. 17, 2022).

[594] Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I–485) = $29.25 * 501,520 = $14,669,460 annual travel costs related to biometrics collection for Form I–485.

[595] Calculation: $571,732,800 (Annual filing fees for Form I–485) + $55,091,972 (Opportunity cost of time for filing Form I–485) + $42,629,200 (Biometrics services fees) + $31,490,441 (Opportunity cost of time for biometrics collection requirements) + $14,669,460 (Travel costs for biometrics collection) = $715,613,873 total current annual cost for filing Form I–485.

[596] Source for immigration medical examination cost range: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at *Reginfo.gov*, ICR Documents, I693–009EMG Supporting Statement, Question 13, (Sept. 7, 2021) *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202108-1615-004* (last visited Aug. 17, 2022).

[597] Source for immigration medical examination cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at *Reginfo.gov*, ICR Documents, I693–009EMG Supporting Statement, Question 13, (Sept. 7, 2021) *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202108-1615-004* (last visited Aug. 17, 2022).

[598] Calculation: (Estimated immigration medical examination cost for Form I–693) * (Estimated annual population filing Form I–485) = $493.75 * 501,520 = $247,625,500 annual estimated medical exam costs for Form I–693.

exam report to USCIS.[599] DHS estimates the opportunity cost of time for completing and submitting Form I–693 is $42.78 per applicant based on the total rate of compensation of minimum wage of $17.11 per hour.[600] Therefore, using the total population estimate of 501,520 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–693 is approximately $21,455,026 annually.[601]

In sum, DHS estimates the total current annual cost for filing Form I–693 is $260,805,446, including medical exam costs, the opportunity cost of time for completing Form I–693, and cost of postage to mail the Form I–693 package to USCIS.[602]

Form I–912, Request for Fee Waiver

Some applicants seeking an adjustment of status may be eligible for a fee waiver when filing Form I–485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may be eligible for a fee waiver by filing Form I–912. If an applicant's Form I–912 is approved, USCIS, as a component of DHS, will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I–485 are waived if an approved Form I–912 accompanies the application. Filing Form I–912 is not required for applications and petitions that do not have a filing fee. DHS also notes that costs examined in this section are not additional costs that will be imposed by the final rule but costs that applicants currently could incur as part of the application process to adjust status.

Table 13 shows the estimated population of individuals that requested a fee waiver (Form I–912), based on receipts, when applying for adjustment of status in FY 2014–FY 2018, as well as the number of requests that were approved or denied each fiscal year. During this period, the number of individuals who requested a fee waiver when applying for adjustment of status ranged from a low of 49,292 in FY 2014 to a high of 95,476 in FY 2017. In addition, the estimated average population of individuals applying to adjust status who requested a fee waiver for Form I–485 over the 5-year period FY 2014–FY 2018 was 69,194. DHS estimates that 69,194 is the average annual projected population of individuals who will request a fee waiver using Form I–912 when filing Form I–485 to apply for an adjustment of status.[603]

Table 13. Total Population Requesting a Fee Waiver (Form I-912) when Filing Form I-485, Adjustment of Status.

Fiscal Year	Receipts	Approvals	Denials
2014	49,292	47,535	1,546
2015	52,815	50,927	1,556
2016	87,377	81,946	4,156
2017	95,476	88,486	4,704
2018	61,010	54,496	3,425
Total	**345,970**	**323,390**	**15,387**
5-year average	**69,194**	**64,678**	**3,077**

Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022).

Note: The number of requests adjudicated in a fiscal year will not be equal to the number of received requests. A request received in one fiscal year may not be adjudicated until a subsequent fiscal year.

To provide a reasonable proxy of time valuation for applicants, as described previously, DHS assumes that applicants requesting a fee waiver for Form I–485 earn the total rate of compensation for individuals applying for adjustment of status as $17.11 per hour, where the value of $10.51 per hour represents the effective minimum

[599] Source for immigration medical examination time burden estimate: USCIS, ''Instructions for Report of Medical Examination and Vaccination Record (Form I–693),'' OMB No. 1615–0033 (expires Mar. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-693instr.pdf* (last visited Aug. 17, 2022).

[600] Calculation for immigration medical examination opportunity cost of time: ($17.11 per hour * 2.5 hours) = $42.78 per applicant.

[601] Calculation: (Estimated immigration medical examination opportunity cost of time for Form I–693) * (Estimated annual population filing Form I–485) = $42.78 * 501,520 = $21,455,026 (rounded) annual opportunity cost of time for filing Form I–485.

[602] Calculation: $247,625,500 (Medical exam costs) + $21,455,026 (Opportunity cost of time for Form I–693) = $269,080,526 total current annual cost for filing Form I–693.

[603] DHS notes that the estimated population of individuals who would request a fee waiver for filing Form I–485 includes all visa classifications for those applying for adjustment of status. DHS is unable to determine the number of fee waiver requests for filing Form I–485 that are associated with specific visa classifications that are subject to public charge review.

wage with an upward adjustment for benefits.

DHS estimates the time burden associated with filing Form I–912 is 1 hour and 10 minutes per applicant (1.17 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[604] Therefore, using $17.11 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I–912 is $20.02 per applicant.[605] Using the total population estimate of 69,194 requests for a fee waiver for Form I–485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–912 is approximately $1,385,264 annually.[606]

Form I–864, Affidavit of Support Under Section 213A of the INA, and Related Forms

As previously discussed, submitting a Form I–864 is required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. Additionally, Form I–864 can include Form I–864A, which may be filed when a sponsor's income and assets do not meet the income requirements of Form I–864 and the qualifying household member chooses to combine their resources with the sponsor's income, assets, or both to meet those requirements. Some sponsors for applicants filing applications for adjustment of status may be able to execute Form I–864EZ rather than Form I–864, provided certain criteria are met. Moreover, certain classes of immigrants currently are exempt from the requirement to file Form I–864 or Form I–864EZ and therefore must file Form I–864W, Request for Exemption for Intending Immigrant's Affidavit of Support.

There is no filing fee associated with filing Form I–864 with USCIS. However, DHS estimates the time burden associated with a sponsor executing Form I–864 is 6 hours per adjustment applicant, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the Form I–864.[607]

To estimate the opportunity cost of time associated with filings of I–864, this analysis uses $39.55 per hour, the total compensation amount including costs for wages and salaries and benefits from the BLS report on Employer Costs for Employee Compensation detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries.[608] DHS uses this wage rate because DHS expects that sponsors who file affidavits of support have adequate means of financial support and are likely to be employed.

Using the average total rate of compensation of $39.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864 will be $237.30 per petitioner.[609] DHS assumes that the average rate of total compensation used to calculate the opportunity cost of time for Form I–864 is appropriate since the sponsor of an immigrant, who is agreeing to provide financial and material support, is instructed to complete and submit the form. Using the estimated annual total population of 297,998 individuals seeking to adjust status who are required to submit an Affidavit of Support Under Section 213A of the INA using Form I–864, DHS estimates the opportunity cost of time associated with completing and submitting Form I–864 $70,714,925 annually.[610] DHS estimates this amount as the total current annual cost for filing Form I–864, as required when applying to adjust status.

There is also no filing fee associated with filing Form I–864A with USCIS. However, DHS estimates the time burden associated with filing Form I–864A is 1 hour and 45 minutes (1.75 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the contract, preparing statements, attaching necessary documentation, and submitting the contract.[611] Therefore, using the average total rate of compensation of $39.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864A will be $69.21 per petitioner.[612] DHS assumes the average total rate of compensation used for calculating the opportunity cost of time for Form I–864 since both the sponsor and another household member agree to provide financial support to an immigrant seeking to adjust status. However, the household member also may be the intending immigrant. While Form I–864A must be filed with Form I–864, DHS notes that it is unable to determine the number of filings of Form I–864A since not all individuals filing I–864 need to file Form I–864A with a household member.

As with Form I–864, there is no filing fee associated with filing Form I–864EZ with USCIS. However, DHS estimates the time burden associated with filing Form I–864EZ is 2 hours and 30 minutes (2.5 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.[613] Therefore, using the average total rate of compensation of $39.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864EZ will be $98.88 per petitioner.[614] However, DHS notes

[604] Source for fee waiver time burden estimate: USCIS, ''Instructions for Fee Waiver Request (Form I–912),'' OMB No. 1615–0116 (expires Sept. 30, 2024), *https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf* (last visited Aug. 17, 2022).

[605] Calculation for fee waiver opportunity cost of time: ($17.11 per hour * 1.17 hours) = $20.02 (rounded).

[606] Calculation: (Estimated opportunity cost of time for Form I–912) * (Estimated annual population of approved Form I–912) = $20.02 * 69,194 = $1,385,264 (rounded) annual opportunity cost of time for filing Form I–912 that are approved.

[607] Source for Form I–864 time burden estimate: USCIS, ''Instructions for Affidavit of Support Under Section 213A of the INA (Form I–864),'' OMB No. 1615–0075 (expires Dec. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-864instr.pdf* (last visited Aug. 17, 2022).

[608] *See* BLS, Economic News Release, ''Employer Cost for Employee Compensation,'' Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (Sept. 16, 2021) *https://www.bls.gov/news.release/archives/ecec_12162021.pdf* (last visited Aug. 17, 2021).

[609] Calculation for opportunity cost of time for completing and submitting Form I–864, Affidavit of Support Under Section 213A of the INA: ($39.55 per hour * 6.0 hours) = $237.30 per applicant.

[610] Calculation: (Form I–864 estimated opportunity cost of time) * (Estimated annual population filing Form I–864) = $237.30 * 297,998 = $70,714,925 (rounded) total annual opportunity cost of time for filing Form I–864.

[611] Source for I–864A time burden estimate: USCIS, ''Instructions for Contract Between Sponsor and Household Member (Form I–864A),'' OMB No. 1615–0075 (expires Dec. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-864ainstr.pdf* (last visited Aug. 17, 2022).

[612] Calculation for opportunity cost of time for completing and submitting Form I–864A, Contract Between Sponsor and Household Member: ($39.55 per hour * 1.75 hours) = $69.21 (rounded) per petitioner.

[613] Source for I–864EZ time burden estimate: USCIS, ''Instructions for Affidavit of Support Under Section 213A of the INA (Form I–864EZ),'' OMB No. 1615–0075 (expires Dec. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-864ezinstr.pdf* (last visited Aug. 17, 2022).

[614] Calculation for opportunity cost of time for completing and submitting Form I–864EZ, Affidavit of Support Under Section 213A of the INA: ($39.55 per hour * 2.5 hours) = $98.88 (rounded).

that it is unable to determine the number of filings of Form I–864EZ and, therefore, rely on the annual cost estimate developed for Form I–864.

There is also no filing fee associated with filing Form I–864W with USCIS. However, DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[615] Therefore, using the average total rate of compensation of $39.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864EZ will be $39.55 per petitioner.[616] However, DHS notes that it is unable to determine the number of filings of Form I–864W and, therefore, rely on the annual cost estimate developed for Form I–864.

ii. Costs of Final Regulatory Changes

In this section, DHS estimates costs of the final rule relative to No Action Baseline. The primary source of quantified new costs for the final rule will be from an additional 0.75 hours increase in the time burden estimate to complete Form I–485 for applicants who are subject to the public charge ground of inadmissibility.[617] The additional time burden is required to collect information based on factors such as age; health; family status; assets, resources, and financial status; and education and skills, so that USCIS could determine whether an applicant would be inadmissible to the United States based on the public charge ground.

The final rule will include additional instructions as well as additional questions for filing Form I–485 for applicants who are subject to the public charge ground of inadmissibility and, as a result, those applicants would spend additional time reading the instructions increasing the estimated time to complete the form. The current estimated time to complete Form I–485 is 6 hours and 25 minutes (6.42 hours). For the final rule, DHS estimates that the time burden for completing Form I–485 will increase by 45 minutes (0.75 hours). As explained above, DHS reduced the estimated time burden for completing the revised Form I–485 from 7.92 hours to 7.17 hours. Open-ended questions requiring narrative-style responses that were included in the information collection instrument associated with the NPRM have been changed to multiple-choice style questions that will require less time for an applicant to answer.

Therefore, in the final rule, the time burden to complete Form I–485 will be 7 hours and 10 minutes (7.17 hours).

The following cost is a new cost that would be imposed on the population applying to adjust status using Form I–485 for applicants who are subject to the public charge ground of inadmissibility. Table 14 shows the estimated new annual costs that the final rule will impose on individuals seeking to adjust status using Form I–485 for applicants who are subject to the public charge ground of inadmissibility with a 0.75 hour increase in the time burden estimate for completing Form I–485.

Table 14. Total New Quantified Direct Costs of the Final Rule.

Form I-485, Application to Register Permanent Residence or Adjust Status	
Estimated annual population	501,520
Opportunity Cost of Time – Additional to No Action Baseline (Current) Costs	0.75 hour
Total Rate of Compensation for Minimum Wage	$17.11
Total New Quantified Costs of the Final Rule*	$6,435,755
Source: USCIS analysis. *Calculation: $17.11 * 0.75 hour * 501,520= $6,435,755 (rounded)	

The time burden includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[618] Using the total rate of compensation for minimum wage of $17.11 per hour, DHS currently estimates the opportunity cost of time for completing and filing Form I–485 will be $12.83 per applicant.[619] Therefore, using the total population estimate of 501,520 annual filings for Form I–485 for applicants who are subject to the public charge ground of inadmissibility, DHS estimates the current total opportunity cost of time associated with completing Form I–485 is approximately $6,435,755 annually.[620]

[615] Source for I–864W time burden estimate: USCIS, ''Instructions for Request for Exemption for Intending Immigrant's Affidavit of Support (Form I–864W),'' OMB No. 1615–0075 (expires Dec. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf* (last visited Aug. 17, 2022).

[616] Calculation for opportunity cost of time for completing and submitting Form I–864W: ($39.55 per hour * 1.0 hours) = $39.55.

[617] To be clear, these form changes will not affect applicants who are exempt from the public charge ground of inadmissibility listed in new 8 CFR 212.23.

[618] Source: USCIS, ''Instructions for Application to Register Permanent Residence or Adjust Status (Form I–485),'' OMB No. 1615–0023 (expires Mar. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf* (last visited Aug. 17, 2022).

[619] Calculation for opportunity cost of time for filing Form I–485: ($17.11 per hour * 0.75 hours) = $12.83 (rounded) per applicant.

[620] Calculation: Form I–485 estimated opportunity cost of time ($17.11 per hour * 0.75 hours) * Estimated annual population filing Form I–485 (501,520) = $17.11 * 0.75 * 501,520 = $6,435,755 (rounded) annual opportunity cost of time for filing Form I–485.

iii. Cost Savings of the Final Regulatory Changes

DHS anticipates that the final rule will produce some quantitative cost savings relative to both baselines. With this rule, T nonimmigrants applying for adjustment of status will no longer need to submit Form I–601 seeking a waiver on public charge grounds of inadmissibility. The existing regulations at 8 CFR 212.18 and 8 CFR 245.23 stating that T nonimmigrants are required to obtain waivers are not in line with the Violence Against Women Act Reauthorization Act of 2013 (VAWA 2013).[621] T nonimmigrants are exempt from public charge inadmissibility under the statute, and therefore never should have required a waiver in order to adjust status. The final rule will align the regulation with the statute. DHS estimates the cost savings for this population will be approximately $15,359 annually.

Table 15 shows the total population between FY 2014 and FY 2018 that filed form I–601. Over the 5-year period the population of individuals who have applied for adjustment of status ranged from a low of 6 in FY 2018 to a high of 35 in FY 2014. On average, the annual population of individuals over five fiscal years who filed Form I–601 and applied for adjustment of status with a T nonimmigrant status is 16.

Table 15. Total Population who filed Form I-601, Application for Waiver of Grounds of Inadmissibility and Applied for Adjustment of Status with T Nonimmigrant Status, Fiscal Years 2014 to 2018.

Fiscal Year	Total Receipts
2014	35
2015	11
2016	9
2017	19
2018	6
Total	**80**
5-year average	**16**

Source: USCIS analysis of data provided by USCIS, Policy and Research Division (Jan. 10, 2022)

DHS considers the historical data from FY 2014 to FY 2018 as the basis to form an estimated population projection of receipts for Form I–601 for T nonimmigrants who are adjusting status for the 10-year period beginning in FY 2022. Based on the average annual population of I–601 filers between FY 2014 and FY 2018, DHS projects that 16 T nonimmigrants who are applying for adjustment of status will no longer need to file Form I–601. DHS uses the effective minimum wage base plus weighted average benefit of $17.11 per hour to estimate the opportunity cost of time for these individuals since they are not likely to be participating in the labor market. DHS estimated the time burden to complete the Form I–601 as 1.75 hours, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[622] Thus, DHS estimates the opportunity cost of time for completing Form I–601 to be $479.08.[623] Based on the population estimate and the filing fee of $930 for Form I–601, the total estimated cost for filing fees for the all 16 estimated filers will be approximately $14,880.[624] The sum of the filing fee results in an estimated total annual savings of approximately $15,359 resulting from the final rule, including the opportunity cost of time and filing fees.[625]

iv. Familiarization Costs

A likely impact of the final rule relative to both baselines is that various individuals and other entities will incur costs associated with familiarization with the provisions of the rule. Familiarization costs involve the time spent reviewing a rule. A noncitizen might review the rule to determine whether they are subject to the final rule. To the extent an individual who is directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule.

In addition to those being directly regulated by the rule, a wide variety of other entities would likely choose to read the rule and incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, benefits-administering agencies, nonprofit organizations, nongovernmental organizations, and religious organizations, among others, may want to become familiar with the provisions of this final rule. DHS believes such nonprofit organizations and other advocacy groups might choose to read the rule to provide

[621] *See* Public Law 113–4, 127 Stat. 54 (2013).

[622] Source: USCIS, ''Instructions for Application for Waiver of Grounds of Inadmissibility (Form I–601),'' OMB No. 1615–0029 (expires July. 31, 2023), *https://www.uscis.gov/sites/default/files/document/forms/i-601instr.pdf* (last visited Aug. 17, 2022).

[623] Calculation: (Form I–601, time burden) * (Estimated annual applicants for Form I–601) * (Hourly wage) = 1.75 * 16 * $17.11 = $479.08 (rounded) per applicant.

[624] Calculation: Filing fee * Estimated annual applicants for Form I–601 = $930 * 16 = $14,880.

[625] Calculation: Total savings ($15,359) = $479.08 + $14,880 = $15,359 (rounded).

information to noncitizens and associated households who may be subject to the rule. Familiarization costs incurred by those not directly regulated are indirect costs. Indirect impacts are borne by entities that are not specifically regulated by this rule but may incur costs due to changes in behavior related to this rule.

DHS estimates the time that will be necessary to read the rule is approximately 8 to 9 hours per person, resulting in opportunity costs of time. DHS assumes the average professional reads technical documents at a rate of about 250 to 300 words per minute. An entity, such as a nonprofit or advocacy group, may have more than one person who reads the final rule. Using the average total rate of compensation as $39.55 per hour for all occupations, DHS estimates that the opportunity cost of time will range from about $316.40to $355.95 per individual who must read and review the final rule.[626] However, DHS is unable to estimate the number of people that will familiarize themselves with this rule. As such, DHS is unable to quantify this cost. DHS requested comments on other possible indirect impacts of the rule and appropriate methodologies for quantifying these non-monetized potential impacts. DHS received several comments on the indirect impact of the rule at the State level. The discussion is included in the following section.

v. Transfer Payments and Indirect Impacts of the Final Regulatory Changes

DHS also considers transfer payments from the Federal and State governments to certain individuals who receive public benefits that may be more likely to occur under the final regulatory changes as compared to the No Action Baseline. While the final rule follows closely the approach taken in the 1999 Interim Field Guidance, it contains three changes that may have an effect on transfer payments. First, the final rule provides that, in any application for admission or adjustment of status in which the public charge ground of inadmissibility applies, DHS will not consider any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility. Second, under the final rule, when making a public charge inadmissibility determination, DHS will also not consider any public benefits that were received by noncitizens who are eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the INA, 8 U.S.C. 1157, including services described under section 412(d)(2) of the INA, 8 U.S.C. 1522(d)(2), provided to an ''unaccompanied alien child'' as defined under section 462(g)(2) of the HSA, 6 U.S.C. 279(g)(2). Individuals covered by these exclusions may be more likely to participate in public benefit programs for the limited period of time that they are in such status or eligible for such benefits. Third, applying for a public benefit on one's own behalf or on behalf of another would not constitute receipt of public benefits by the noncitizen applicant. This definition would make clear that the noncitizen's receipt of public benefits solely on behalf of another, or the receipt of public benefits by another individual (even if the noncitizen assists in the application process), would also not constitute receipt of public benefits by the noncitizen. These clarifications could lead to an increase in public benefit participation by certain persons (most of whom will likely not to be subject to the public charge ground of inadmissibility in any event). This change could increase transfer payments from the Federal, State, Tribal, territorial, and local governments to certain individuals. DHS is unable to quantify the effects of these changes.

DHS acknowledges that an increase in transfer payments due to this final rule would produce other indirect impacts. For example, administrative costs to the State and local benefits-granting agencies associated with public benefit program enrollments would likely increase. When public benefit program enrollments increase, the processing of more enrollees results in an increase in costs to those agencies. However, DHS is unable to quantify the increase in administrative costs. DHS received a comment from one State regarding administrative costs for Medicaid participants and SNAP recipients. The State noted that it incurred administrative costs of $103 million and $63 million, respectively in fiscal year 2020, but did not explain how administrative costs might scale up or down as a consequence of enrollment decisions by beneficiaries. DHS notes that these costs represent the State's total annual administrative costs associated with Medicaid and SNAP, not the total direct costs of providing the actual benefit to a recipient (which the commenter also provided with respect to Medicaid), or costs from which a per-enrollee marginal cost to that State could be calculated. DHS also notes that these administrative costs cannot be reliably applied to every U.S. State. Finally, DHS is unable to quantify the increase in enrollees due to the lack of data.

Another example of an indirect impact of this final rule is that it is likely to increase access to public benefit programs by some eligible individuals, including noncitizens and U.S. citizens in mixed-status households, with a range of downstream indirect effects for public health and community stability and resilience.

vi. Benefits of Final Regulatory Changes

The primary benefit of the final rule will be time savings of individuals directly and indirectly affected by the final rule. By clarifying standards governing a determination that a noncitizen is inadmissible or ineligible to adjust status on the public charge ground, the final rule will reduce time spent by the affected population who are making decisions to apply for adjustment of status or enrolling or disenrolling in public benefit programs. For example, when noncitizens make decisions on whether to adjust status or to enroll or disenroll in public benefit programs, they may spend time gathering information or consulting attorneys. The final rule will reduce the time spent making these decisions. Specifically, the final rule provides clarity on inadmissibility on the public charge ground by codifying certain definitions, standards, and procedures. Listing the categories of noncitizens exempt from the public charge inadmissibility ground adds clarity as to which noncitizens are subject to the public charge determination and will help to reduce uncertainty and confusion. However, DHS is unable to quantify the reduction in time spent gathering information or consulting attorneys. DHS does not have data on how much time individuals would spend in making a decision on whether to adjust status or to enroll or disenroll in public benefit programs. DHS

[626] Calculation: (Average total compensation for all occupations) * (Time to read rule − lower bound) = (Opportunity cost of time [OCT] to read rule) = $39.55 * 8 hours = $316.40 OCT per individual to read rule, 8 hours (rounded) = (approximately 140,000 words/300)/60.

Calculation: (Average total compensation for all occupations) * (Time to read rule − upper bound) = (Opportunity cost of time [OCT] to read rule) = $39.55 * 9 hours = $355.95 OCT per individual to read rule, 9 hours = (approximately 140,000 words/250)/60.

Average total compensation for all occupations ($39.55): *See* BLS, Economic News Release, ''Employer Cost for Employee Compensation,'' Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (September 16, 2021), *https://www.bls.gov/news.release/archives/ecec_09162021.pdf* (last viewed Aug. 17, 2022).

requested public comments on this issue but did not receive any.

vii. Total Estimated and Discounted Costs

To compare costs over time, DHS applied a 3 percent and a 7 percent discount rate to the total estimated costs and savings associated with the final rule.[627] Table 16 presents a summary of the total direct costs, savings, and net costs in the final rule.

Table 16. Summary of Estimated Total Direct Costs and Cost Savings of the Final Rule

	Total Annual Costs/Savings	Costs/Savings over 10-year Period
Annual Costs	$6,435,755	$64,357,550
Annual Cost Savings	$15,359	$153,590
Annual Net Costs[1]	$6,420,396	$64,203,960
Source: USCIS Analysis [1] Annual Net Costs = Annual Costs – Annual Savings		

Over the first 10 years of implementation, DHS estimates the undiscounted direct costs of the final rule will be approximately $64,357,550, the cost savings $153,590, and the net costs $64,203,960. In addition, as seen in Table 17, DHS estimates that the 10-year discounted net cost of this final rule to individuals applying to adjust status who would be required to undergo review for determination of inadmissibility based on public charge will be approximately $54,767,280 at a 3 percent discount rate and approximately $45,094,175 at a 7 percent discount rate.

Table 17. Discounted Costs of the Final Rule

	Costs over 10-year Period	**Savings over 10-year Period**	**Net Costs over 10-year Period**
Total Undiscounted Costs/Savings	$64,357,550	$153,590	$64,203,960
Total Costs/Savings at 3% Discount Rate	$54,898,296	$131,015	$54,767,280
Total Costs/Savings at 7% Discount Rate	$45,202,050	$107,875	$45,094,175
Source: USCIS Analysis.			

viii. Costs to the Federal Government

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* section 286(m) of the INA, 8 U.S.C. 1356(m). DHS notes that USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs, such as salaries and benefits for clerical positions, officers, and managerial positions, plus an amount to recover unassigned overhead (*e.g.,* facility rent, IT equipment and systems) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the service in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. Therefore, DHS has established the fee for the adjudication of Form I–485, Application to Register Permanent Residence or Adjust Status.

Time required for USCIS to review the additional information collected in Form I–485 when the final rule is finalized includes the additional time to adjudicate the underlying benefit request. DHS notes that the final rule

[627] *See* OMB, ''Circular A–4'' (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

may increase USCIS' costs associated with adjudicating immigration benefit requests. DHS estimates that the increased time to adjudicate the benefit request will result in an increased employee cost of approximately $14 million per year.[628] USCIS currently does not charge a filing fee for other forms affected by this final rule do not currently charge a filing fee, including Form I–693, Medical Examination and Vaccination Record; Affidavit of Support forms (Form I–864, Form I–864A, Form I–864EZ, and I–864W); Form I–912, Request for Fee Waiver, and Form I–407, Record of Abandonment of Lawful Permanent Resident Status. While filing fees are not charged for these forms, the cost to USCIS is captured in the fee for I–485. Future adjustments to the fee schedule may be necessary to recover the additional operating costs and will be determined at USCIS' next comprehensive biennial fee review.

c. Pre-Guidance Baseline

As noted above, the Pre-Guidance Baseline represents a state of the world in which the 1999 NPRM, 1999 Interim Field Guidance, and the 2019 Final Rule were not enacted. The Pre-Guidance Baseline is included in this analysis in accordance with OMB Circular A–4, which directs agencies to include a ''pre-statutory'' baseline in an analysis if substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action.[629] DHS previously has not performed a regulatory analysis on the regulatory costs and benefits of the 1999 Interim Field Guidance and, therefore, includes a Pre-Guidance Baseline in this analysis for clarity and completeness. DHS presents the Pre-Guidance Baseline to provide a more informed picture on the overall impacts of the 1999 Interim Field Guidance since its inception, while recognizing that many of these impacts have been realized already.

The final rule will affect individuals who apply for adjustment of status because these individuals would be subject to inadmissibility determinations based on the public charge ground as long as the individual is not in a category of applicant that is exempt from the public charge ground of inadmissibility. In order to estimate the effect of the final rule relative to Pre-Guidance baseline, DHS revisits the state of the world for both the Pre-Guidance baseline and the No Action baseline. The state of the world in the Pre-Guidance baseline is one in which the 1999 Interim Field Guidance was never issued. The state of the world in the No Action baseline is one in which the 1999 Interim Field Guidance was issued and has been in practice. In order to estimate the effect of the 2022 final rule relative to the Pre-Guidance baseline, DHS considers the effect of the 1999 Interim Field Guidance relative to the Pre-Guidance baseline as well as the changes in this final rule relative to the No Action Baseline. Since the latter has already been discussed in the No Action Baseline Section, the rest of this section focuses on estimating the effect of the 1999 Interim Field Guidance relative to the Pre-Guidance baseline.

PRWORA and IIRIRA generated considerable public confusion about noncitizen eligibility for public benefits and the related question of whether the receipt of Federal, State, or local public benefits for which a noncitizen may be eligible renders them likely to become a public charge. According to the literature, these laws led to sharp reductions in the use of public benefit programs by immigrants between 1994 and 1997. This phenomenon is referred to as a chilling effect, which describes immigrants disenrolling from or forgoing enrollment in public benefit programs due to fear or confusion regarding: (1) the immigration consequences of public benefit receipt; or (2) the rules regarding noncitizen eligibility for public benefits.[630] [631] [632] The state of the world before the 1999 NPRM and 1999 Field Guidance reflected growing public confusion over the meaning of the term ''public charge'' in immigration law, which was undefined, and its relationship to the receipt of Federal, State, or local public benefits.

The U.S. Department of Agriculture (USDA) published a study shortly after PRWORA took effect. The study found that the number of people receiving food stamps fell by over 5.9 million between summer 1994 and summer 1997.[633] The study notes that enrollment in the food stamps program was falling during this period, possibly due to strong economic growth, but the decline in enrollment was steepest among legal immigrants. Under PRWORA, legal immigrants were facing significantly stronger restrictions under which most of them would become ineligible to receive food stamps in September 1997. The study found that enrollment of legal immigrants in the food stamps program fell by 54 percent, accounting for 14 percent of the total decline. USDA also observed that

> Restrictions on participation by legal immigrants appear to have deterred participation by their children, many of whom retained their eligibility for food stamps. Participation among U.S. born children living with their legal immigrant parents fell faster than participation among children living with native-born parents. The number of [participating] children living with legal immigrants fell by 37 percent, versus 15 percent for children living with native-born parents.[634]

Another study found evidence of a ''chilling effect'' following enactment of PRWORA and IIRIRA where noncitizen enrollment in public benefits programs declined more steeply than U.S. citizen enrollment over the period 1994 through 1997.[635] The study found that ''[w]hen viewed against the backdrop of overall declines in welfare receipt for all households, use of public benefits among noncitizen households fell more sharply (35 percent) between 1994 and 1997 than among citizen households (14 percent). These patterns hold for welfare (defined here as TANF, SSI, and General Assistance), food stamps, and

[628] Office of Performance and Quality data received on December 30, 2021. The increase in employee cost is based on estimates of additional adjudication time due to the rule, at compensation rates approximated by General Schedule wage data for USCIS employees.

[629] *See* OMB. *Circular A–4,* pp. 15–16, (Sept. 17, 2003) *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[630] Michael Fix and Jeffrey Passel, ''Trends in noncitizens' and citizens' use of public benefits following welfare reform,'' Urban Institute (Mar. 1, 1999), *http://webarchive.urban.org/publications/408086.html* (last visited Aug. 17, 2022).

[631] Stephen Bell, ''Why are welfare caseloads falling?,'' Urban Institute (March 2001), *https://www.urban.org/research/publication/why-are-welfare-caseloads-falling* (last visited Aug. 17, 2022).

[632] Magnus Lofstrom and Frank Bean, ''Assessing immigrant policy options: Labor market conditions and post-reform declines in immigrants' receipt of welfare,'' *Demography* 39(4), 617–63 (Nov. 2002), *https://read.dukeupress.edu/demography/article-pdf/39/4/617/884758/617lofstrom.pdf* (last visited Aug. 17, 2022).

[633] *See* Jenny Genser, ''Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997,'' U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation (1999), *https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997* (last visited Aug. 17, 2022).

[634] Jenny Genser, ''Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997,'' U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation (Mar. 1999), at 2–3 (internal table citation omitted), *https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997* (last visited Aug. 17, 2022).

[635] *See* Michael Fix and Jeffrey Passel, ''Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994–1997,'' Urban Institute (1999) (Fix and Passel (1999)), *https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform* (last visited Aug. 17, 2022).

Medicaid.'' [636] The study authors concluded that rising incomes did not explain the relatively high disenrollment rate and suggested that the steeper declines in noncitizens' use of benefits was attributable more to the chilling effects of PRWORA and public charge, among other factors. The study authors expected that, over time, eligibility changes would become more important because, under PRWORA, most immigrants admitted after August 22, 1996, would be ineligible for most means-tested public benefits for at least 5 years after their entry to the country.[637]

As described in the 1999 NPRM, the 1999 NPRM sought to reduce the negative public health and nutrition consequences generated by the existing confusion and to provide noncitizens with better guidance as to the types of public benefits that would be considered or not considered in reviews for inadmissibility on the public charge ground.

By providing a clear definition of ''likely at any time to become a public charge'' and identifying the types of public benefits that would be considered in public charge inadmissibility determinations, the final rule could alleviate confusion and uncertainty with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits not only causes considerable harm, but also can have a range of downstream consequences for the general public. By describing the kinds of public benefits, if received, that could result in a determination that a person is likely at any time to become a public charge, immigrants would be able to maintain available supplemental benefits that are designed to aid individuals in gaining and maintaining employment. The final rule also lists the factors that must be considered in making public charge determinations. The final rule makes clear that the past or current receipt of public assistance, by itself, would not lead to a determination of being likely to become a public charge without also considering the minimum statutory factors.

The primary economic impact of the final rule relative to the Pre-Guidance Baseline will be an increase in transfer payments from the Federal and State governments to individuals. As discussed above, the chilling effect due to PRWORA and IIRIRA resulted in a decline in participation in public benefit programs among noncitizens and foreign-born individuals and their families. The final rule will alleviate confusion and uncertainty, as compared to the Pre-Guidance Baseline, by clarifying the ground of public charge inadmissibility. This clarification will lead to an increase in public benefit participation by certain persons (most of whom would likely not be subject to the public charge ground of inadmissibility in any event).[638] Due to the increase in transfer payments, DHS believes that the rule may also have indirect effects on businesses in the form of increased revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, and agricultural producers who grow foods that are eligible for purchase using SNAP benefits. However, DHS is unable to quantify this indirect effect due to the significant passage of time between the 1999 Interim Field Guidance and this final rule.

DHS believes that the rule may have indirect effects on State, local, and/or Tribal government as compared to the Pre-Guidance baseline. There may be costs to various entities associated with familiarization of and compliance with the provisions of the rule, including salaries and opportunity costs of time to monitor and understand regulation requirements, disseminate information, and develop or modify information technology (IT) systems as needed. It may be necessary for many government agencies to update guidance documents, forms, and web pages. It may be necessary to prepare training materials and retrain staff at each level of government, which will require additional staff time and will generate associated costs. However, DHS is unable to quantify these effects.

Due to the passage of a significant amount of time between the 1999 Interim Field Guidance and this final rule, DHS cannot quantify the effects that this final rule will have as compared to the Pre-Guidance baseline. For instance, although DHS could estimate the chilling effects of PRWORA and IIRIRA and the countervailing effects of the 1999 Interim Field Guidance, it would be challenging to apply such estimates to the 20-plus years since that time. A wide number of changes in the economy and Federal laws occurred during that time period that might have affected public benefits usage among the population most likely to be affected by the final rule. Thus, DHS is unable to quantify these effects.

d. Regulatory Alternative

Consistent with E.O. 12866, DHS considered the costs and benefits of an available regulatory alternative. The alternative that DHS considered was a rulemaking similar to the rulemaking that comprised the 2018 NPRM and the 2019 Final Rule (the Alternative). DHS considered both the effects of the 2018 NPRM and the 2019 Final Rule because the indirect disenrollment effects associated with the rulemaking began prior to the publication of the Final Rule. DHS sought to avoid underestimating the full impact the rulemaking had on the public.

As compared to the 1999 Interim Field Guidance, the 2019 Final Rule expanded the criteria used in public charge inadmissibility determinations. The 2019 Final Rule broadened the definition of ''public charge,'' both by adding new public benefits for consideration and by expanding the definition of public charge to mean ''an alien who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period.''

The additional public benefits in the 2019 Final Rule were non-emergency Medicaid for non-pregnant adults, federally funded nutritional assistance (SNAP), and certain housing assistance, subject to certain exclusions for certain populations. In addition, the 2019 Final Rule required noncitizens to submit a declaration of self-sufficiency on a new form designated by DHS and required the submission of extensive initial evidence relating to the public charge ground of inadmissibility.

The 2019 Final Rule also provided, with limited exceptions, that certain applicants for extension of stay or change of nonimmigrant status would be required to demonstrate that they have not received, since obtaining the nonimmigrant status they seek to extend or change and through the time of filing and adjudication, one or more public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months).

In order to estimate the effect of the Alternative relative to the Pre-Guidance baseline, DHS sums the effect of the 1999 Interim Field Guidance relative to the Pre-Guidance baseline with the effect of the Alternative relative to the No Action Baseline. Detailed discussion of the costs, benefits, and transfer

[636] Fix and Passel (1999), at 1–2.

[637] Fix and Passel (1999), at 1–2.

[638] Relatively few noncitizens in the United States are both subject to INA sec. 212(a)(4) and eligible for public benefits prior to adjustment of status (*see* Table 3 above).

payments of the Alternative relative to the No Action baseline is provided below. The effect of the 1999 Interim Field Guidance relative to the Pre-Guidance baseline under the Alternative is the same as discussed in the assessment of the final rule. This effect is discussed in the Pre-Guidance Baseline Section. Although DHS is not able to quantify all the effects of the Alternative, for those effects that are not quantifiable DHS provides qualitative discussion.

The primary objective of the Alternative would be to ensure that noncitizens who are admitted to the United States or apply for adjustment of status have not received one or more public benefits for longer than the threshold duration established by the rule, and to thereby allow the admission only of noncitizens expected to rely on their own financial resources, and those of family members, sponsors, and private organizations. DHS expects that effects under the Alternative would be similar to those under the 2019 Final Rule. The 2019 Final Rule was associated with widespread indirect effects, primarily with respect to those who were not subject to the 2019 Final Rule in the first place, such as U.S.-citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status.

This final rule would implement a different policy than that of the alternative described here. DHS believes that, in contrast to the Alternative, this rule would effectuate a more faithful interpretation of the statutory phrase of ''likely at any time to become a public charge''; avoid unnecessary burdens on applicants, adjudicators, and benefits-granting agencies; mitigate the possibility of widespread ''chilling effects'' with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially with respect to individuals who are not subject to the public charge ground of inadmissibility; and reduce States' administrative costs by alleviating confusion and simplifying administrative burdens due to the final rule's clarification concerning public benefits.

i. Direct Costs

Total direct costs resulting from the 2019 Final Rule were estimated to be approximately $35.4 million per year.[639] Total annual transfer payment decreases due to the 2019 Final Rule were estimated to be about $2.47 billion resulting from individuals (most of whom would likely not have been subject to the 2019 Final Rule) disenrolling from or forgoing enrollment in public benefit programs. The federal-level share of the annual transfer payments decrease was approximately $1.46 billion, and the state-level share of the annual transfer payments decrease was $1.01 billion.[640] For purposes of estimating the costs and benefits of the Alternative, DHS updated its estimates of the total annual direct cost of and change in the total annual transfer payment increases related to the 2019 Final Rule.

After updating the costs from the 2019 Final Rule, DHS estimates the total annual direct costs of the Alternative would be approximately $62 million, as detailed below. The update in direct costs from the 2019 Final Rule includes an increase in the number of average receipts of form I–485, application to register permanent residence or adjust status and an increase in the average total rate of compensation. These costs would include about $48,639,917 to the public to fill out and submit a new form I–944,[641] Declaration of Self-Sufficiency, which would require noncitizens to declare self-sufficiency and provide a range of evidence that DHS required for making public charge inadmissibility determinations under the 2019 Final Rule. There is also an estimated additional time burden cost of $1,458,771 to applicants who would be required to fill out and submit Form I–485;[642] $40,426 to public charge bond obligors for filing Form I–945, Public Charge Bond;[643] $946 to filers for submitting Form I–356, Request for Cancellation of Public Charge Bond;[644] and $7,201,007 to applicants for completing and filing forms I–129, Petition for a Nonimmigrant Worker;[645] $151,338 for I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker;[646] and $4,045,372 for I–539, Application to Extend/Change Nonimmigrant Status[647] to demonstrate that the applicant has not received public benefits since obtaining the nonimmigrant status that they are seeking to extend or change.

ii. Transfer Payments

As noted above, the 2019 Final Rule was also associated with widespread indirect effects, primarily with respect to those who were not subject to the 2019 Final Rule in the first place, such as U.S.-citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status.[648] DHS

[639] *See* ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292 (Aug. 14, 2019), as amended by ''Inadmissibility on Public Charge Grounds; Correction,'' 84 FR 52357 (Oct. 2, 2019).

[640] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292 (Aug. 14, 2019).

[641] Cost to file form I–944: Form I–944 Time burden estimated in the 2019 Final Rule (4.5 hour) *Average total rate of compensation discussed in Section VI.A.5 using the effective minimum wage ($17.11) * Total Population Subject to Review for Inadmissibility on the Public Charge Ground from Table 10 (501,520) = $38,614,532 (rounded), Cost of obtaining credit report and score cost from Experian ($19.99) * Total Population Subject to Review for Inadmissibility on the Public Charge Ground from Table 10 (501,520) = $10,025,385 (rounded). Total cost to file form I–944 = $38,614,532 + $10,025,385 = $48,639,917. DHS uses this burden hour estimate for consistency with the analysis in the 2019 Final Rule.

[642] Cost to file form I–485: Form I–485 Time burden increase estimated in the 2019 Final Rule (0.17 hour) * Average total rate of compensation discussed in Section VI.A.5 using the effective minimum wage ($17.11) * Total Population Subject to Review for Inadmissibility on the Public Charge Ground from Table 10 (501,520) = $1,458,771 (rounded).

[643] Cost to file form I–945: Form I–945 Time burden estimated in the 2019 Final Rule (1 hour) *Average total rate of compensation discussed in Section VI.A.5 using the effective minimum wage ($17.11) * Estimated annual population in the 2019 Final Rule who would file Form I–945 (960) = $16,426 (rounded).

[644] Cost to file form I–356: (Form I–356 Time burden estimated in the 2019 Final Rule (0.75 hour) *Average total rate of compensation discussed in Section VI.A.5 using the effective minimum wage ($17.11) + Filing fee estimated in the 2019 Final Rule ($25)) * Estimated annual population in the 2019 Final Rule who would file Form I–356 (25) = ($12.83 + $25) * 25 = $946 (rounded).

[645] Cost to file form I–129: Form I–129 Time burden increase estimated in the 2019 Final Rule (0.5 hour) * the total compensation from BLS discussed in Section VI.A.5 ($39.55) * Estimated annual population who would file Form I–129 using FY2014–FY2018 data from USCIS (364,147) = $7,201,007 (rounded).

[646] Cost to file form I–129CW: Form I–129 CW Time burden increase estimated in the 2019 Final Rule (0.5 hour) * the total compensation from BLS discussed in Section VI.A.5 ($39.55) * Estimated annual population who would file Form I–129CW using FY2014–FY2018 data from USCIS (7,653) = $151,338 (rounded).

[647] Cost to file form I–539: Form I–539 Time burden increase estimated in the 2019 Final Rule (0.5 hour) * the total compensation from BLS discussed in Section VI.A.5 ($39.55) * Estimated annual population who would file Form I–539 using FY2014–FY2018 data from USCIS (204,570) = $4,045,372 (rounded).

[648] Hamutal Bernstein et al., ''Immigrant Families Continued Avoiding the Safety Net during the COVID–19 Crisis,'' Urban Institute (2021), *https://www.urban.org/research/publication/immigrant-families-continued-avoiding-safety-net-during-covid-19-crisis* (Bernstein et al. (2021)) (last visited Aug. 17, 2022). Several additional studies are cited in the discussion below, repeatedly finding that it

expects that similar effects would occur under the Alternative. DHS estimates that the total annual transfer payments from the Federal Government to public benefits recipients who are members of households that include noncitizens would be approximately $3.79 billion lower. DHS also estimates that the total annual transfer payments from the State Government to public benefits recipients would be approximately $2.63 billion lower.[649] DHS notes that as a formal matter, the estimated reduction in annual transfer payments is a transfer, which is a monetary payment from one group to another that does not affect total resources. In addition, the transfers estimated in this analysis relate predominantly to enrollment decisions made by those who are not subject to the public charge ground of inadmissibility. The consequences of reduction in transfer payments represents significantly broader effects than any disenrollment that would result among people actually regulated by this Alternative.

As noted below, DHS is unable to estimate the downstream effects that would result from such decreases. DHS expects that in some cases, a decrease in transfers associated with one program or service would include an increase in transfers associated with other programs or services, such as programs or services delivered by nonprofits.

In the 2019 Final Rule, DHS estimated the reduction in transfer payments by multiplying a disenrollment/forgone enrollment rate of 2.5 percent by an estimate of the number of public benefits recipients who are members of households that include noncitizens (*i.e.,* the population that may disenroll) and then multiplying the estimated population by an estimate of the average annual benefit received per person or household for the covered benefits.

In the 2019 Final Rule, DHS estimated the 2.5 percent disenrollment/forgone enrollment rate by dividing the annual number of approved noncitizens who adjusted status annually by the estimated noncitizen population of the United States.[650] DHS estimated this disenrollment rate as the five-year average annual number of persons adjusting status as a percentage of the estimated noncitizen population in the United States (2.5 percent). This estimate reflected an assumption that 100 percent of such noncitizens and their household members are either enrolled in or eligible for public benefits and will be sufficiently concerned about potential consequences of the policies in this final rule to disenroll or forgo enrollment in public benefits. The resulting transfer estimates would therefore have had a tendency toward overestimation, at least as it relates to the population that would be directly regulated by the 2019 Final Rule.

In the 2019 Final Rule, DHS assumed that the population likely to disenroll from or forgo enrollment in public benefits programs in any year would be public benefits recipients who were members of households (or in the case of rental assistance, households as a unit) including foreign-born non-citizens who were adjusting status annually. But as discussed below, this approach may have resulted in an underestimate due to the documented chilling effects associated with the 2019 Final Rule among other parts of the noncitizen and citizen populations who were not included as adjustment applicants or members of households of adjustment applicants as well as other noncitizens who were not adjustment applicants. For the low estimate, DHS uses the same methodology, but with updated data, to estimate that the low rate of disenrollment or forgone enrollment due to the Alternative would be 3.1 percent.[651] [652]

Since the publication of the 2019 Final Rule, several studies have been published that discuss the impact of the 2019 Final Rule on the rate of public benefit disenrollment or forgone enrollment (*i.e.,* a chilling effect). Studies conducted between 2016 and 2020 show reductions in enrollment in public benefits programs due to a chilling effect ranging from 4.1 percent to 48 percent.[653] [654] The results of these studies depend on several factors, such as the sample examined or the period or method of analysis. The Public Charge NPRM was published in late 2018 and the 2019 Final Rule was finalized in August 2019. The 2019 Final Rule became effective in February 2020. However, after subsequent legal challenges to the 2019 Final Rule, it was vacated in March 2021. Given this timeline, several studies show that the largest observed disenrollment from or forgone enrollment in public benefit programs occurred between 2018 and 2019.[655] Capps et al. (2020) looked at benefits usage across all groups and observed that enrollment was declining over this time period for all groups (albeit with consistently more significant reductions in enrollment among noncitizens or those in mixed-status households than among the public at large). Capps et al. (2020) attributed the reduction in enrollment in the overall U.S. population to the improving economic conditions between 2016 and 2019, although other factors may also have influenced these rates.[656]

Some studies examined different samples such as low-income noncitizens,[657] low-income citizens,[658] adults in immigrant families,[659] immigrant families with children,[660] or

was those individuals not subject to INA sec. 212(a)(4) who typically chose to disenroll or refrain from enrolling in public benefits, due to fear of adverse consequences from the 2019 Final Rule throughout its rulemaking process. Relatively few noncitizens in the United States are both subject to INA sec. 212(a)(4) and eligible for public benefits prior to adjustment of status (*see* Table 3 above).

[649] Total annual Federal and State reduction in transfer payment = (Estimated Reduction in Transfer Payments Based on the Federal government from Table 21)/(average Federal Medical Assistance Percentages (FMAP) across all States and U.S. territories) = $3,786,574,510/0.59 = $6.42 billion (rounded). The State portion of reduction in transfer payments is Total annual Federal and State reduction in transfer payment minus the Federal portion. Calculation: $2.63 billion = $6.42 billion − $3.79 billion.

[650] ''Inadmissibility on Public Charge Grounds,'' 83 FR 41292, 41463 (Aug. 14, 2019).

[651] Calculation, based on 5-year averages over the period fiscal year 2014–2018: (690,837 receipts for I–485, adjustments of status/22,289,490 estimated noncitizen population) * 100 = 3.1 percent (rounded). 22,289,490 (estimated noncitizen population): U.S. Census Bureau American Database, ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates,'' *https://data.census.gov/cedsci* (last visited Aug. 17, 2022).

[652] In the 2019 Final Rule, the rate of disenrollment or forgone enrollment was calculated using number of I–485 approvals rather than receipts. For this analysis DHS elected to use I–485 receipts because the public charge inadmissibility ground is applied to all those who file the application for adjustment of status not just those who are approved.

[653] Randy Capps et al., ''Anticipated ''Chilling Effects'' of the public-charge rule are real: Census data reflect steep decline in benefits use by immigrant families,'' Migration Policy Institute (2020), *https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real* (Capps et al. (2020)) (last visited Aug. 17, 2022). Note: This study finds a 4.1-percent decrease in Medicaid/CHIP enrollment from 2016 to 2017 for low-income noncitizens.

[654] Bernstein et al. (2021).

[655] Capps et al. (2020).

[656] *See, e.g.,* Capps et al. (2020).

[657] Capps et al. (2020).

[658] Benjamin Sommers, ''Assessment of Perceptions of the Public Charge Rule Among Low-Income Adults in Texas,'' JAMA Network (July 15, 2020), *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768245* (last visited Aug. 17, 2022).

[659] Hamutal Bernstein et al., ''One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018,'' Urban Institute (May 2019), *https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_8.pdf* (last visited Aug. 17, 2022).

[660] Jennifer Haley et al., ''One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019,'' Urban Institute (2020), *https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-*

Continued

low-income immigrant adults.[661] The studies show that the 2019 Final Rule directly or indirectly affected adult noncitizens and indirectly affected adults in immigrant families who are lawful permanent residents or naturalized citizens.[662] One study shows that immigrant families with children reported a greater reduction in public benefit enrollment (20.4 percent) compared to immigrant families without children (10 percent) in 2019.[663] Another study shows the reduction in public benefit program enrollment also differs by the type of the public benefit program examined.[664] This study found reduced enrollment in SNAP, Medicaid/CHIP, and TANF and General Assistance (TANF/GA), but noted that the reduction was relatively larger for TANF/GA (12 percent annualized reduction among low-income individuals from 2016 to 2019) and SNAP (12 percent annualized reduction), as compared to Medicaid/CHIP (7 percent annualized reduction).[665] The study observed that participation in all three programs fell about twice as fast over the 2016 to 2019 period for U.S.-citizen children with noncitizens in the household as for those with only citizens in the household.

Due to the uncertainty of the rate of disenrollment or forgone enrollment in public benefits programs related to the 2019 Final Rule, DHS uses a range of rates to estimate the change in Federal Government transfer payments that would be associated with the Alternative. For estimating the lower bound of the range, DHS uses a 3.1 percent rate of disenrollment or forgone enrollment in public benefits programs based on the estimation methodology from the 2019 Final Rule (as discussed above).

DHS bases the upper bound of the range on the results of studies by Bernstein, Gonzalez, Karpman, and Zuckerman (Bernstein et al. [2019] [666] and Bernstein et al. [2020] [667]), which provided an average of 14.7 percent rate of disenrollment or forgone enrollment in public benefits programs. These studies observed reductions in the public benefit participation rate for adults in immigrant families in 2018 and 2019. Bernstein et al. (2019; 2020) uses a population of nonelderly adults who are foreign born or living with a foreign-born relative in their household—this matches the population of mixed-status households for which DHS estimates for the Alternative the rate of disenrollment from or forgone future enrollment in a public benefits program. Other studies such as Capps et al. (2020) examined a chilling effect among low-income families, which only covers a subset of the population of interest. One study showed that in 2020, more than one in six adults in immigrant families (17.8 percent) reported avoiding a noncash government benefit program or other help with basic needs because of green card concerns or other worries about immigration status or enforcement, and more than one in three adults in families in which one or more members do not have a green card (36.1 percent) reported these broader chilling effects.[668] Looking at the subset of the noncitizen population, however, shows a larger chilling effect as this smaller group likely experienced a larger disenrollment rate. However, this small population does not capture other noncitizen groups that might have also disenrolled in public benefits. DHS chose to use the two Bernstein studies described below, because the studies analyze the impact on the broader population of noncitizens, which includes the smaller subsets identified in the other studies.

Bernstein et al. (2019; 2020) examined beneficiaries of SNAP, Medicaid, and housing subsidies, which are public benefits programs considered for public charge inadmissibility determinations under the Alternative. However, Bernstein et al. (2019; 2020) does not include other public benefit programs considered for public charge inadmissibility determinations under the Alternative, such as TANF or SSI. Since DHS estimates the change in transfer payments for Medicaid, SNAP, TANF, SSI, and housing subsidies, DHS uses an overall average rate of chilling effect, based on the chilling effects reported by Bernstein et al. (2019; 2020).

Bernstein et al. (2019) showed that 13.7 percent of adults in immigrant families reported that they (*i.e.,* the respondent) or a family member avoided a noncash government benefit program in 2018. Bernstein et al. (2020) showed that 15.6 percent of adults in immigrant families reported that they (the respondent) or a family member avoided a noncash government benefit program in 2019. DHS calculates a simple average of these two percentages (13.7 percent and 15.6 percent) from the Bernstein et al. (2019; 2020) studies to arrive at the estimated annual decrease of 14.7 percent described above.

As with the lower estimate discussed above, DHS acknowledges that this upper estimate could be an underestimate or an overestimate. The upper bound estimate of a 14.7 percent rate of disenrollment or forgone enrollment may result in an underestimate since the Bernstein et al. (2019; 2020) studies did not include all the public benefit programs such as TANF and SSI. As shown in Capps et al. (2020), cash assistance public benefit programs TANF/GA, as well as SNAP experienced a greater rate in disenrollment relative to Medicaid/CHIP. On the other hand, the upper estimate of a 14.7 percent rate of disenrollment or forgone enrollment may result in an overestimate. While Capps et al. (2020) noted that during the period between 2016 and 2019 participation in public benefits was declining for both U.S. citizens and noncitizens (albeit at significantly different rates), the disenrollment rates produced in the Bernstein et al. (2019; 2020) studies did not control for overall trends in the U.S. population at large.

Bernstein et al. (2019; 2020) population estimates are based on a nationally representative survey of

in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019.pdf.

[661] Susan Babey et al., ''One in 4 Low-Income Immigrant Adults in California Avoided Public Programs, Likely Worsening Food Insecurity and Access to Health Care,'' UCLA Center for Health Policy Research (2021), *https://healthpolicy.ucla.edu/publications/Documents/PDF/2021/publiccharge-policybrief-mar2021.pdf.*

[662] Hamutal Bernstein et al., ''One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018,'' Urban Institute (May 2019), *https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_8.pdf* (last visited Aug. 17, 2022).

[663] Jennifer Haley et al., ''One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019,'' Urban Institute (June 2020), *https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019.pdf.*

[664] Capps et al. (2020).

[665] Capps et al. (2020). See Figure 1 for changes in participation by low-income noncitizens from 2016 to 2019 (37 percent decrease in SNAP, 37 percent decrease in TANF/GA, and 20 percent decrease in Medicaid/CHIP), which are not adjusted to account for other variables. DHS calculates annualized reduction among low-income noncitizen from 2016 to 2019: for TANF/GA (12 percent) = 37 percent/3 years = 12 (rounded), for SNAP (12 percent) = 37 percent/3 years = 12 (rounded), and Medicaid/CHIP (7 percent) = 20 percent/3 years = 7 (rounded).

[666] Hamutal Bernstein et al., ''One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018,'' Urban Institute (May 2019), *https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_8.pdf* (last visited Aug. 17, 2022).

[667] Hamutal Bernstein et al., ''Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019,'' Urban Institute (May 2020), *https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf* (last visited Aug. 16, 2022).

[668] Bernstein et al. (2021).

nonelderly adults who are foreign born or living with a foreign-born relative in their household. From there, Bernstein et al. (2019; 2020) compare the disenrollment year over year for Medicaid/CHIP, SNAP, or housing subsidies to arrive at an overall disenrollment rate of 13.7 percent in 2018 and 15.6 percent in 2019. Many studies discussed earlier in this section similarly attempted to measure the disenrollment or forgone enrollment rate due to the 2019 Final Rule. These studies show reductions in enrollment in public benefits programs due to a chilling effect ranging from 4.1 percent to 36.1 percent. DHS uses the estimates of the chilling effect by Bernstein et al. (2019; 2020) as a proxy because their population closely matches the population of interest for this analysis whereas the other studies looked at a smaller subset of the population. Compared to other studies, Bernstein et al. (2019; 2020) also measures the chilling effect as either not applying for or stopping participation in public benefit program.

DHS uses 8.9 percent as the primary estimate in order to estimate the annual reduction in Federal Government transfer payments associated with the Alternative, which is the midpoint between the lower estimate (3.1 percent) and the upper estimate (14.7 percent) of disenrollment or forgone enrollment in public benefits programs. DHS chose to provide a range due to the difficulty in estimating the effect on various populations.

Using the primary estimate rate of disenrollment or forgone enrollment in public benefits programs of 8.9 percent, DHS estimates that the total annual reduction in transfer payments from the Federal Government to individuals who may choose to disenroll from or forgo enrollment in public benefits programs. Based on the data presented below, DHS estimates that the total annual reduction in transfer payments paid by the Federal Government to individuals who may choose to disenroll from or forgo enrollment in public benefits programs would be approximately $3.79 billion for an estimated 819,599 individuals and 31,940 households across the public benefits programs examined.

To estimate the reduction in transfer payments under the Alternative, DHS must multiply the estimated disenrollment/forgone enrollment rate of 8.9 percent by: (1) the population of analysis (*i.e.,* those who may disenroll from or forgo enrollment in Medicaid, SNAP, TANF, SSI, and Federal rental assistance, the programs that would be covered under the Alternative);[669] and (2) the value of the forgone benefits.

Table 17 shows the estimated population of public benefits recipients who are members of households that include noncitizens. DHS assumes that this is the population of individuals who may disenroll from or forgo enrollment in public benefits under the Alternative. The table also shows estimates of the number of households with at least one noncitizen family member that may have received public benefits.[670] [671] Based on the number of households with at least one noncitizen family member, DHS estimates the number of public benefits recipients who are members of households that include at least one noncitizen who may have received benefits using the U.S. Census Bureau's estimated average household size for foreign-born households.[672] [673]

In order to estimate the population of public benefits recipients who are members of households that include at least one noncitizen DHS uses a 5-year average of public benefit recipients' data from FY 2014 to FY 2018. Although data from FY 2019 to FY 2021 were available, DHS opted not to use data from these years because the populations of public benefit recipients in those years were affected by both the 2019 Final Rule and the COVID–19 pandemic.

Consistent with the approach DHS took in the 2019 Final Rule, DHS's methodology was as follows. First, for most of the public benefits programs analyzed, DHS estimated the number of households with at least one person receiving such benefits by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.63 for the U.S. total population.[674] Second, DHS estimated the number of such households with at least one noncitizen resident. According to the U.S. Census Bureau population estimates, the noncitizen population is 6.9 percent of the U.S. total population.[675] While there may be some variation in the percentage of noncitizens who receive public benefits, including depending on which public benefits program one considers, DHS assumes in this economic analysis that the percentage holds across the populations of the various public benefits programs. Therefore, to estimate the number of households with at least one noncitizen who receives public benefits, DHS multiplies the estimated number of households for each public benefits program by 6.9 percent. This step may introduce uncertainty into the estimate because the percentage of households with at least one noncitizen may differ from the

[669] DHS recognizes that the rule would create a similar disincentive to receipt of TANF and SSI by certain noncitizens, although DHS expects that the scope and relative simplicity of this rule, and the fact that these benefits have been considered in public charge inadmissibility determinations since 1999, would mitigate chilling effects to some extent. Note that the Medicaid enrollment does not include child enrollment because the 2019 Final Rule did not include Medicaid or CHIP for children.

[670] *See* U.S. Census Bureau, ''American Community Survey and Puerto Rico Community Survey 2020 Subject Definitions,'' *https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2020_ACSSubjectDefinitions.pdf* (last visited Aug. 17, 2022). The foreign-born population includes anyone who was not a U.S. citizen or a U.S. national at birth, which includes respondents who indicated they were a U.S. citizen by naturalization or not a U.S. citizen. The ACS questionnaires do not ask about immigration status but uses responses to determine the U.S. citizen and non-U.S.-citizen populations as well as to determine the native and foreign-born populations. The population surveyed includes all people who indicated that the United States was their usual place of residence on the survey date. The foreign-born population includes naturalized U.S. citizens, lawful permanent residents, noncitizens with a nonimmigrant status (*e.g.,* foreign students), noncitizens with a humanitarian status (*e.g.,* refugees), and noncitizens present without a lawful immigration status.

[671] To estimate the number of households with at least 1 foreign-born noncitizen family member that have received public benefits, DHS calculated the overall percentage of total U.S. households that are foreign-born noncitizen as 6.9 percent. Calculation: [22,289,490 (Foreign-born noncitizens)/322,903,030 (Total U.S. population)] * 100 = 6.9 percent. *See* U.S. Census Bureau American Database, ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates,'' *https://data.census.gov/cedsci* (last visited Aug. 17, 2022).

[672] *See* U.S. Census Bureau American Database, ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates,'' *https://data.census.gov/cedsci* (last visitedAug. 17, 2022). The average foreign-born household size is reported as 3.31 persons. DHS multiplied this figure by the estimated number of benefits-receiving households with at least 1 foreign-born noncitizen receiving benefits to estimate the population living in benefits-receiving households that include a foreign-born noncitizen.

[673] In this analysis, DHS uses the American Community Survey (ACS) to develop population estimates along with beneficiary data from each of the benefits program. DHS notes that the ACS data were used for the purposes of this analysis because it provided a cross-sectional survey based on a random sample of the population each year including current immigration classifications. Both surveys reflect use by noncitizens of the public benefits included in the Alternative.

[674] *See* U.S. Census Bureau Database, ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates,'' *https://data.census.gov/cedsci* (last visited Aug. 17, 2022).

[675] *See* U.S. Census Bureau Database, ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates,'' *https://data.census.gov/cedsci.* Calculation: [22,289,490 (Foreign-born noncitizens)/322,903,030 (Total U.S. population)] * 100 = 6.9 percent.

percentage of noncitizens in the population. However, if noncitizens tend to be grouped together in households, then an overestimation of households that include at least one noncitizen is more likely.

DHS then estimates the number of noncitizens who received benefits by multiplying the estimated number of households with at least one noncitizen who receives public benefits by the U.S. Census Bureau's estimated average household size of 3.31 for those who are foreign-born.[676]

Table 18. Estimated Population of Public Benefits Recipients Who Are Members of Households that Include at Least One Noncitizen, FY 2014 – FY 2018

Public Benefits Program	Average Annual Total Number of Recipients[1]	Households that May Be Receiving Benefits[2]	Benefits-Receiving Households with at Least One Noncitizen[3]	Public Benefits Recipients Who Are Members of Households Including at Least One Noncitizen[4]
Medicaid[5]	38,070,865	14,475,614	998,817	3,306,084
Supplemental Nutrition Assistance Program (SNAP)[6]	*N/A*	21,630,217	1,492,485	4,940,125
Temporary Assistance for Needy Families (TANF)[7]	2,836,073	1,078,355	74,406	246,284
Supplemental Security Income (SSI)[8]	8,250,666	3,137,135	216,462	716,489
Federal Rental Assistance[9]	*N/A*	5,199,000	358,731	*N/A*

Sources and Notes: USCIS analysis of data provided by the Federal agencies that administer each of the listed public benefits program or research organizations.

[1] Figures for the average annual total number of recipients are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available (2014-2018). For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the final rule.

[2] DHS estimated the number of households by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.63 for the U.S. total population. *See* U.S. Census Bureau Database. "S0501: Selected Characteristics of the

[676] *See* U.S. Census Bureau Database, "S0501: Selected Characteristics of the Native and Foreign-born Populations 2018 American Community Survey (ACS) 5-year Estimates," *https://data.census.gov/cedsci* (last visited Aug. 17, 2022).

Native and Foreign-born Populations 2014 – 2018 American Community Survey (ACS) 5-year Estimates." Available at *https://data.census.gov/cedsci* (last visited Jan. 14, 2022). Note that HUD Rental Assistance and HUD Housing Choice Vouchers programs report data on the household level. Therefore, DHS did not use this calculation to estimate the average household size and instead used the data as reported.

[3] To estimate the number of benefits-receiving households with at least one foreign-born noncitizen, DHS multiplied the estimated number of households receiving benefits in the United States by 6.9 percent, which is the foreign-born noncitizen population as a percentage of the U.S. total population using U.S. Census Bureau population estimates. *See ibid.*

[4] To estimate the population of public benefits recipients who are members of households that include foreign-born noncitizens, DHS multiplied the estimated number of benefits-receiving households with at least one foreign-born noncitizen by the average household size of 3.31 for those who are foreign-born using the U.S. Census Bureau's estimate. *See ibid.*

[5] Medicaid – *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS). Monthly Medicaid & CHIP Application, Eligibility Determination, and Enrollment Reports & Data. Available at *https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/monthly-reports/index.html*. Last visited Jan. 14, 2022. Note that each annual total was calculated by averaging the monthly enrollment population over each year. The numbers that were used for the average can be found in Table 1A: Medicaid and CHIP for each month, using the number listed as the "Total Across All States." through the Sept. 2018 report and in the Data.Medicaid.gov interactive database from Oct. 2018 onwards. DHS used "Total Medicaid Enrollment" data for its estimates. Also, note that per enrollee Medicaid costs vary by eligibility group and State. Note that consistent with the analysis conducted for the 2019 Final Rule, the Medicaid enrollment does not include child enrollment. Although DHS did not include Medicaid CHIP for children in the 2019 Final Rule, DHS is aware of evidence of disenrollment effects that would not be captured here

[6] SNAP – *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "National and/or State Level Monthly and/or Annual Data: Persons, Households, Benefits, and Average Monthly Benefit per Person & Household," "FY69 through FY22." Available at *https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap*. Last visited Jan. 14, 2022. The number of households receiving SNAP benefits in this table is not calculated using average U.S. household size. Rather, it is 5-year average (FY2014-FY2018) of the number of households as reported by the U.S. Department of Agriculture from the website listed in this footnote.

[7] TANF – *See* U.S. HHS, Office of Family Assistance. "TANF Caseload Data." Available at *https://www.acf.hhs.gov/ofa/data/tanf-caseload-data-2018*; *https://www.acf.hhs.gov/ofa/data/tanf-caseload-data-2017*; *https://www.acf.hhs.gov/ofa/data/tanf-caseload-data-2016*; *https://www.acf.hhs.gov/ofa/data/tanf-caseload-data-2015*; and *https://www.acf.hhs.gov/ofa/data/tanf-caseload-data-2014*. Last visited Jan. 14, 2022. Note: The number of participants is listed for the fiscal year, not calendar year since the dollar amount of assistance received is only presented for fiscal years.

[8] SSI – *See* U.S. Social Security Administration, Annual Report of the Supplemental Security Income Program, 2021, Table IV.B9., p. 47. Available at *https://www.ssa.gov/OACT/ssir/SSI21/ssi2021.pdf*; Last visited Jan. 14, 2022. *See also* U.S. Social Security Administration, Office of Research, Evaluation, and Statistics. "SSI Recipients by State and County, 2018," available at *https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2018/index.html*. "SSI Monthly Statistics, 2018." Available at *https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018/table01.html*.

Last visited Jan. 14, 2022. Note that the link shows fiscal year 2018 data, but links to data for other fiscal years can also be accessed.

[9] Federal Rental Assistance and HUD Housing Choice Vouchers – Data on annual total recipient households: *See* Center on Budget and Policy Priorities. National and State Housing Fact Sheets & Data. *See* Federal Rental Assistance, "Download the Data." and Housing Choice Voucher Program, "Download the Data." Available at *https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data*. Last visited Jan. 14, 2022. Note that "Federal Rental Assistance" includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521.

In order to estimate the economic impact of disenrollment or forgone enrollment from public benefits programs, it is necessary to estimate the typical annual public benefits a person receives for each public benefits program included in this economic analysis. DHS estimated the annual benefit received per person for each public benefit program in Table 19. For each benefit but Medicaid, the benefit per person is calculated for each public benefit program by dividing the average annual program payments by the average annual total number of recipients.[677] For Medicaid, DHS uses Centers for Medicare & Medicaid Services' (CMS) median per capita expenditure estimate across all States for 2018. To the extent that data are available, these estimates are based on 5-year annual averages for the years between FY 2014 and FY 2018.

[677] DHS notes that the amounts presented may not account for overhead costs associated with administering each of these public benefits programs. The costs presented are based on amounts recipients have received in benefits as reported by benefits-granting agencies.

Table 19. Estimated Annual Benefit per Person, by Public Benefit Program, FY 2014 – FY 2018.

Public Benefits Program	Average Annual Total Number of Recipients	Average Annual Public Benefits Payments	Annual Benefit per Person or Household[1]
Medicaid[2]	*N/A*	*N/A*	$8,168
Supplemental Nutrition Assistance Program (SNAP)[3]	43,948,386	$66,161,985,577	$1,505
Temporary Assistance for Needy Families (TANF)[4]	2,836,073	$3,840,827,013	$1,354
Supplemental Security Income (SSI)[5]	8,250,666	$54,684,600,000	$6,628
Federal Rental Assistance[6]	5,199,000	$43,834,000,000	$8,431

Sources and notes: USCIS analysis of data provided by the Federal agencies that administer each of the listed public benefits program or research organizations. Note that figures for the average annual total number of recipients and the annual total public benefits payments are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available (2014-2018). For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the final rule. Note that DHS acknowledges that there could be overlap among participants in the listed public benefit programs.

[1] Calculation: Average Annual Benefit per Person = (Average Annual Public Benefits Payments) / (Average Annual Total Number of Recipients). Note: Calculations may not be exact due to rounding.

[2] Medicaid- Data on Medicaid Per Capita Expenditures available at *https://www.medicaid.gov/state-overviews/scorecard/how-much-states-spend-per-medicaid-enrollee/index.html*. Last visited Jan. 14, 2022. Table 1. Per capita Expenditure Estimates for States and Data Quality Assessment (2018). Column "Total," Row "Median"

[3] SNAP – Data on the annual program expenditure on public benefits: *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "National and/or State Level Monthly and/or Annual Data: Persons, Households, Benefits, and Average Monthly Benefit per Person & Household," "FY1969 through FY2022 National View Summary." Available at *https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap*. Last visited Jan. 14, 2022.

[4] TANF – Data on annual program expenditure on public benefits: *See* U.S. HHS, Office of Family Assistance. "TANF Financial Data." *See* Table A.1.: Federal TANF and State MOE Expenditures Summary by ACF-196 Spending Category,

Federal Funds for Basic Assistance. Available at *https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2018*; *https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2017*; *https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2016*; *https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2015*; and *https://www.acf.hhs.gov/ofa/data/tanf-financial-data-fy-2014*. Last visited Jan. 14, 2022.

[5] SSI – Data on the annual program expenditure on public benefits: *See* U.S. Social Security Administration, *Annual Report of the Supplemental Security Income Program, 2021*. Table IV.B9.—SSI Recipients with Federally Administered Payments in Current-Payment Status, p. 47 and Table IV.C1.—SSI Federal Payments in Current Dollars, Calendar years 1975-2021, p. 48. Available at: *https://www.ssa.gov/OACT/ssir/SSI21/ssi2021.pdf*. Last visited Jan. 14, 2022; *See also* U.S. Social Security Administration, Office of Research, Evaluation, and Statistics. "Number of recipients by state or other area, eligibility category, age, and receipt of OASDI benefits, December 2018, Table 1" Available at *https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2018/index.html*. Last visited Jan. 14, 2022. Note that the link shows fiscal year 2018 data, but links to data for other fiscal years can also be accessed.

[6] Federal Rental Assistance and HUD Housing Choice Vouchers – Data on annual total expenditure on public benefits: *See* Center on Budget and Policy Priorities. *National and State Housing Fact Sheets & Data*. Federal Rental Assistance, "Download the Data" and Housing Choice Voucher Program, "Download the Data." Available at *https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data*. Last visited Jan. 14, 2022.

As discussed earlier, using the midpoint reduction rate of 8.9 percent, Table 20 shows the estimated population that would be likely to disenroll or forgo enrollment in a federally funded public benefits program under the Alternative.

Table 20. Estimated Population of Members of Households Including at Least One Noncitizen Likely to Disenroll or Forgo Enrollment in a Public Benefits Program.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households Including at Least One Noncitizen[1]	Benefits-Receiving Households with At Least One Noncitizen [1]	Members of Benefits-Receiving Households Including Noncitizens Based On an 8.9% Rate of Disenrollment or Forgone Enrollment[2]	Benefits-Receiving Households with At Least One Noncitizen Based On an 8.9% Rate of Disenrollment or Forgone Enrollment[3]
Medicaid	3,306,084		294,241	
Supplemental Nutrition Assistance Program (SNAP)	4,940,125		439,671	
Temporary Assistance for Needy Families (TANF)	246,284		21,919	
Supplemental Security Income (SSI)	716,489		63,768	
Federal Rental Assistance	N/A	358,731	N/A	31,927
Totals	**9,208,982**	**358,731**	**819,599**	**31,927**

Source: USCIS analysis.

Notes:
[1] *See* Table 18.
[2] To estimate the population that could choose to disenroll/forgo enrollment, DHS multiplied the population of public benefits recipients who are members of benefits-receiving households including foreign-born noncitizens by 8.9 percent (the midpoint reduction rate). Note that 819,599 total does not include individuals who may have disenrolled from the HUD Federal Rental Assistance. The 31,927 total reports the number of households who may have disenrolled from the HUD Federal Rental Assistance, but the number of individuals affected by the disenrollment from HUD Federal Rental Assistance may be greater than 31,927 because there is more than one member per household.
[3] To estimate the population that could choose to disenroll/forgo enrollment, DHS multiplied the number of households with at least one foreign-born noncitizen by 8.9 percent (the midpoint reduction rate).

Table 20 shows the estimated population that would be likely to disenroll from or forgo enrollment in federally funded public benefits programs due to the Alternative's indirect chilling effect. The table also

presents the previously estimated average annual benefit per person who received benefits for each of the public benefits programs.[678] Multiplying the estimated population that would be likely to disenroll from or forgo enrollment in public benefit programs due to the Alternative by the average annual benefit per person who received benefits for each of the public benefit programs, DHS estimates that the total annual reduction in transfer payments paid by the Federal Government to individuals who may choose to disenroll from or forgo enrollment in public benefits programs would be approximately $3.79 billion for an estimated 819,599 individuals and 31,927 households across the public benefits programs examined. As these estimates reflect only Federal financial participation in programs whose costs are shared by U.S. States, there may also be additional reductions in transfer payments from U.S. States to individuals who may choose to disenroll from or forgo enrollment in a public benefits program.

Since the Federal share of Federal financial participation (FFP) varies from State to State, DHS uses the average Federal Medical Assistance Percentages (FMAP) across all States and U.S. territories of 59 percent to estimate the total reduction of transfer payments for Medicaid.[679] DHS acknowledges that the estimate of 59 percent might be an underestimate because it does not include higher percentage of FMAP for States that were provided enhanced FMAP by the Affordable Care Act's Medicaid expansion nor any additional increase in FMAP due to the Families First Coronavirus Relief Act. Table 21 shows that Federal annual transfer payments for Medicaid would be reduced by about $2.4 billion under the Alternative. From this amount and the average FMAP of 59 percent, DHS calculates the total reduction in transfer payments from Federal and State governments to individuals to be about $4.07 billion.[680] From that total amount, DHS estimates State annual transfer payments would be reduced by approximately $1.67 billion due to the disenrollment or forgone enrollment of foreign-born noncitizens and their households from Medicaid.[681]

For the purpose of this analysis DHS conservatively assumes that, for SNAP, TANF and Federal Rental Assistance, the Federal Government pays 100 percent of benefits values included in Table 18 and Table 19 above. Therefore, Table 20 shows the Federal share of annual transfer payments would be about $0.96 billion for SNAP, TANF, and Federal Rental Assistance.[682] For SSI, the maximum Federal benefit changes yearly. Effective January 1, 2022, the maximum Federal benefit was $841 monthly for an individual and $1,261 monthly for a couple. Some States supplement the Federal SSI benefit with additional payments, which make the total SSI benefit levels higher in those States.[683] Moreover, the estimates of expenditures for Federal Rental Assistance relate to purely Federal funds, although housing programs are administered by State and local public housing authorities, which may supplement program funding. However, DHS is unable to quantify the State portion of the transfer payment due to a lack of data related to State-level administration of these public benefit programs.

[678] As previously noted, the average annual benefits per person amounts presented may not account for overhead costs associated with administering each of these public benefits programs since they are based on amounts recipients have received in benefits as reported by benefits-granting agencies. Therefore, the costs presented may underestimate the total amount of transfer payments to the Federal Government.

[679] *See* ''Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 Through September 30, 2017,'' 80 FR 73779 (Nov. 25, 2015).

[680] Total annual Federal and State reduction in transfer payment for Medicaid = (Estimated Reduction in Transfer Payments Based on a 8.9% Rate of Disenrollment or Forgone Enrollment for Medicaid from Table 21)/(average Federal Medical Assistance Percentages (FMAP) across all States and U.S. territories) = $2,403,360,488/0.59 = $4.07 billion (rounded).

[681] State annual reduction in transfer payment for Medicaid =Total annual Federal and State reduction in transfer payment for Medicaid— Federal annual reduction in transfer payment for Medicaid = $4.07 billion − $2.40 billion = $1.67 billion.

[682] From Table 21, transfer payment reduction for SNAP is $661,704,855, for TANF is $29,678,326, and for Federal Rental Assistance is $ 269,176,537. Calculation of the sum: $960,559,718 ($0.96 billion).

[683] *See* SSI information available at *https://www.ssa.gov/policy/docs/statcomps/supplement/2021/ssi.html.*

Table 21. Total Estimated Reduction in Transfer Payments Paid by the Federal Government Due to Disenrollment or Forgone Enrollment in Public Benefits Programs.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households Including Noncitizens Based On an 8.9% Rate of Disenrollment or Forgone Enrollment	Households Receiving Benefits with At Least One Noncitizen Based On an 8.9% Rate of Disenrollment or Forgone Enrollment	Average Annual Benefit per Person or Household	Estimated Reduction in Transfer Payments Based On an 8.9% Rate of Disenrollment or Forgone Enrollment
Medicaid[1]	294,241		$8,168	$2,403,360,488
Supplemental Nutrition Assistance Program (SNAP)	439,671		$1,505	$661,704,855
Temporary Assistance for Needy Families (TANF)	21,919		$1,354	$29,678,326
Supplemental Security Income (SSI)	63,768		$6,628	$422,654,304
Federal Rental Assistance		31,927	$8,431	$269,176,537
Totals	**819,599**	**31,927**	***N/A***	**$3,786,574,510**

Source: USCIS analysis.

Notes:

[1] Neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures. Note that per enrollee Medicaid costs vary by eligibility group and State.

As shown in Table 21, applying the same calculations using the low estimate of 3.1 percent, DHS estimates that the total annual reduction in transfer payments paid by the Federal government to individuals who may choose to disenroll from or forgo enrollment in public benefits programs would be approximately $1.32 billion for an estimated 285,479 individuals and 11,121 households across the public benefits programs examined. For the high estimate of 14.7 percent DHS estimates that the total annual reduction in transfer payments paid by the Federal government to individuals who may choose to disenroll from or forgo enrollment in public benefits programs would be approximately $6.25 billion for an estimated 1,353,720 individuals and 52,733 households across the public benefits programs examined.

Table 22. Comparison of the High, Low, and Primary Total Estimated Reduction in Transfer Payments Paid by the Federal Government Due to Disenrollment or Forgone Enrollment in Public Benefits Programs.

Public Benefits Program	Estimated Annual Reduction in Transfer Payments Based on a 3.1% Rate of Disenrollment or Forgone Enrollment	Estimated Annual Reduction in Transfer Payments Based on an 8.9% Rate of Disenrollment or Forgone Enrollment	Estimated Annual Reduction in Transfer Payments Based on a 14.7% Rate of Disenrollment or Forgone Enrollment
Medicaid[1]	$837,130,152	$2,403,360,488	$3,969,598,992
Supplemental Nutrition Assistance Program (SNAP)	$230,481,720	$661,704,855	$1,092,927,990
Temporary Assistance for Needy Families (TANF)	$10,337,790	$29,678,326	$49,020,216
Supplemental Security Income (SSI)	$147,214,508	$422,654,304	$698,087,472
Federal Rental Assistance	$93,761,151	$ 269,176,537	$444,591,923
Totals	**$1,318,925,321**	**$3,786,574,510**	**$6,254,226,593**

In the 2019 Final Rule, DHS anticipated that USCIS' review of public charge inadmissibility would substantially increase the number of denials for adjustment of status applicants because of the rule's provisions and process for public charge determinations. However, USCIS data show that the 2019 Final Rule did not result in the anticipated increase in denials of adjustment of status applications based on the public charge ground of inadmissibility during the period it was in effect between February 2020 and March 2021. During the year the 2019 Final Rule was in effect, DHS issued only 3 denials (which were subsequently reopened and approved) and 2 Notices of Intent to Deny (which were ultimately rescinded and the applications were approved) based on the totality of the circumstances public charge inadmissibility determination under section 212(a)(4)(A) and (B) of the INA, 8 U.S.C. 1182(a)(4)(A) and (B). The 2019 Final Rule thus ultimately did not result in any adverse determinations in the 47,555 applications for adjustment of status to which it was applied.[684]

Comparison of the total direct annual cost between the current final rule and the Alternative show that the direct cost of the Alternative is greater than that of the final rule. Although the Alternative would indirectly have the effect of a larger reduction of transfer payments than the final rule, likely primarily among those not regulated by the Alternative, transfer payments are not considered to be costs or benefits of a rule. Rather, they are transfers from one group to another group that do not themselves entail a net gain or loss to society.

For instance, Bernstein et al. (2020) found that the chilling effect on public benefits associated with the 2019 Final Rule is partially attributable to confusion and misunderstanding. That study finds that two-thirds of adults in immigrant families (66.6 percent) were aware of the 2019 Final Rule, and 65.5 percent were confident in their understanding about the rule. Yet only 22.7 percent knew it does not apply to applications for naturalization, and only 19.1 percent knew children's enrollment in Medicaid would not be considered in their parents' public charge determinations. These results suggest that under the Alternative, parents might pull their eligible U.S.-citizen children out of crucial benefit programs, and current lawful permanent residents might choose not to enroll in safety net programs for which they might be eligible for fear of risking their citizenship prospects.[685]

iii. Additional Indirect Effects

DHS notes that there would likely be additional indirect effects related to increased disenrollment or forgone enrollment in public benefit programs. As individuals disenroll or forgo public benefit program enrollment, costs associated with administration of public benefit programs might decrease insofar

[684] USCIS Field Operations Directorate (June 2021); USCIS Office of Performance and Quality (June 2021); USCIS Field Office Directorate (Oct. 2021).

[685] Bernstein et al. (2020).

as administration costs are correlated with enrollment.[686]

DHS received comments from several States regarding administrative costs due to the disruptions in access to public benefit programs. The disruptions result in increased ''churn'' as eligible individuals and families cycle on and off public benefit program more frequently (enrolling at times of great need and disenrolling to avoid risk or due to confusion), which will increase States' administrative costs. States will also incur additional administrative costs in order to allocate resources for consistent and targeted outreach and education, available in the individuals' native languages and shared through their social networks, in order to allay fears about the public charge rule. One State provided comment on administrative costs it incurred due to the 2019 Final Rule. For the fiscal year 2019, the State funded $1.3 million in grants to establish capacity within community organizations across the State to conduct community education and individual and family counseling, including focusing on public charge education and outreach to address the misinformation and fear in communities. For fiscal years 2020 and 2021, the State funded $2.1 million in grants to ensure continued capacity within community organizations across the State to conduct community education and individual and family counseling on the 2019 Final Rule. State employees dedicated hundreds of hours to planning and training State caseworkers and call center workers related to 2019 Final Rule. According to the State, the estimated administrative cost associated with the State caseworkers is over $3 million.

DHS also notes that there would likely be additional downstream indirect effects related to increased disenrollment or forgone enrollment in public benefit programs, such as:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.[687]

DHS also

> recognize[d] that reductions in federal and state transfers under federal benefit programs may have impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.[688]

In another section of the 2019 Final Rule, DHS stated that it had ''determined that the rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children.'' [689]

At the time of the 2019 Final Rule's issuance, one study estimated that as many as 3.2 million fewer persons might receive Medicaid due to fear and confusion surrounding the 2019 Final Rule, which could lead to as many as 4,000 excess deaths every year.[690] The same study estimated that 1.8 million fewer people would use SNAP benefits, even though many of them are U.S. citizens. In addition, loss of Federal housing security would likely lead to worse health outcomes and dependence on other elements of the social safety net for some persons. As noted above, E.O. 12866 and E.O. 13563 direct agencies to select regulatory approaches that maximize net benefits while giving consideration, to the extent appropriate and consistent with law, to values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. In addition, E.O. 13563 emphasizes the importance of not only quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility, but also considering equity, fairness, distributive impacts, and human dignity. DHS recognizes that many of the indirect effects discussed in this section implicate values such as equity, fairness, distributive impacts, and human dignity. DHS acknowledges that although many of these effects are difficult to quantify, they would be an indirect cost of the Alternative.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA),[691] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[692] requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. 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.[693]

The final rule does not directly regulate small entities and is not expected to have a direct effect on small entities. It does not mandate any actions or requirements for small entities in the process of a Form I–485 Adjustment of Status requestor seeking immigration benefits. Rather, this final rule regulates individuals, and individuals are not defined as ''small entities'' by the RFA.[694] Based on the evidence presented in this analysis and throughout this preamble, the Secretary of Homeland Security certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among

[686] DHS notes that Federal, State, and local governments share administrative costs (with the Federal Government contributing approximately 50 percent) for SNAP. *See* USDA, ''Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2019,'' at 1, *https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2019.pdf,* (Mar. 2021) (last visited Aug. 17, 2022). DHS notes that because State participation in these programs may vary depending on the type of benefit provided, it was unable to fully or specifically quantify the impact of State transfers. For example, the Federal Government funds all of SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses (per section 16(a) of the Food and Nutrition Act of 2008). *See also* USDA, ''FNS Handbook 901,'' at 41 (Jan 2020), *https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_internet_Ready_Format.pdf*). Federal TANF funds can be used for administrative TANF costs, up to 15 percent of a State's family assistance grant amount. *See* 45 CFR 263.13(a)(i).

[687] *See* 2019 Final Rule RIA at 109.

[688] 2019 Final Rule RIA at 6.

[689] ''Inadmissibility on Public Charge Grounds,'' 84 FR 41292, 41493 (Aug. 14, 2019).

[690] Leighton Ku, ''New Evidence Demonstrates That the Public Charge Rule Will Harm Immigrant Families and Others,'' Health Affairs (Oct. 9, 2019), *https://www.healthaffairs.org/do/10.1377/hblog20191008.70483/full* (last visited Aug. 12, 2022).

[691] 5 U.S.C. ch. 6.

[692] Public Law 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note).

[693] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act (15 U.S.C. 632).

[694] 5 U.S.C. 601(6).

other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[695] The inflation-adjusted value of $100 million in 1995 is approximately $177.8 million in 2021 based on the Consumer Price Index for All Urban Consumers (CPI–U).[696]

The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate.[697] The term ''Federal intergovernmental mandate'' means, in relevant part, a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program).[698] The term ''Federal private sector mandate'' means, in relevant part, a provision that would impose an enforceable duty upon the private sector (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program).[699]

This final rule does not contain such a mandate, because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to their voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this rule. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA.[700] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA. DHS has, however, analyzed many of the potential effects of this action in the RIA above.

D. Small Business Regulatory Enforcement Fairness Act of 1996

The Office of Management and Budget has designated this final rule as a major rule as defined by 5 U.S.C. 804.[701] This final rule likely will result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. Accordingly, absent exceptional circumstances, this final rule must be effective no earlier than 60 days after the date on which Congress receives a report submitted by DHS as required by 5 U.S.C. 801(a)(1). This final rule will be effective December 23, 2022, which meets this requirement.

E. Executive Order 13132 (Federalism)

E.O. 13132 was issued to ensure the appropriate division of policymaking authority between the States and the Federal Government and to further the policies of the Unfunded Mandates Act. This final rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this rule would impose substantial direct compliance costs on State and local governments or preempt State law. Therefore, in accordance with section 6 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have ''tribal implications'' because, if finalized, it would 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, although there are references to Indian Tribes in this final rule. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) financially impacts families, if at all, only to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the agency must prepare an impact assessment to address criteria specified in the law.

DHS has analyzed this final regulatory action in accordance with the requirements of section 654 and determined that this final rule does not affect family well-being, and therefore DHS is not issuing a Family Policymaking Assessment.

I. National Environmental Policy Act

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA

[695] 2 U.S.C. 1532(a).

[696] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items'' (Dec 2021), *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf.* Steps in calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the most recent current year available (2021); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100. Calculation of inflation: [(Average monthly CPI–U for 2021 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(270.970 − 152.383)/152.383] * 100 = (118.587/152.383) * 100 = 0.7782 * 100 = 77.82 percent = 77.8 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.778 = $177.8 million in 2021 dollars.

[697] *See* 2 U.S.C. 1502(1), 658(6).

[698] 2 U.S.C. 658(5).

[699] 2 U.S.C. 658(7).

[700] *See* 2 U.S.C. 1502(1), 658(6).

[701] *See* 5 U.S.C. 804(2).

and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. 40 CFR 1507.3(e)(2)(ii) and 1501.4. The Instruction Manual, Appendix A, Table 1 lists categorical exclusions that DHS has found to have no such effect. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.2(a–c).

This final rule applies to applicants for admission or adjustment of status as long as the individual is applying for an immigration status that is subject to the public charge ground of inadmissibility. As discussed in detail above, this final rule establishes a definition of public charge and specifies the types of public benefits that DHS would consider as part of its public charge inadmissibility determinations. This list of benefits is the same as under the 1999 Interim Field Guidance that governed public charge inadmissibility determinations for over 20 years. This list of public benefits is narrower than under the 2019 Final Rule. This final rule codifies a totality of the circumstances framework for the analysis of the factors, including statutory minimum factors, used to make public charge inadmissibility determinations. This final rule makes changes to the regulations governing public charge bonds.

Given the similarity between this final rule and the 1999 Interim Field Guidance with respect to public charge inadmissibility determinations, DHS does not anticipate any change in the number of individuals admitted to the United States or adjusting status under this final rule. DHS does not expect that this final rule would change the level of immigration as compared to the No Action Baseline.

DHS believes this final rule will not result in any meaningful, calculable change in environmental effect. This final rule implements the public charge ground of inadmissibility in a way that is consistent with how DHS has applied the statute since 1999, and the differences between the policies in this final rule and the 1999 Interim Field Guidance do not change the environmental effect of DHS's current approach. DHS has therefore determined that this final rule clearly fits within Categorical Exclusion A3(d) in DHS Instruction Manual 023–01–001–01, the Department's procedures for implementing NEPA issued November 6, 2014 (available at *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf),* because it interprets or amends a regulation without changing its environmental effect. This final rule will not result in any major Federal action that will significantly affect the quality of the human environment. The new regulations are not a part of any larger action, and present no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

DHS explicitly requested comments on NEPA in the NPRM, and only one commenter addressed it by expressing their understanding that DHS has determined that the rule fits within the Categorical Exclusions.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 through 3512, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. In this final rule, DHS invites written comments and recommendations for the proposed information collection outlined below within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

DHS and USCIS invited the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice was published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument. Comments were accepted for 60 days from the publication date of the proposed rule. See Section III.N of this preamble for summaries of and responses to the comments received regarding the information collection.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–485, Supplement A, and Supplement J; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on Form I–485 will be used to request and determine eligibility for adjustment of permanent residence status. Supplement A is used to adjust status under section 245(i) of the Immigration and Nationality Act. Supplement J is used by employment-based applicants for adjustment of status who are filing or have previously filed Form I–485 as the principal beneficiary of a valid Form I–140 in an employment-based immigrant visa category that requires a job offer.

(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–485 is 690,837 and the estimated hour burden per response is 7.17 hours. The estimated total number of respondents for the information collection Supplement A is 29,213 and the estimated hour burden per response is 1.25 hour. The estimated total number of respondents for the information collection Supplement J is 37,358 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection of Biometrics is 690,837 and the estimated hour burden per response is 1.17 hour.

(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 5,835,455 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 $236,957,091.

V. List of Subjects and Regulatory Amendments

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Immigration, Immigration and Naturalization Service, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority in part 103 continues to read:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54; 125 Stat. 550; 31 CFR part 223.

■ 2. Section 103.6 is amended by revising the paragraph (c) heading and paragraph (c)(1) to read as follows:

§ 103.6 Immigration Bonds

* * * * *

(c) *Cancellation and breach*—(1) *Public charge bonds.* A public charge bond posted for an alien will be cancelled when the alien dies, departs permanently from the United States, or is naturalized, provided the alien did not breach such bond by receiving either public cash assistance for income maintenance or long-term institutionalization at government expense prior to death, permanent departure, or naturalization. USCIS may cancel a public charge bond at any time after determining that the alien is not likely at any time to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond will be cancelled by USCIS upon review following the fifth anniversary of the admission or adjustment of status of the alien, provided that the alien has filed Form I–356, Request for Cancellation of Public Charge Bond, and USCIS finds that the alien did not receive either public cash assistance for income maintenance or long-term institutionalization at government expense prior to the fifth anniversary. If Form I–356 is not filed, the public charge bond will remain in effect until the form is filed and USCIS reviews the evidence supporting the form, and renders a decision regarding the breach of the bond, or a decision to cancel the bond.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108–458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110–229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115–218.

Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 4. Amend § 212.18 by revising paragraph (b)(2) and (3) to read as follows:

§ 212.18 Application for Waivers of inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders

* * * * *

(b) * * *

(2) If an applicant is inadmissible under section 212(a)(1) of the Act, USCIS may waive such inadmissibility if it determines that granting a waiver is in the national interest.

(3) If any other applicable provision of section 212(a) renders the applicant inadmissible, USCIS may grant a waiver of inadmissibility if the activities rendering the applicant inadmissible were caused by or were incident to the victimization and USCIS determines that it is in the national interest to waive the applicable ground or grounds of inadmissibility.

■ 5. Add §§ 212.20 through 212.23 to read as follows:

Sec.

* * * * *

§ 212.20 Applicability of public charge inadmissibility.

8 CFR 212.20 through 212.23 address the public charge ground of inadmissibility under section 212(a)(4) of the Act. Unless the alien requesting the immigration benefit or classification has been exempted from section 212(a)(4) of the Act as listed in § 212.23(a), the provisions of §§ 212.20 through 212.23 of this part apply to an applicant for admission or adjustment of status to that of a lawful permanent resident.

§ 212.21 Definitions.

For the purposes of §§ 212.20 through 212.23, the following definitions apply:

(a) *Likely at any time to become a public charge* means likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

(b) *Public cash assistance for income maintenance* means:

(1) Supplemental Security Income (SSI), 42 U.S.C. 1381 *et seq.;*

(2) Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program, 42 U.S.C. 601 *et seq.;* or

(3) State, Tribal, territorial, or local cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but which also exist under other names).

(c) *Long-term institutionalization at government expense* means government assistance for long-term institutionalization (in the case of Medicaid, limited to institutional services under section 1905(a) of the Social Security Act) received by a beneficiary, including in a nursing facility or mental health institution. Long-term institutionalization does not include imprisonment for conviction of a crime or institutionalization for short periods for rehabilitation purposes.

(d) *Receipt (of public benefits).* An individual's receipt of public benefits occurs when a public benefit-granting agency provides either public cash assistance for income maintenance or long-term institutionalization at government expense to the individual, where the individual is listed as a beneficiary of such benefits. An individual's application for a public benefit on their own behalf or on behalf of another does not constitute receipt of public benefits by such individual.

Approval for future receipt of a public benefit that an individual applied for on their own behalf or on behalf of another does not constitute receipt of public benefits by such an individual. An individual's receipt of public benefits solely on behalf of a third party (including a member of the alien's household as defined in paragraph (f) of this section) does not constitute receipt of public benefits by such individual. The receipt of public benefits solely by a third party (including a member of the alien's household as defined in paragraph (f) of this section), even if an individual assists with the application process, does not constitute receipt for such individual.

(e) *Government* means any Federal, State, Tribal, territorial, or local government entity or entities of the United States.

(f) *Household:* The alien's household includes:

(1) The alien;

(2) The alien's spouse, if physically residing with the alien;

(3) If physically residing with the alien, the alien's parents, the alien's unmarried siblings under 21 years of age, and the alien's children as defined in section 101(b)(1) of the Act;

(4) Any other individuals (including a spouse or child as defined in section 101(b)(1) of the Act not physically residing with the alien) who are listed as dependents on the alien's federal income tax return; and

(5) Any other individual(s) who lists the alien as a dependent on their federal income tax return.

§ 212.22 Public charge inadmissibility determination.

(a) *Factors to consider*—(1) *Consideration of minimum factors:* For purposes of a public charge inadmissibility determination, DHS will consider the alien's:

(i) Age;

(ii) Health, as evidenced by a report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required (to which DHS will generally defer absent evidence that such report is incomplete);

(iii) Family status, as evidenced by the alien's household size, based on the definition of household in § 212.21(f);

(iv) Assets, resources, and financial status, as evidenced by the alien's household's income, assets, and liabilities (excluding any income from public benefits listed in § 212.21(b) and income or assets from illegal activities or sources such as proceeds from illegal gambling or drug sales); and

(v) Education and skills, as evidenced by the alien's degrees, certifications, licenses, skills obtained through work experience or educational programs, and educational certificates.

(2) *Consideration of affidavit of support.* DHS will favorably consider an Affidavit of Support Under Section 213A of the INA, when required under section 212(a)(4)(C) or (D) of the Act, that meets the requirements of section 213A of the Act and 8 CFR part 213a, in making a public charge inadmissibility determination.

(3) *Consideration of current and/or past receipt of public benefits:* DHS will consider the alien's current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense (consistent with § 212.21(c)). DHS will consider such receipt in the totality of the circumstances, along with the other factors. DHS will consider the amount and duration of receipt, as well as how recently the alien received the benefits, and for long-term institutionalization at government expense, evidence submitted by the alien that the alien's institutionalization violates federal law, including the Americans with Disabilities Act or the Rehabilitation Act. However, current and/or past receipt of these benefits will not alone be a sufficient basis to determine whether the alien is likely at any time to become a public charge. DHS will not consider receipt of, or certification or approval for future receipt of, public benefits not referenced in § 212.21(b) and (c)), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, any benefits related to immunizations or testing for communicable diseases, or other supplemental or special-purpose benefits.

(4) *Disability alone not sufficient.* A finding that an alien has a disability, as defined by Section 504 of the Rehabilitation Act, will not alone be a sufficient basis to determine whether the alien is likely at any time to become a public charge.

(b) *Totality of the circumstances.* The determination of an alien's likelihood of becoming a public charge at any time in the future must be based on the totality of the alien's circumstances. No one factor outlined in paragraph (a) of this section, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, should be the sole criterion for determining if an alien is likely to become a public charge. DHS may periodically issue guidance to adjudicators to inform the totality of the circumstances assessment. Such guidance will consider how these factors affect the likelihood that the alien will become a public charge at any time based on an empirical analysis of the best-available data as appropriate.

(c) *Denial Decision.* Every written denial decision issued by USCIS based on the totality of the circumstances set forth in paragraph (b) of this section will reflect consideration of each of the factors outlined in paragraph (a) of this section and specifically articulate the reasons for the officer's determination.

(d) *Receipt of public benefits while an alien is in an immigration category exempt from public charge inadmissibility.* In an adjudication for an immigration benefit for which the public charge ground of inadmissibility applies, DHS will not consider any public benefits received by an alien during periods in which the alien was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as set forth in § 212.23(a), or for which the alien received a waiver of public charge inadmissibility, as set forth in § 212.23(c).

(e) *Receipt of benefits available to refugees.* DHS will not consider any public benefits that were received by an alien who, while not a refugee admitted under section 207 of the Act, is eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the Act, including services described under section 412(d)(2) of the Act provided to an unaccompanied alien child as defined under 6 U.S.C. 279(g)(2).

§ 212.23 Exemptions and waivers for public charge ground of inadmissibility.

(a) *Exemptions.* The public charge ground of inadmissibility under section 212(a)(4) of the Act does not apply, based on statutory or regulatory authority, to the following categories of aliens:

(1) Refugees at the time of admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(3) Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and

Related Programs Appropriations Act of 1988, Public Law 100–202, 101 Stat. 1329–183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;

(4) Afghan and Iraqi Interpreters, or Afghan or Iraqi nationals employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended, Public Law 110–181 (Jan. 28, 2008);

(5) Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

(6) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89–732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;

(7) Nicaraguans and other Central Americans applying for adjustment of status under section 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;

(8) Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;

(9) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101–167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

(10) Special immigrant juveniles as described in section 245(h) of the Act;

(11) Aliens who entered the United States prior to January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);

(12) Aliens applying for or reregistering for Temporary Protected Status as described in section 244 of the Act in accordance with section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);

(13) Nonimmigrants described in section 101(a)(15)(A)(i) and (ii) of the Act (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), in accordance with section 102 of the Act and 22 CFR 41.21(d);

(14) Nonimmigrants classifiable as C–2 (alien in transit to U.N. Headquarters) or C–3 (foreign government official), 22 CFR 41.21(d);

(15) Nonimmigrants described in section 101(a)(15)(G)(i), (ii), (iii), and (iv), of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), in accordance with section 102 of the Act and 22 CFR 41.21(d);

(16) Nonimmigrants classifiable as NATO–1, NATO–2, NATO–3, NATO–4 (NATO representatives), and NATO–6 in accordance with 22 CFR 41.21(d);

(17) Applicants for nonimmigrant status under section 101(a)(15)(T) of the Act, in accordance with § 212.16(b);

(18) Except as provided in paragraph (b) of this section, individuals who are seeking an immigration benefit for which admissibility is required, including but not limited to adjustment of status under section 245(a) of the Act and section 245(l) of the Act and who:

(i) Have a pending application that sets forth a prima facie case for eligibility for nonimmigrant status under section 101(a)(15)(T) of the Act, or

(ii) Have been granted nonimmigrant status under section 101(a)(15)(T) of the Act, provided that the individual is in valid T nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated;

(19) Except as provided in paragraph (b) of this section:

(i) Petitioners for nonimmigrant status under section 101(a)(15)(U) of the Act, in accordance with section 212(a)(4)(E)(ii) of the Act; or

(ii) Individuals who are granted nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act, who are seeking an immigration benefit for which admissibility is required, including, but not limited to, adjustment of status under section 245(a) of the Act, provided that the individuals are in valid U nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated;

(20) Except as provided in paragraph (b) of this section, any aliens who are VAWA self-petitioners under section 212(a)(4)(E)(i) of the Act;

(21) Except as provided in paragraph (b) of this section, qualified aliens described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;

(22) Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108–136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);

(23) American Indians born in Canada determined to fall under section 289 of the Act;

(24) Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Public Law 97–429 (Jan. 8, 1983);

(25) Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106–429 under 8 CFR 245.21;

(26) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991, under section 646(b) of the IIRIRA, Public Law 104–208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note;

(27) Applicants adjusting status who qualify for a benefit under Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, *Public Law 116–92,* 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension);

(28) Certain Syrian nationals adjusting status under Public Law 106–378; and

(29) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.

(b) *Limited Exemption.* Aliens described in paragraphs (a)(18) through (21) of this section must submit an Affidavit of Support Under Section 213A of the INA if they are applying for adjustment of status based on an employment-based petition that requires such an affidavit of support as described in section 212(a)(4)(D) of the Act.

(c) *Waivers.* A waiver for the public charge ground of inadmissibility may be authorized based on statutory or regulatory authority, for the following categories of aliens:

(1) Applicants for admission as nonimmigrants under 101(a)(15)(S) of the Act;

(2) Nonimmigrants admitted under section 101(a)(15)(S) of the Act applying for adjustment of status under section 245(j) of the Act (witnesses or informants); and

(3) Any other category of aliens who are eligible to receive a waiver of the public charge ground of inadmissibility.

PART 213—PUBLIC CHARGE BONDS

■ 6. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 1183; 8 CFR part 2.

■ 7. Revise § 213.1 to read as follows:

§ 213.1 Admission under bond or cash deposit.

(a) *Public charge bonds for adjustment of status applicants.* If, in the course of adjudicating an application for adjustment of status to that of a lawful permanent resident, USCIS determines that the alien is inadmissible only under section 212(a)(4) of the Act, and that the application for adjustment of status is otherwise approvable, USCIS may invite the alien to submit a public charge bond as a condition of approval of the adjustment of status application. Subject to the requirements of paragraph (c) of this section and 8 CFR 103.6, USCIS will set the bond amount and provide instructions for the submission of a public charge bond. Public charge bonds may be in the form of a surety bond or an agreement covering cash deposits.

(b) *Public charge bonds requested by consular officers.* USCIS may accept a public charge bond before the issuance of an immigrant visa to the alien upon receipt of a request directly from a United States consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond. The consular officer will set the amount of any such bond subject to paragraph (c) of this section and will provide instructions for the submission of a public charge bond. Upon acceptance of such a bond, USCIS will notify the U.S. consular officer who requested the bond, giving the date and place of acceptance and the amount of the bond.

(c) *Form and amount of public charge bonds.* All bonds and agreements covering cash deposits given as a condition of admission or adjustment of status of an alien under section 213 of the Act must be executed on a form designated by USCIS for that purpose and be in the sum set by USCIS under paragraph (a) of this section for adjustment of status applicants or the consular officer under paragraph (b) of this section for immigrant visa applicants but not less than $1,000. USCIS will provide a receipt to the alien or an interested person acting on the alien's behalf on a form designated by USCIS for such purpose. All public charge bonds are subject to the procedures established in 8 CFR 103.6 relating to bond riders, acceptable sureties, cancellation of bonds, and breach of bonds.

PART 245—ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 9. In § 245.23, revise paragraph (c)(3) to read as follows:

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

* * * * *

(c) * * *

(3) The alien is inadmissible under any applicable provisions of section 212(a) of the Act and has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j). Where the alien establishes that the victimization was a central reason for the alien's unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the alien need not obtain a waiver of that ground of inadmissibility. The alien, however, must submit with the Form I–485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

* * * * *

Dated: August 26, 2022.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2022–18867 Filed 9–8–22; 8:45 am]

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Part III

Small Business Administration

13 CFR Parts 121, 124, 125, Et al.

Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 127

RIN 3245–AH70

Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several changes to the ownership and control requirements for the 8(a) Business Development (BD) program, including recognizing a process for allowing a change of ownership for a former Participant that is still performing one or more 8(a) contracts and permitting an individual to own an applicant or Participant where the individual can demonstrate that financial obligations have been settled and discharged by the Federal Government. The rule also proposes to make several changes relating to 8(a) contracts, including clarifying that a contracting officer cannot limit an 8(a) competition to Participants having more than one certification and clarifying the rules pertaining to issuing sole source 8(a) orders under an 8(a) multiple award contract. The proposed rule would also make several other revisions to incorporate changes to SBA's other government contracting programs, including changes to implement a statutory amendment from the National Defense Authorization Act for Fiscal Year 2022, include blanket purchase agreements in the list of contracting vehicles that are covered by the definitions of consolidation and bundling, and more clearly specify the requirements relating to waivers of the nonmanufacturer rule.

DATES: Comments must be received on or before November 8, 2022.

ADDRESSES: You may submit comments, identified by RIN 3245–AH70, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail (for paper, disk, or CD–ROM submissions):* Mark Hagedorn, Attorney Advisor, Office of General Counsel, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the comments to Mark Hagedorn and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential.

FOR FURTHER INFORMATION CONTACT: Mark Hagedorn, U.S. Small Business Administration, Office of General Counsel, 409 Third Street SW, Washington, DC 20416; (202) 205–7625; *mark.hagedorn@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA proposes to make several changes to the ownership and control requirements for the 8(a) Business Development (BD) program, including recognizing a process for allowing a change of ownership for a former Participant that is still performing one or more 8(a) contracts and permitting an individual to own an applicant or Participant where the individual can demonstrate that financial obligations have been settled and discharged by the Federal Government. SBA also proposes to make several changes relating to 8(a) contracts, including clarifying that a contracting officer cannot limit an 8(a) competition to Participants having more than one certification and clarifying the rules pertaining to issuing sole source 8(a) orders under an 8(a) multiple award contract. The proposed rule would also make several other revisions to incorporate changes to SBA's other government contracting programs to implement a statutory amendment from the National Defense Authorization Act for Fiscal Year 2022.

Section-by-Section Analysis

Section 121.103(h)

Section 121.103(h) sets forth the rules pertaining to affiliation through joint ventures. This rule first proposes to take some of the language currently contained in the introductory text and add it to a new § 121.103(h)(1) for ease of use. SBA believes that the current introductory text is overly complex and separating some of the requirements into a separate paragraphs will be easier to understand and use. In adding a new § 121.103(h)(1), the proposed rule would redesignate paragraphs (h)(1), (2), (3), and (4) as paragraphs (h)(2), (3), (4), and (5), respectively, and would adjust cross references contained in § 121.103(h) in §§ 121.404(d) and (g)(5), 125.6(c), 125.8(a), 125.18(f)(1), 126.601(d)(1), and 126.618(c)(2).

SBA's regulations currently provide that a specific joint venture generally may not be awarded contracts beyond a two-year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for the joint venture. Although SBA's current policy is to allow orders to be issued under previously awarded contracts beyond the two-year period (since the restriction is on additional contracts, not continued performance on contracts already awarded), SBA continues to receive questions as to whether orders beyond the two-year period are permissible. To clear up any confusion, the proposed rule would add a sentence to the introductory text of § 121.103(h) to capture SBA's current policy. SBA notes that current policy also allows for award of contracts beyond the two-year period if the offer, including price, was submitted prior to the end of the two-year period. Because there does not appear to be any confusion regarding that policy, this proposed rule does not change or amend that policy in any way.

The proposed rule would also revise Example 2 to paragraph (h) introductory text. SBA's joint venture rule previously prohibited a joint venture from receiving more than three contracts over a two-year period. SBA amended that rule to allow a joint venture to seek and be awarded an unlimited number of contracts over the two-year period. *See* 85 FR 66146, 66179 (Oct. 16, 2020). Unfortunately, when SBA amended the regulatory text to paragraph (h) it did not also amend the language in Example 2 to paragraph (h). Example 2 to paragraph (h) introductory text gave an illustration of a joint venture receiving two contracts during a two-year period and not submitting offers for any additional contracts. Because the example illustrated a situation with only two contracts, some were confused as to whether the example was applying the old three contracts over two years rule instead of the amended unlimited contracts over two years. That was not SBA's intent. This proposed rule would adjust the language in the example to specifically recognize that a joint venture can receive more than three contracts over a two-year period.

The proposed rule would also clarify SBA's distinct treatment of populated and unpopulated joint ventures. The current regulation provides that if a joint venture exists as a formal separate legal entity, it may not be populated with individuals intended to perform contracts awarded to the joint venture. The proposed rule would clarify that this requirement was meant to apply only to contracts set aside or reserved

for small business (*i.e.,* small business set-aside, 8(a), women-owned small business (WOSB), HUBZone, and service-disabled veteran owned small business (SDVOSB) contracts). The reason for this requirement is to allow SBA and procuring agencies to track the work done by each partner to the joint venture and to ensure that the lead small business partner upon whom eligibility for the contract is based (*e.g.,* the 8(a) partner in a joint venture for an 8(a) contract between an 8(a) protégé and its large business mentor) is actually performing a significant portion of the contract and benefitting from that performance. As SBA has previously explained, if a joint venture were permitted to be populated, employees from a large business mentor could be hired by the joint venture, perform the contract, return to the large business after contract performance, and leave the small protégé firm with few or no benefits or business development from that contract. The proposed rule would clarify, however, that a populated joint venture could be awarded a contract set aside or reserved for small business where each of the partners to the joint venture were similarly situated (*e.g.,* both partners to a joint venture seeking a HUBZone contract were certified HUBZone small business concerns). Any time the size of a populated joint venture is questioned, the proposed rule also clarifies that SBA will aggregate the revenues or employees of all partners to the joint venture.

In addition, this proposed rule would revise the ostensible subcontractor rule in redesignated § 121.103(h)(3). The proposed rule would first divide the current text contained in § 121.103(h)(2) into § 121.103(h)(3) introductory text and § 121.103(h)(3)(i) for ease of use. SBA also proposes to clarify how the ostensible subcontractor rule should apply to general construction contracts. General construction types of contracts regularly involve subcontractors with specialized experience in the specialty construction trades. The primary role of a prime contractor in a general construction project is to superintend, manage, and schedule the work, including coordinating the work of various subcontractors. Those are the functions that are the primary and vital requirements of a general construction contract and ones that a prime contractor must perform. Although the prime contractor for a general construction contract must meet the limitation on subcontracting requirement set forth in § 125.6(a)(3), SBA recognizes that subcontractors often perform the majority of the actual construction work because the prime contractor frequently must engage multiple subcontractors specializing in a variety of trades and disciplines. As such, SBA believes that the ostensible subcontractor rule for general construction contracts should be applied to the management and oversight of the project, not to the actual construction or specialty trade construction work performed. The prime contractor must retain management of the contract but may delegate a large portion of the actual construction work to its subcontractors.

SBA further proposes to revise the ostensible subcontractor rule to comport with recent decisions of SBA's Office of Hearings and Appeals (OHA). In *Size Appeal of DoverStaffing, Inc.,* SBA No. SIZ–5300 (2011), OHA created a four-factor test to indicate when a prime contractor's relationship with a subcontractor is suggestive of unusual reliance under the ostensible subcontractor rule. The four factors are (1) the proposed subcontractor is the incumbent contractor and ineligible to compete for the procurement, (2) the prime contractor plans to hire the large majority of its workforce from the subcontractor, (3) the prime contractor's proposed management previously served with the subcontractor on the incumbent contract, and (4) the prime contractor lacks relevant experience and must rely upon its more experienced subcontractor to win the contract. Under OHA's decisions, when these factors are present, violation of the ostensible subcontractor rule is more likely to be found if the subcontractor will perform 40% or more of the contract. SBA proposes to add two of these four factors to the ostensible subcontractor rule: the reliance on incumbent management and the reliance on the subcontractor's experience. As with the existing rule, SBA still would consider all aspects of the prime contractor's relationship with the subcontractor and would not limit its inquiry to the enumerated *DoverStaffing* factors. SBA continues to believe that the SBA Area Offices should be given discretion to consider and weigh all factors in rendering a formal size determination, and that unique circumstances could lead to a result that does not fully align with the *DoverStaffing* analysis. SBA seeks comment on these proposed changes to the ostensible subcontracting rule.

Finally, the proposed rule would revise redesignated § 121.103(h)(4) to clarify how receipts are to be counted where a joint venture hires individuals to perform one or more specific contracts (*i.e.,* where the joint venture is populated). Although SBA requires joint ventures to be unpopulated for purposes of performing set-aside contracts in order to properly track work performed and benefits derived by the lead small/8(a)/HUBZone/WOSB/SDVOSB entity to the joint venture, some joint ventures are nevertheless populated for other purposes. Generally, the appropriate share of a joint venture's revenues that a partner to the joint venture must include in its own revenues is the same percentage as the joint venture partner's share of the work performed by the joint venture. However, that general rule cannot apply to populated joint ventures. Where a joint venture is populated, each individual partner to the joint venture does not perform any percentage of the contract—the joint venture entity itself performs the work. As such, revenues cannot be divided according to the same percentage as work performed because to do so would give each partner $0 corresponding to the 0% of the work performed by the individual partner. In such a case, SBA believes that revenues must be divided according to the same percentage as the joint venture partner's percentage ownership share in the joint venture. Although SBA believes that is the intent of the current regulation, the proposed rule specifically incorporates that intent into redesignated § 121.103(h)(4).

Section 121.103(i)

The proposed rule would put back into the regulations a paragraph pertaining to affiliation based on franchise and license agreements. This provision was inadvertently deleted from § 121.103 when SBA deleted other provisions of § 121.103 in its October 2020 rulemaking (85 FR 66146 (Oct. 16, 2020)). The proposed rule merely adds back into the regulations the provision that was inadvertently removed.

Section 121.404

SBA proposes to clarify § 121.404(a)(1)(iv), which provides that size is determined for a multiple award contract at the time of initial offer on the contract even if the initial offer might not include price. As stated in the existing regulation, this size determination applies to the contract. However, SBA never intended that orders issued pursuant to that contract follow the same rule. SBA is aware of some confusion on that point. Accordingly, the proposed clarification would make clear that orders issued pursuant to such a multiple award contract that do not include price are treated similarly to orders under multiple award contracts generally. SBA believes there is no justification for exempting orders issued on these

contracts differently, simply because the contract did not require price with initial offer. Thus, the proposed rule would specifically add that size for set-aside orders will be determined in accordance with paragraph (a)(1)(i)(A) or (B) or (a)(1)(ii)(A) or (B), as appropriate.

SBA also proposes to clarify when size recertification is required in connection with a sale or acquisition. In 2016, SBA amended its regulation regarding recertification of size to add the word ''sale'' in addition to mergers and acquisitions as an instance when recertification is required. *See* 81 FR 34243, 34259 (May 31, 2016). Since that time, some have questioned whether recertification of size status may be required whenever any sale of stock occurs, even de minimis amounts. That was not SBA's intent. Recertification is required whenever there is a merger. However, recertification in connection with a ''sale'' or ''acquisition'' is required only where the sale or acquisition results in a change in control or negative control of the concern. Recertification is not required where small sales or acquisitions of stock that do not appear to affect the control of the selling or acquiring firm occur. The proposed rule would add language to clarify SBA's current intent.

The proposed rule would also clarify the recertification requirements set forth in § 121.404(g) for joint ventures. Specifically, the proposed rule would add a new § 121.404(g)(6) which would set forth the general rule that a joint venture can recertify its status as a small business where all parties to the joint venture qualify as small at the time of recertification, or the protégé small business in a still active mentor-protégé joint venture qualifies as small at the time of recertification. The proposed rule would also clarify that the two-year limitation on contract awards to joint ventures set forth in § 121.103(h) does not apply to recertification. In other words, recertification is not a new contract award, and thus can occur even if its timing is more than two years after the joint venture received its first contract.

Sections 121.404(a)(1)(i)(B) and (a)(1)(ii)(B), 124.501(h), and 124.502(a)

Section 121.404(a)(1)(i)(B) and (a)(1)(ii)(B) provide generally that a business concern that qualifies as small at the time of an offer for a multiple award contract that is set aside or reserved for the 8(a) BD program will be deemed a small business for each order issued against the contract, unless a contracting officer requests a size recertification for a specific order. However, for sole source 8(a) orders issued under a multiple award contract set-aside for exclusive competition among 8(a) Participants, § 124.503(i)(1)(iv) requires an agency to offer and SBA to accept the order into the 8(a) program on behalf of the identified 8(a) contract holder. As part of the offer and acceptance process, SBA must determine that a concern is currently an eligible Participant in the 8(a) BD program at the time of award. *See* § 124.501(h). There has been some confusion as to whether a concern must qualify as small at the time of the offer of the order or whether size relates back to the award of the underlying 8(a) multiple award contract. Because size is something SBA looks at in making an eligibility determination in accepting a sole source offering, SBA intended that a Participant must currently qualify as a small business for any sole source award in addition to currently being a Participant in the program (*i.e.,* firms that have graduated from or otherwise left the 8(a) BD program are not eligible for any 8(a) sole source award). SBA believes that the regulations are not clear on this point, and as such this proposed rule would amend §§ 121.404(a)(1)(i)(B) and (a)(1)(ii)(B), 124.501(h), and 124.502(a) to clarify that position.

Section 121.411(c)

The proposed rule would correct an inconsistency between §§ 121.411(c) and 125.3(c)(1)(viii). In requiring a prime contractor to notify unsuccessful small business offerors of the apparent successful offeror on subcontracts, § 125.3(c)(1)(viii) provides that a prime contractor must provide pre-award written notification to unsuccessful small business offerors on all subcontracts over the simplified acquisition threshold, while § 121.411(c) requires a prime contractor to inform each unsuccessful subcontract offeror in connection with any competitive subcontract. The proposed rule would add the over the simplified acquisition threshold condition to § 121.411(c) and adjust the language in § 125.3(c)(1)(viii) to make the two provisions consistent.

Section 121.507

SBA is seeking comments on a proposed amendment to its Small Business Timber Set-Aside Program regulations. The Small Business Timber Set-Aside Program establishes small business set-aside sales of sawtimber from the federal forests managed by the U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management. Current regulations require that a small business concern cannot resell or exchange more than 30% of the sawtimber volume to ''other than small'' businesses. SBA regulations do not address situations where a small business concern is unable to meet the 30% requirement due to circumstances outside of their control.

Several timber industry stakeholders have petitioned SBA to allow a waiver of the 30% requirement in limited circumstances such as natural disasters, national emergencies, or other attenuating circumstances. SBA is proposing an amendment to § 121.507 to add paragraph (d), which would allow the Director of Government Contracting to grant a waiver in limited circumstances when a small business is unable to meet the 30% requirement due to circumstances out of its control. SBA seeks comments on the following: whether a waiver is needed; if it is needed, under what circumstances should a waiver be granted; whether SBA should allow partial waivers (*i.e.,* for some but not all of the 30/70 requirement); and how SBA should evaluate a waiver request.

Section 121.702

Section 121.702 sets forth the size and eligibility standards that apply to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Paragraph (c)(7) provides guidance relating to the ostensible subcontractor rule in the SBIR/STTR programs. That rule treats a prime contractor and its subcontractor or subgrantee as joint venturers when a subcontractor or subgrantee performs primary and vital requirements of an SBIR or STTR funding agreement. The proposed rule would clarify that when an SBIR/STTR offeror is determined to be a joint venturer with its ostensible subcontractor, all rules applicable to joint ventures would apply. This means that SBA will apply § 121.702(a)(1)(iii) or (b)(1)(ii), which contains the ownership and control requirements for SBIR/STTR joint ventures. This clarification is consistent with how SBA treats entities that are determined to be joint venturers with an ostensible subcontractor for other small business program set-asides.

Section 121.1001

Section 121.1001 identifies who may initiate a size protest or request a formal size determination in any circumstances. Currently, the language identifying who may protest the size of an apparent successful offeror is not identical for all of SBA's programs. For small business set-aside contracts and

competitive 8(a) contracts, any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason may initiate a size protest. For contracts set aside for WOSBs or SDVOSBs, any concern that submits an offer may initiate a size protest. For contracts set aside for certified HUBZone small business concerns, any concern that submits an offer and has not been eliminated for reasons unrelated to size may submit a size protest. SBA believes that making the language for all programs identical would remove any confusion and provide more consistent implementation of the size protest procedures. As such, this rule proposes to adopt the language currently pertaining to small business set-asides and competitive 8(a) contracts to all of SBA's programs. Thus, any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason could initiate a size protest in each of those programs. The proposed rule would make these changes in § 121.1001(a)(6)(i) for the HUBZone program, in § 121.1001(a)(8)(i) for the SDVO program, and in § 121.1001(a)(9)(i) for the WOSB program.

With respect to 8(a) contracts, § 121.1001(a)(2) identifies interested parties who may protest the size status of an apparent successful offeror for an 8(a) competitive contract, and § 121.1001(b)(2)(ii) identifies those who can request a formal size determination with respect to a sole source 8(a) contract award. Pursuant to § 124.501(g), before a Participant may be awarded either a sole source or competitive 8(a) contract, SBA must determine that the Participant is eligible for award. SBA will determine eligibility at the time of its acceptance of the underlying requirement into the 8(a) BD program for a sole source 8(a) contract, and after the apparent successful offeror is identified for a competitive 8(a) contract. For a sole source contract, if SBA determines a Participant to be ineligible because SBA believes the concern to be other than small, § 121.1001(b)(2)(ii) authorizes the Participant determined to be ineligible to request a formal size determination. However, § 121.1001(b)(2)(ii) does not currently authorize a Participant determined to be ineligible based on size to request a formal size determination in connection with a competitive 8(a) contract award. SBA does not believe that the protest authority of § 121.1001(a)(2) was meant to apply to this situation since protests normally relate to another firm challenging the small business status of the apparent successful offeror, not the apparent successful offeror challenging its own size status. This rule proposes to provide specific authority to allow a firm determined to be ineligible for a competitive 8(a) award based on size to request a formal size determination. It would also authorize the contracting officer, the SBA District Director in the district office that services the Participant, the Associate Administrator for Business Development, and the SBA's Associate General Counsel for Procurement Law to do so as well.

Sections 121.1004(a)(ii), 125.28(d)(2), 126.801(d)(2)(i), and 127.603(c)(2)

In the context of a sealed bid procurement, SBA's regulations provide that an interested party must protest the size or socioeconomic status (*i.e.,* service-disabled veteran-owned small business (SDVOSB), HUBZone or women-owned small business (WOSB)/economically-disadvantaged women-owned small business (EDWOSB)) of the low bidder prior to the close of business on the fifth business day after bid opening. However, the regulations do not specifically take into account the situation where a low bidder is timely protested and found to be ineligible, the procuring agency identifies another low bidder, and an interested party seeks to challenge the size or socioeconomic status of the newly identified low bidder. In such a situation, the new low bidder is identified well beyond five days of bid opening. As such, it is impossible for an interested party to file a timely protest (*i.e.,* one within five days of bid opening). It was not SBA's intent to disallow size protests in these circumstances. SBA believes that a protest in these circumstances should be deemed timely if it is received within five days of notification of the new low bidder. A few firms have questioned whether such a protest should be deemed timely because the regulations speak only to filing a protest within five days of bid opening. Because a protest by SBA is always timely, when timeliness has been questioned in these circumstances, and the protest is sufficiently specific, SBA has adopted the protest as its own and processed it accordingly. To eliminate this needless additional step where timeliness is questioned, the proposed rule would specifically provide that where the identified low bidder is determined to be ineligible for award, a protest of any other identified low bidder would be deemed timely if received within five business days after the contracting officer has notified the protestor of the identity of that new low bidder.

SBA proposes to make this change in § 121.1004(a)(ii) for size protests, in § 125.28(d)(2) for protests relating to SDVO status, in § 126.801(d)(2)(i) for protests relating to HUBZone status, and in § 127.603(c)(2) for protests relating to WOSB or EDWOSB status.

Section 121.1004

The proposed rule would add a new § 121.1004(f) to specify that size protests may be filed only against an apparent successful offeror (or offerors) or an offeror in line to receive an award. SBA will not consider size protests relating to offerors who are not in line for award. This is the current SBA policy and the proposed rule merely provides additional clarity to § 121.1004(e), which specifies that premature protests will be dismissed.

Where an agency decides to reevaluate offers as a corrective action in response to a GAO protest, the proposed rule would add a new § 121.1004(g) providing that SBA would dismiss any size protest relating to the initial apparent successful offeror. When offerors are made aware of the new or same apparent successful offeror after reevaluation, they will again have the opportunity to protest the size of the apparent successful offeror within five business days after such notification.

Section 121.1009

Section 121.1009 details the procedures SBA's Government Contracting Area Offices use in making formal size determinations. Section 121.1009(a)(1) provides that the Area Office will generally issue a formal size determination within 15 business days after receipt of a protest or a request for a formal size determination. With respect to a specific contract, SBA will generally process size protests relating only to the apparent successful offeror. SBA sometimes receives a size protest where the award is simultaneously being protested at the Government Accountability Office (GAO). Where this happens, SBA suspends processing the size protest pending the outcome of the GAO decision since that decision may require corrective action which could affect the apparent successful offeror. Although that has been SBA's policy in practice, it is not specifically set forth in SBA's regulations. The proposed rule would incorporate that policy, providing that if a protest is pending before GAO, the SBA Area Office will suspend the size determination case. Once GAO issues a decision, the Area Office will recommence the size determination process and issue a

formal size determination within 15 business days of the GAO decision, if possible.

Sections 121.1009(g)(5), 125.30(g)(4), 126.503(a)(2), and 127.405(d)

Section 863 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY22), Public Law 117–81, amended section 5 of the Small Business Act, 15 U.S.C. 634, to add three requirements related to size and socioeconomic status determinations. First, section 863 mandates that a business concern or SBA, as applicable, ''shall'' update the concern's status in *SAM.gov* not later than two days after a final determination by SBA that the concern does not meet the size or socioeconomic status requirements that it certified to be. SBA believes that the statue intends that a business concern be required to update *SAM.gov* in all instances in which it is capable of doing so. Only where a business concern is unable to change a particular status (*e.g.,* only SBA can identify a concern as a certified HUBZone small business) will the business concern not be required to change that status in *SAM.gov*. Second, section 863 requires that, in the event that the business does not update its status within this timeframe, SBA ''shall'' make the update within two days of the business's failure to do so. Third, section 863 requires that, where the business is required to make an update, it also must notify the contracting officer for each contract with which the business has a pending bid or offer, if the business finds, in good faith, that the determination affects the eligibility of the concern to be awarded the contract. The proposed rule would implement these provisions by amending SBA's regulations in §§ 121.1009(g)(5) (for size determinations), 125.30(g)(4) (for SDVO status determinations), 126.503(a)(2) (for HUBZone status determinations), and 127.405(c) (for WOSB/EDWOSB status determinations). Because only SBA can change a firm's status as a certified HUBZone small business concern in *SAM.gov*, it is not ''applicable'' under the statute for the business concern to do so. As such, the proposed rule would not add language requiring a HUBZone concern to change its status in *SAM.gov* within two business days of an adverse status determination. Instead, it would require SBA to make such a change within four business days.

Sections 121.1203 and 121.1204

Section 46(a)(4)(A) of the Small Business Act, 15 U.S.C. 657s(a)(4)(A), provides that in a contract mainly for supplies a small business concern shall supply the product of a domestic small business manufacturer or processor unless a waiver is granted after SBA reviews a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including the period of performance) required by the contract. Section 121.1203 of SBA's regulations provides guidance as to when SBA will grant a waiver to the nonmanufacturer rule in connection with an individual contract, and § 121.1204 identifies the procedures for requesting and granting waivers.

The proposed rule seeks to clarify perceived ambiguities relating to the effect of a waiver in a multiple item procurement. For a multiple item set-aside contract, in order to qualify as a small business nonmanufacturer, at least 50 percent of the value of the contract must come from either small business manufacturers or from any businesses for items which have been granted a waiver to the nonmanufacturer rule (or small business manufacturers plus waiver must equal at least 50 percent). *See* 13 CFR 125.6(a)(2)(ii)(B). In seeking a contract-specific waiver to the nonmanufacturer rule, SBA's regulations provide that a contracting officer's waiver request must include a definitive statement of the specific item to be waived. The proposed rule would clarify that for a multiple item procurement, a contracting officer must specifically identify each item for which a waiver is sought. The proposed rule would also provide that once SBA reviews and concurs with an agency's request, SBA's waiver applies only to the specific item(s) identified, not to the entire contract.

This rule also proposes to add a provision that would prohibit contract-specific waivers for contracts with a duration of longer than five years, including options. When SBA grants an individual waiver with respect to a particular item, it does not necessarily mean that there are no small business manufacturers of that item. Instead, it could merely relate to the lack of availability of small business manufacturers for the specific contract at issue due to timing (*e.g.,* small business manufacturers are currently tied up with other commitments) or capacity (*e.g.,* there are small business manufacturers, but those manufacturers cannot provide the item in the quantity that is required). The circumstances surrounding the availability of a specific item from small business manufacturers can greatly change in five years. Beyond five years, new small business manufacturers of a particular item could come into the market, or those previously committed to other projects or who were unable to previously supply the product in the quantity or time constraints required by the contract could become available to meet the agency's requirements. After a five-year contract is completed and an agency seeks to award a follow-on contract for the same requirements, an agency would be required to again conduct market research and determine that no small business manufacturer or processor reasonably can be expected to offer one or more specific products required by the new solicitation. As an alternative, SBA is considering limiting waivers to five years for long term contracts, but allowing a procuring agency to seek a new waiver for an additional five years if, after conducting market research, it demonstrates that there are no available small business manufacturers and that a waiver remains appropriate. SBA seeks comments on both approaches.

When an agency seeks an individual waiver to the nonmanufacturer rule in connection with a specific acquisition, SBA believes that the agency is ready to move forward with the acquisition process as soon as SBA makes a wavier decision and expects the solicitation to be issued shortly after such a decision is made. That is why SBA's waiver decision letters provide that the waiver will expire in one year from the date of the waiver decision. SBA expects award to be made within one year. If it is not, SBA believes that the agency should come back to SBA with revised market research requesting that the waiver (or waivers in the case of a multiple item procurement) be extended. Similar to the rationale for not allowing individual waivers to apply to long-term contracts, the circumstances surrounding whether there are any small business manufacturers who are capable and available to supply products for a specific procurement may change in one year. Where an agency demonstrates that small business manufacturers continue to be unavailable to fulfill the requirement, SBA will extend the waiver(s). The proposed rule would specifically incorporate this policy into a new § 121.1204(b)(5).

Although SBA believes that there is no current ambiguity, the proposed rule would also add language specifying that an individual waiver applies only to the contract for which it is granted and does not apply to modifications outside the scope of the contract or other procurement actions. A waiver granted

for one contract does not and was never intended to apply to another contract (whether that separate contract was a follow-on contract, bridge contract, or some other contract or order under another contract), but the proposed rule would add this language nevertheless to dispel any possible misunderstanding.

Finally, the proposed rule would clarify that where an agency requests a waiver for multiple items, SBA may grant the request in full, deny it in full, or grant a waiver for some but not all of the items for which a waiver was sought. SBA's decision letter would identify the specific items that SBA identifies as waived for the procurement.

Section 121.1205

Section 121.1205 refers to the list of classes of products for which SBA has granted waivers to the Nonmanufacturer Rule. The reference in the current version of the regulation provides a link to a website that no longer exists. The proposed rule would update the reference to the correct website, which is *https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver-list.*

Section 124.102

Section 124.102(c) provides that a concern whose application is denied due to size by 8(a) BD program officials may request a formal size determination with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the business is located. SBA notes that during the processing of an application SBA itself can request a formal size determination pursuant to § 121.1001(b)(2)(i). The § 124.102(c) process applies only where SBA has not requested a formal size determination with respect to a specific applicant. Under § 124.102(c), if the concern requests a formal size determination and the Area Office finds it to be small under the size standard corresponding to its primary North American Classification System (NAICS) code, the concern can immediately reapply to the 8(a) BD program. SBA believes that a concern should not need to reapply to the 8(a) BD program if size was the only reason for decline. In such a case, SBA believes that the Associate Administrator for Business Development (AA/BD) should immediately certify the firm as eligible for the 8(a) BD program. The proposed rule would make a distinction for applications denied solely based on size and those where size is one of several reasons for decline. Where size is not the only reason for decline, the proposed rule would provide that the concern could reapply for participation in the 8(a) BD program at any point after 90 days from the AA/BD's decline. The AA/BD would then accept the size determination as conclusive of the concern's small business status, provided the applicant concern has not completed an additional fiscal year in the intervening period and SBA believes that the additional fiscal year changes the applicant's size.

Section 124.103

Section 124.103 describes the rules pertaining to social disadvantage status. Section 124.103(c) details how an individual who is not a member of one of the groups presumed to be socially disadvantaged may establish his or her individual social disadvantage. It provides that an individual must identify an objective distinguishing feature that has contributed to his or her social disadvantage, and lists physical handicap as one such possible identifiable feature. In order to be consistent with recent changes in terms made by the General Services Administration (GSA), 87 FR 6044, as well as with the Americans with Disabilities Act, the proposed rule would change the words physical handicap to identifiable disability.

Section 124.104

Section 124.104 specifies the rules pertaining to whether an individual may be considered economically disadvantaged. Section 124.104(c)(2)(ii) provides that funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be considered in determining an individual's net worth. The paragraph then requires the individual to provide information about the terms and restrictions of the account to SBA in order for SBA to determine whether the funds invested in the account should be excluded from the individual's net worth. SBA does not believe that it is necessary for an individual to provide information about the terms and restrictions of a retirement account to SBA in every instance. As such, the proposed rule would change this provision to requiring an individual to provide information about the terms and restrictions of an IRA or other retirement account only when requested to do so by SBA.

The proposed rule would also delete current § 124.104(c)(2)(iii). That provision provides that income received from an applicant or Participant that is an S corporation, limited liability company (LLC) or partnership will be excluded from an individual's net worth where the applicant or Participant provides documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm. SBA does not believe that this provision is necessary because the exact provision is contained in § 124.104(c)(3)(ii) in discussing how SBA treats personal income.

Section 124.105

Section 124.105 describes the ownership requirements pertaining to applicants and Participants for the 8(a) BD program. Section 124.105(h) sets forth ownership restrictions for non-disadvantaged individuals and concerns, and § 124.105(h)(2) specifies ownership restrictions for non-Participant concerns in the same or similar line of business and for principals of such concerns. Current § 124.105(h)(2) recognizes a limited exception to the general ownership restriction for a former Participant in the same or similar line of business or a principal of such a former Participant. This paragraph does not, however, refer to or recognize another exception set forth elsewhere in SBA's regulations, and that is the exception set forth in § 125.9(d)(2) which allows an SBA-approved mentor to own up to 40 percent of its protégé. This proposed rule adds language clarifying that the § 125.9(d)(2) authority applies equally to mentors in the same line of business as its protégé that is also a current 8(a) BD Program Participant.

Section 124.105(i) provides guidance with respect to changes of ownership, and § 124.105(i)(1) specifies that any Participant that was awarded one or more 8(a) contracts may substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver under § 124.515. There has been some confusion as to whether there can be a change of ownership for a former Participant that is still performing one or more 8(a) contracts. This would generally not occur with one disadvantaged individual seeking to buy out a disadvantaged principal of a former 8(a) Participant. That is because of the one-time eligibility restriction. In order for any change of ownership to be approved by SBA, SBA must determine that the individual seeking to replace a former principal does in fact qualify as socially and economically disadvantaged under SBA's regulations. An individual who has previously participated in the 8(a) BD program and has used his or her individual disadvantaged status to qualify one 8(a)

Participant would not be deemed disadvantaged if the individual sought to replace a principal of a second 8(a) Participant. Thus, the only individuals who could seek to replace the principal of a former 8(a) Participant would be those who have never participated in the 8(a) BD program before. To do so, such individuals would have to use their one-time eligibility to complete performance on previously awarded 8(a) contracts. The business concern could not be awarded any additional contracts because it is no longer an eligible Participant. If an individual thought the opportunity was sufficient to entice him or her to forego his/her one-time eligibility, he or she might proceed with such a transaction, but SBA does not believe that would often happen. The more likely scenario would be where an entity (tribe, ANC), Native Hawaiian Organization (NHO), or Community Development Corporation (CDC)) seeks to replace the principal of a former 8(a) Participant. The one-time eligibility restriction does not apply to entities. A tribe, ANC, NHO or CDC can own more than one business concern that participates in the 8(a) BD program. As such, an entity could purchase a former Participant and complete performance of any remaining 8(a) contracts. If the tribe, ANC, NHO, or CDC seeking to replace the principal of a former 8(a) Participant has or has had a Participant in the 8(a) BD program, its general eligibility has already been established. However, if this would be the first time that a specific entity would own a business seeking 8(a) BD benefits, the entity must establish its overall eligibility. In the case of an Indian tribe or NHO, it must, among other things, demonstrate that it is economically disadvantaged. The proposed rule would clarify that a change of ownership could apply to a former Participant as well as to a current Participant.

Section 124.105(i)(2) permits a change of ownership to occur without receiving prior SBA approval in certain specified circumstances, including where all non-disadvantaged individual owners involved in the change of ownership own no more than a 20 percent interest in the concern both before and after the transaction. In order to ensure that ownership interests are not divided up among two or more immediate family members to avoid SBA's immediate review of a change of ownership, the proposed rule would provide that SBA will aggregate the interests of all immediate family members in determining whether a non-disadvantaged individual involved in a change of ownership has more than a 20 percent interest in the concern.

Section 124.107

Section 124.107 describes the policies relating to potential for success. In order to be eligible for the 8(a) BD program an applicant concern must possess reasonable prospects for success in competing in the private sector. This requirement stems from the language contained in section 8(a)(7)(A) of the Small Business Act, 15 U.S.C. 637(a)(7)(A), which provides that no small business concern shall be deemed eligible for the 8(a) BD program unless SBA determines that with contract, financial, technical, and management support the concern will be able to perform 8(a) contracts and has reasonable prospects for success in competing in the private sector. There has been some confusion as to whether an applicant must demonstrate that it has specifically performed work in the private sector prior to applying to participate in the 8(a) BD program. That is not the case. The statutory requirement is that SBA must determine that with assistance from the 8(a) BD program a business concern will have reasonable prospects for success in competing in the private sector in the future. The regulation requires an applicant to demonstrate that it has been in business and received revenues in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, but it does not say that those revenues must have come from the private sector. A business concern that has performed no private sector work but has demonstrated successful performance of state, local or federal government contracts is eligible to participate in the 8(a) BD program. The proposed rule would add language clarifying that intent.

Section 124.108

Section 124.108 establishes other eligibility requirements that pertain to firms applying to and participating in the 8(a) BD program. Section 124.108(e) provides that an applicant will be ineligible for the 8(a) BD program where the firm or any of its principals has failed to pay significant financial obligations owed to the Federal Government. This proposed rule would clarify that where the firm or the affected principals can demonstrate that the financial obligations have been settled and discharged/forgiven by the Federal Government, the applicant would be eligible for the program.

Section 124.109

Section 124.109 provides specific rules applicable to Indian tribes and Alaska Native Corporations for applying to and remaining eligible for the 8(a) BD program. SBA's regulations currently provide that the articles of incorporation, partnership agreement or limited liability company articles of organization of a tribally-owned applicant or Participant must contain express sovereign immunity waiver language, or a ''sue and be sued'' clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs. This rule proposes two changes with respect to that provision. First, the waiver of sovereign immunity should apply only to concerns owned by Federally recognized Indian tribes. State recognized tribes are not deemed sovereign and, thus, do not need to waive sovereign immunity because they are already subject to suit. As such, SBA proposes to amend this provision to clarify that it is intended to apply only to concerns owned by Federally recognized tribes. Second, concerns that are organized under tribal law may not have articles of incorporation, partnership agreements or limited liability company articles of organization and may be unable to strictly comply with the regulatory language. In response, SBA proposes to add language allowing tribally-owned concerns organized under tribal law to waive sovereign immunity in any similar documents authorized under tribal law.

One of the ways a tribally-owned business can demonstrate potential for success needed to be eligible for the program is to demonstrate that it has been in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification. Not all tribally-owned concerns file federal income tax returns. The tax return requirement is intended to be an objective means by which a tribally-owned concern can show that it has been in business for at least two years with operating revenues. SBA believes that tax returns are not the only way for a tribally-owned concern to demonstrate its business history. The proposed rule would add a provision allowing a tribally-owned applicant to submit financial statements demonstrating that it has been in business for at least two years with operating revenues in the

primary industry in which it seeks 8(a) BD certification.

Section 124.110

The proposed rule would add a new § 124.110(d)(3) to allow the individuals responsible for the management and daily operations of an NHO-owned concern to manage two Program Participants. This would make the control requirements relating to NHO-owned applicants/Participants consistent with those applying to applicants/Participants owned by tribes and Alaska Native Corporations (ANCs). Although this is a statutory exemption for firms owned by tribes and ANCs, and is not for firms owned by NHOs, SBA believes that the policies relating to all three entity-owned applicants/Participants should be consistent whenever possible. SBA does not believe that this change for NHO-owned firms in any way contradicts any statutory requirement and would merely allow more flexibility for NHO-owned firms.

In addition, the proposed rule would clarify the current policy regarding NHO ownership of an applicant or Participant small business concern. Although SBA currently requires an NHO to unconditionally own at least 51 percent of the applicant or Participant, the proposed rule merely makes that requirement explicit in the regulations.

Section 124.204

Section 124.204 details how SBA processes applications for 8(a) BD program admission. It identifies that only the AA/BD can approve or decline an application for participation in the 8(a) BD program. There are, however, certain threshold issues that must be addressed before an application will be fully processed. Specifically, in SBA's electronic 8(a) application system, there are four fundamental eligibility questions that must be answered before an application will be reviewed: an applicant must be a for-profit business (*see* §§ 121.105 and 124.101); every individual claiming disadvantaged status must be a United States citizen (*see* § 124.101); neither the applicant firm nor any of the individuals upon whom eligibility is based could have previously participated in the 8(a) BD program (*see* § 124.108(b)); and any individually-owned applicant must have generated some revenues (*see* § 124.107(a) and (b)(1)(iv)). If an applicant answers that it is not a for-profit business entity, that one or more of the individuals upon whom eligibility is based is not a United States citizen (*see* § 124.104), that the applicant or one or more of the individuals upon whom eligibility is based has previously participated in the 8(a) BD program (*see* § 124.108(b)), or that the applicant is not an entity-owned business and has generated no revenues (*see* § 124.107(a) and (b)(1)(iv)), its application will be closed and it will be prevented from completing a full electronic application. Each of those four bases automatically renders the applicant ineligible for the program and further review would not be warranted. The proposed rule would identify these four threshold issues that must be addressed before an application will be reviewed.

Section 124.302

Section 124.302 addresses graduation and early graduation from the 8(a) BD program. In determining whether an applicant or Participant should be deemed economically disadvantaged, SBA previously required a concern to compare its financial condition to non-8(a) BD business concerns in the same or similar line of business. SBA eliminated that requirement as not being consistent with the statutory authority which requires only that an applicant or concern be owned and controlled by one or more individuals who are economically disadvantaged, not that the concern itself be economically disadvantaged. In addressing graduation, § 124.302(b) retained some of that same language requiring a comparison of an 8(a) BD Participant to non-8(a) businesses. SBA believes that too is inconsistent with the statutory language, which defines the term ''graduated'' or ''graduation'' to mean that a Program Participant is recognized as successfully completing the 8(a) BD program by substantially achieving the targets, objectives, and goals contained in its business plan, and demonstrating its ability to compete in the marketplace without assistance from the 8(a) BD program. 15 U.S.C. 636(j)(10)(H). As such, the proposed rule would remove § 124.302(b)(5), as not consistent with the statutory oversight responsibilities. SBA also believes that the requirements for graduation are adequately set forth in § 124.302(a)(1) of SBA's regulations and requests comments on whether the entire § 124.302(b) can be eliminated as unnecessary.

Section 124.402

Section 124.402 requires each firm admitted to the 8(a) BD program to develop a comprehensive business plan and to submit that business plan to SBA as soon as possible after program admission. Currently, § 124.402(b) provides that SBA will suspend a Participant from receiving 8(a) BD program benefits if it has not submitted its business plan to its servicing district office within 60 days after program admission. There is a concern that § 124.402(b) does not clearly provide that a Participant's business plan must be approved by SBA before the concern is eligible for 8(a) contracts, as required by section 7(j)(10)(D)(i) of the Small Business Act, 15 U.S.C. 636(j)(10)(D)(i). This proposed rule would clarify that SBA must approve a Participant's business plan before the firm is eligible to receive 8(a) contracts. However, SBA recognizes that some firms are admitted to the 8(a) BD program with self-marketed procurement commitments from one or more procuring agencies. SBA also understands that several newly admitted Participants have missed 8(a) contract opportunities in the past because SBA did not approve their business plans before the procuring agencies sought to award such procurement commitments as 8(a) contracts. SBA does not wish to discourage self-marketing activities or prevent a newly admitted Participant from receiving critical business development assistance. At the same time, SBA is constrained by the statutory language requiring business plan approval prior to the award of 8(a) contracts. The proposed rule would merely prioritize business plan approval for any firm that is offered a sole source 8(a) requirement or is the apparent successful offeror for a competitive 8(a) requirement. Specifically, the proposed rule would provide that where a sole source 8(a) requirement is offered to SBA on behalf of a Participant or a Participant is the apparent successful offeror for a competitive 8(a) requirement and SBA has not yet approved the Participant's business plan, SBA will approve the Participant's business plan as part of its eligibility determination prior to contract award.

Section 124.403

Section 124.403 sets forth the requirements relating to business plans. Section 124.403(a) provides that Each Participant must annually review its business plan with its assigned Business Opportunity Specialist (BOS) and modify the plan as appropriate. The wording of this paragraph caused some to believe that a Participant needed to submit a business plan to SBA every year even where nothing had changed from the previous year. That was not SBA's intent. The ''as appropriate'' language was meant to infer that a Participant need not submit a business plan if nothing had changed from the previous year. The proposed rule clarifies that a Participant must submit

a new or modified business plan only if its business plan has changed from the previous year.

Sections 124.501, 125.22(d), 126.609, and 127.503(e)

There has been some confusion as to whether a contracting officer can limit an 8(a) competition (whether for an 8(a) contract or an order set-aside for 8(a) competition under an unrestricted contract) to Participants having more than one certification (*e.g.,* 8(a) *and* HUBZone). SBA believes that section 8(a)(1)(D)(i) of the Small Business Act, 15 U.S.C. 637(a)(1)(D)(i), requires any 8(a) competition to be available to all eligible Program Participants. SBA has consistently interpreted this provision as prohibiting SBA from accepting a requirement for the 8(a) BD program that seeks to limit an 8(a) competition only to certain types of 8(a) Participants, rather than allowing competition among all eligible Participants. In other words, SBA has interpreted this authority to prohibit an agency from requiring one or more other certifications in addition to its 8(a) certification. This interpretation is currently contained in § 125.2(e)(6)(i), but is not specifically contained in the 8(a) BD regulations. Likewise, the statutory authority for HUBZone set asides, 15 U.S.C. 657a(c)(2)(B), provides authority for competition restricted to certified HUBZone small business concerns and does not permit a ''dual'' set-aside for firms that are both HUBZone-certified and 8(a) Participants. The proposed rule would merely add a sentence to § 124.501(b) to clarify SBA's current position that would prohibit a contracting activity from restricting an 8(a) competition to Participants that are also certified HUBZone small businesses, certified WOSBs or eligible SDVO small businesses. SBA also proposes to make similar clarifications to the regulations for the SDVO (in § 125.22(d)), HUBZone (in new § 126.609), and WOSB (in § 127.503(e)) programs.

SBA also proposes to clarify § 124.501(b) by noting that an agency may award an 8(a) sole source order against a multiple award contract that was not set aside for competition only among 8(a) Participants. SBA believes that such awards are consistent with SBA's statutory authority at section 8(a)(16) of the Small Business Act, 15 U.S.C. 637(a)(16), to enter 8(a) sole source awards. Furthermore, this type of 8(a) sole source order is beneficial to both 8(a) Participants, who benefit from increased contracting opportunities, and to procuring agencies, that can take advantage of pre-negotiated terms and pricing.

The proposed rule would also revise the introductory text to § 124.501(g). The revised language would first require SBA to notify an 8(a) Participant any time SBA determines the Participant to be ineligible for a specific sole source or competitive 8(a) award. SBA notes that this is currently required in section 19.805–2 of the Federal Acquisition Regulation (FAR), title 48 of the Code of Federal Regulations, and is something that should occur routinely, but believes that highlighting this in SBA's regulations would be helpful. SBA also proposes to clarify that where a joint venture is the apparent successful offeror in connection with a competitive 8(a) procurement, SBA will determine whether the 8(a) partner to the joint venture is eligible for award, but will not review the joint venture agreement to determine compliance with § 124.513. SBA believes that there was some confusion as to what an eligibility determination entailed in the context of a competitive 8(a) joint venture apparent successful offeror. The proposed rule seeks to make clear that SBA's determination of eligibility relates solely to the 8(a) partner to the joint venture and does not represent a full review of the 8(a) joint venture under § 124.513.

Finally, the proposed rule would also make several clarifications to the bona fide place of business requirement contained in § 124.501(k). Section 8(a)(11) of the Small Business Act, 15 U.S.C. 637(a)(11), requires that to the maximum extent practicable 8(a) construction contracts ''shall be awarded within the county or State where the work is to be performed.'' SBA has implemented this statutory provision by requiring a Participant to have a bona fide place of business within a specific geographic location. In the October 2020 rulemaking, *supra,* SBA clarified that the Small Business Act does not differentiate between sole source 8(a) construction contracts and competitive 8(a) construction contracts. As such, the statutory ''maximum extent practicable'' requirement applies equally to sole source and competitive 8(a) contracts. SBA understands that some have expressed the view that the ''to the maximum extent practicable'' statutory language should be read in a way that affords procuring agencies the discretion to broaden or do away with the bona fide place of business requirement where they deem it to be appropriate. SBA disagrees that the statutory language affords such flexibility. In SBA's view, ''to the maximum extent practicable'' denotes Congress's intent that something be followed whenever possible, not merely when a procuring agency thinks it is the best option or appropriate in particular circumstances. Thus, SBA will continue to apply the bona fide place of business requirement to both sole source and competitive 8(a) construction procurements unless SBA determines that it is not ''practicable'' to do so. In this regard, with employees expected to telework on a significant basis due to the COVID–19 pandemic, SBA issued a Policy Notice temporarily placing a moratorium on the bona fide place of business requirement with respect to all 8(a) construction contracts offered to the 8(a) BD program prior to September 30, 2022, based on SBA's determination that it was not ''practicable'' to impose that requirement at this time. SBA Policy Notice 6000–819056 (August 25, 2021). Due to the lingering effects of the COVID–19 pandemic, the SBA Administrator has determined that requiring a bona fide place of business in a particular location continues to be impracticable and has extended the moratorium on the requirement through September 30, 2023. Once SBA determines that it is no longer impracticable to require a bona fide place of business, SBA will again require a Participant to have a bona fide place of business in a particular geographic location with respect to all construction requirements offered to the 8(a) program. As such, SBA seeks to clarify several components of the bona fide place of business requirement in this proposed rule.

When SBA revised the bona fide place of business rule in October 2020, it intended that a Participant with a bona fide place of business anywhere in a particular state should be deemed eligible for a construction contract throughout that entire state (even if the state is serviced by more than one SBA district office). However, because the regulatory text used the word ''may'', several Participants have sought clarification of SBA's intent. The proposed rule clarifies SBA's intent.

The proposed rule would also clarify that where a Participant is currently performing a contract in a specific state, it would qualify as having a bona fide place of business in that state for one or more additional contracts. This clarification is specifically intended to apply to the situation where a business concern is performing a construction contract in a specific location, the procuring activity likes the work done by the business concern and seeks to award an 8(a) construction contract to the same business concern in the same location as the previous contract. SBA believes that it does not make sense to

say that a business concern is not eligible for such award because it has not officially sought and approved to have a bona fide place of business in that location. The proposed clarification would also provide that the Participant could not use contract performance in one state to allow it to be eligible for an 8(a) contract in a contiguous state unless it officially establishes a bona fide place of business in the location in which it is currently performing a contract. The proposed rule would also clarify that a Participant could establish a bona fide place of business through a full-time employee in a home office. In addition, an individual designated as the full-time employee of the Participant seeking to establish a bona fide place of business in a specific geographic location need not be a resident of the state where he/she is conducting business. In the past, some SBA district offices have required the designated employee to possess a driver's license issued by the state corresponding to the location of the office. SBA believes that is not appropriate. There is no requirement that a specific employee must permanently reside in a specific location. A Participant merely needs to demonstrate that one or more employees are operating in an office within the identified geographic location. A Participant should be able to rotate employees in and out of a specific location as it sees fit, and as long as one individual (but not necessarily the same individual) remains at that location, that location can be considered a bona fide place of business. Finally, the proposed rule would provide guidance on how SBA interprets the bona fide place of business requirement where a contract requires work to be performed in more than one location and those different locations may not be within the boundaries of the bona fide place of business. Although this is SBA's current interpretation of the bona fide place of business requirement, SBA believes putting it in the regulations would clarify any confusion that currently exists. For a single award 8(a) construction contract requiring work in multiple locations, the proposed rule would provide that a Participant is eligible if it has a bona fide place of business where a majority of the work is to be performed. For a multiple award 8(a) construction contract, the proposed rule would require a Participant to have a bona fide place of business in any location where work is to be performed.

Section 124.503(a)

Section 124.503(a) provides that SBA will decide whether to accept a requirement offered to the 8(a) BD program within ten working days of receipt of a written offering letter if the contract value exceeds the Simplified Acquisition Threshold (SAT). In consideration of mutual responsibilities under SBA's 8(a) Partnership Agreements with federal procuring agencies, SBA has agreed to issue an acceptance letter or rejection letter for such offers within five working days unless the agency grants an extension. This proposed rule would clarify that the ten-day acceptance timeframe under § 124.503(a) applies only to 8(a) offers made outside the 8(a) Partnership Agreement authority.

Section 124.503(a)(4)(ii) authorizes a procuring activity to award an 8(a) contract without requiring an offer and acceptance where the requirement is valued at or below the SAT and SBA has delegated its 8(a) contract execution functions to the agency. The paragraph goes on to provide that in such a case, the procuring activity must notify SBA of all 8(a) awards made under this authority. Some agencies have relied on this language to justify proceeding to award an 8(a) contract under the SAT without first requesting an eligibility determination from SBA of the apparent successful 8(a) contractor (which is required by § 124.501(g)). It was not SBA's intent to allow an award without a determination of eligibility being made. To do otherwise could result in agencies awarding 8(a) contracts to ineligible firms. Although it authorizes an expedited review, the partnership agreement between SBA and procuring agencies identifies that an eligibility determination must still be made in these cases. The proposed rule would merely clarify that requirement in SBA's regulations.

Section 124.503(a)(5) authorizes a procuring agency to seek acceptance of an 8(a) offering letter with the AA/BD where SBA does not respond to an offering letter within the ten-day period set forth under § 124.503(a). The proposed rule clarifies that this ten-day time period is intended to be ten business days.

Section 124.503(i)(1)(ii)

SBA's current regulations require a procuring agency to notify SBA where it seeks to reprocure a follow-on requirement through a pre-existing limited contracting vehicle which is not available to all 8(a) BD Program Participants and the previous/current 8(a) award was not so limited. *See* 13 CFR 124.504(d)(1). There has been some confusion as to whether this conflicts with § 124.503(i)(1)(ii), which provides that an agency need not offer or receive acceptance of individual orders into the 8(a) BD program if the underlying multiple award contract was awarded through the 8(a) BD program. These provisions were not meant to conflict. Although formal offer and acceptance is not required, it is important for SBA to be notified of any work that is intended to be moved to an 8(a) multiple award contract that was previously performed under an 8(a) contract that was not limited to specific 8(a) Participants (*i.e.,* either a sole source award to a specific Participant or an 8(a) competitive award that was open to all eligible Program Participants). As SBA noted in the supplementary information to the final rule implementing the notification requirement contained in § 124.504(d)(1), an 8(a) incumbent contractor may be seriously hurt by moving a procurement from an 8(a) sole source or competitive procurement to an 8(a) multiple award contract to which the incumbent is not a contract holder. *See* 85 FR 66146, 66163 (Oct. 16, 2020). In such a case, the incumbent would have no opportunity to win the award for the follow-on contract and would have no opportunity to demonstrate that it would be adversely impacted by the loss of the opportunity to compete for the follow-on procurement. SBA believes that not allowing an incumbent 8(a) contractor to compete for a follow-on contract where that contract accounts for a significant portion of its revenues contradicts the business development purposes of the 8(a) BD program.

In order to eliminate any confusion and ensure that notification occurs where a procuring agency seeks to issue an order under an 8(a) multiple award contract and some or all of the work contemplated in that order was previously performed through one or more other 8(a) contracts, the proposed rule would amend § 124.503(i)(1)(ii) to clarify that an agency must notify SBA where it seeks to issue an order under an 8(a) multiple award contract that contains work that was previously performed through another 8(a) contract. Where that work is critical to the business development of a current Participant that previously performed the work through another 8(a) contract and that Participant is not a contract holder of the 8(a) multiple award contract, SBA may request that the procuring agency fulfill the requirement through a competition available to all 8(a) BD Program Participants.

Section 124.503(i)(1)(iv)

SBA's current regulations authorize a sole source 8(a) order to be awarded under a multiple award contract to a multiple award contract holder where the multiple award contract was set-

aside or reserved for exclusive competition among 8(a) Participants. The procuring agency must offer and SBA must accept the order into the 8(a) BD program on behalf of the identified 8(a) contract holder. To be eligible for the award of a sole source order, SBA's regulations currently specify that a concern must be a current Participant in the 8(a) BD program at the time of award of the order. There has been some confusion as to whether the business activity target requirements set forth in § 124.509 apply to the award of such an order. In other words, it was not clear whether a Participant seeking a sole source 8(a) order under a multiple award contract set-aside or reserved for eligible 8(a) Participants needed to be in compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509 at the time of the offer/acceptance of the order. Because SBA is determining eligibility anew at the time of a new sole source order, it was always SBA's intent to not only require a firm to still be a current 8(a) Participant at the time of offer/acceptance of a sole source order, but to also require the firm to be in compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509. As such, this proposed rule clarifies that compliance with the § 124.509 business activity target requirements will be considered before SBA will accept a sole source 8(a) order on behalf of a specific 8(a) Participant multiple award contract holder. Where an agency seeks to issue a sole source order to a joint venture, the proposed rule clarifies that SBA will review and determine whether the lead 8(a) partner to the joint venture is currently an eligible Program Participant and in compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509.

In addition, the proposed rule further clarifies the rules pertaining to issuing sole source orders to joint ventures under an 8(a) multiple award contract. There has been some confusion as to whether the requirement set forth in § 121.103(h) that a joint venture may not be awarded contracts beyond a two-year period, starting from the date of the award of the first contract, applies to such sole source orders and whether SBA must approve the joint venture in connection with the sole source order as generally required by § 124.513(e)(1). The restriction in § 121.103(h) stems from SBA's belief that a joint venture should not be an on-going entity, but something with limited scope and limited duration. Thus, SBA has limited the duration that a joint venture can submit offers for the award of contracts to two years from the date of its first contract award. However, that two-year restriction does not apply to orders issued under an already awarded contract. The proposed rule would specifically clarify that the two-year restriction does not apply to a sole source 8(a) order under an 8(a) multiple award contract. In other words, the sole source order can be issued more than two years after the date the joint venture received its first contract award. In addition, the proposed rule would provide that SBA would not review and approve a joint venture where the joint venture had already been awarded a competitive 8(a) multiple award contract and is seeking a sole source 8(a) order under that multiple award contract at some point during the performance period of the contract. SBA believes that the general requirement set forth in § 124.513(e)(1) that SBA review a joint venture in connection with a sole source 8(a) award should not apply to sole source orders issued under a competitively awarded 8(a) multiple award contract because the joint venture's eligibility for the contract was already established at the award of the underlying contract. The procuring agency and other interested parties had the opportunity to challenge whether the joint venture was properly formed at that time.

Finally, in making this clarification to § 124.509, SBA noticed two instances in SBA's rules where SBA intended to cross reference § 124.509, but instead cited to § 124.507. This proposed rule would amend §§ 124.303(a)(15) and 124.403(c)(1) to change the cross reference to § 124.509.

Section 124.503(i)(2)(ii)

SBA has received inquiries as to whether an agency can issue an order under the Federal Supply Schedule (FSS) as an 8(a) award, and if so, what procedures must be used. As with any unrestricted multiple award contract, SBA believes that an order can be issued under the FSS as an 8(a) award if the procedures set forth in § 124.503(i)(2) are followed. This means that the following requirements must be met: the order must be offered to and accepted into the 8(a) BD program; the order must require the concern to comply with applicable limitations on subcontracting provisions and the nonmanufacturer rule, if applicable, in the performance of the individual order; before award, SBA must verify that the identified apparent successful offeror is an eligible 8(a) Participant as of the initial date specified for the receipt of proposals contained in the order solicitation, or at the date of award of the order if there is no solicitation; and the order must be competed exclusively among only the 8(a) awardees of the underlying multiple award contract. There is some confusion as to what that last requirement means. In the case of a multiple award contract awarded under full and open competition, SBA believes that the current regulatory language is clear. All contract holders that have certified as 8(a) eligible must be able to submit an offer for the order if they choose. An agency cannot limit competition to a subset of contract holders that have claimed to be 8(a) eligible. Of course, the apparent successful offeror's eligibility must be verified by SBA prior to award to ensure that the concern was in fact an eligible Participant as of the initial date specified for the receipt of offers contained in the order solicitation, or at the date of award of the order if there is no solicitation. For an order under the FSS that an agency seeks to issue through the 8(a) BD program, there has been some confusion as to what procedures must be used to issue the order. Specifically, agencies have told SBA that it is not clear whether an agency can merely follow the FAR 8.4 requirements or must allow all FSS holders who claim 8(a) status the opportunity to compete. SBA believes that orders issued under the FSS are unique from orders issued under multiple award contracts competed using full and open competition. GSA has established procedures for issuing orders under the FSS. SBA believes that those procedures should be used when an agency seeks to issue an 8(a) award under the FSS. This proposed rule would clarify that distinction. An agency need not open the order up to competition among all FSS contract holders claiming 8(a) status. However, an agency must consider the quote from any FSS contract holder claiming 8(a) status who submits one. As with 8(a) orders issued under unrestricted multiple award contracts, however, the apparent successful offeror for an 8(a) order under the FSS must be an eligible Participant as of the initial date specified for the receipt of offers contained in the request for quote, or at the date of award of the order if there is no solicitation.

SBA proposes to clarify § 124.503(i)(2)(ii) by noting that an agency may award an 8(a) sole source order under a multiple award contract that was awarded under full and open competition or as a small business set-

aside where the identified 8(a) Participant is a contract holder of the multiple award contract. It was not SBA's intent to prohibit agencies from entering 8(a) sole source orders in this context. Such orders are consistent with SBA's statutory authority at section 8(a)(16) of the Small Business Act, 15 U.S.C. 637(a)(16), to enter 8(a) sole source awards. Additionally, clarification of this flexibility is beneficial to both 8(a) Participants, who benefit from increased contracting opportunities, and to procuring agencies that can take advantage of pre-negotiated terms and pricing. Of course, a procuring agency must offer and SBA must accept the requirement sought to be fulfilled as an 8(a) sole source order before the order can be issued.

Section 124.504

Section 124.504(d) sets forth the procedures authorizing release of a follow-on requirement from the 8(a) BD program. Paragraph (d)(3) provides that SBA will release a requirement where the procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside. Some procuring activities have read this to mean that SBA will always release a requirement from the 8(a) BD program if the procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside. That was not SBA's intent. The 8(a) BD program is a business development program. SBA takes that purpose seriously and will always consider whether an incumbent 8(a) contractor would be adversely affected by the release of a follow-on procurement from the 8(a) BD program. Accordingly, the proposed rule would amend § 124.504(d)(3) by changing the words ''SBA will release'' to ''SBA may release'' to clarify that SBA has discretion in any release decision. The fact that a procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside is a positive for release, but SBA must still consider any adverse consequences to an incumbent 8(a) Participant. The release process has also caused some confusion regarding how a follow-on requirement may be procured if SBA agrees to release. Again, the current rule provides that release may occur only where a procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside. In other words, a strict reading of the rule would not allow release where an agency seeks to award a follow-on requirement as a set-aside order under a multiple award contract that is not itself a set-aside contract. Thus, even if an agency sought to procure a follow-on requirement as an 8(a) order under an unrestricted multiple award contract, the current regulatory language could be read to preclude that approach. That was not SBA's intent. As long as an agency identifies a procurement strategy that would target small businesses for a follow-on procurement, release may occur. In fact, release to such a contract vehicle may be appropriate where the incumbent 8(a) contractor has graduated from the program but still qualifies as a small business, the requirement is critical to the incumbent contractor's overall business development, the incumbent contractor is a contract holder on an unrestricted multiple award contract, and the procuring agency has evidenced its intent to set-aside an order for small business under the multiple award contract for which the incumbent contractor is a contract holder. This would give the incumbent contractor the opportunity to compete for the follow-on procurement and ensure that award would be made to a small business. The proposed rule would clarify that release may occur whenever a procuring agency identifies a procurement strategy that would emphasize or target small business participation.

Section 124.506(b)(3)

In explaining SBA's ability to accept a sole source 8(a) requirement on behalf of a tribally-owned, ANC-owned or NHO-owned Participant above the general competitive threshold amounts, § 124.506(b)(2) currently provides that a procurement may not be removed from competition to award it to a Tribally-owned, ANC-owned or NHO-owned concern on a sole source basis. There has been some confusion as to what the phrase ''may not be removed from competition'' means. Some have misinterpreted this provision to believe that a follow-on requirement to one that was previously awarded as a competitive 8(a) procurement cannot be awarded to an entity-owned firm on a sole source basis above the applicable competitive threshold. That is not SBA's intent. The provision prohibiting a procurement from being removed from competition and awarded to an entity-owned Participant on a sole source basis was meant to apply only to a current procurement, not the predecessor to a current procurement. A procuring agency may not evidence its intent to fulfill a requirement as a competitive 8(a) procurement, through the issuance of a competitive 8(a) solicitation or otherwise, cancel the solicitation or change its public intent, and then procure the requirement as a sole source 8(a) procurement to an entity-owned Participant. A follow-on procurement is a new contracting action for the same underlying requirement, and if the procuring agency has not evidenced a public intent to fulfill it as a competitive 8(a) procurement it can be fulfilled on a sole source basis to an entity-owned Participant. The proposed rule adds language clarifying that intent.

However, as identified above, SBA is concerned about the business development aspects of the program for an incumbent Participant. In other words, where a Participant was previously awarded a competitive 8(a) contract, is still an eligible Participant at the completion of the contract, and is hoping to compete again for the follow-on procurement to the contract it previously performed, SBA may take that into account in its decision whether to accept a follow-on procurement on a sole source basis on behalf of an entity-owned Participant if the contract is critical to the incumbent Participant's overall business development. SBA requests comments as to whether a specific provision should be added to the regulations requiring SBA to consider the effect that losing an opportunity to compete for a follow-on contract would have on an incumbent Participant's business development.

Section 124.506(d)

The proposed rule clarifies SBA's rules pertaining to the award of sole source 8(a) contracts to individually-owned 8(a) Participants. The proposed rule would add a provision to § 124.506(d) to clarify that an individually-owned 8(a) Participant could receive a sole source award in excess of the $4.5M and $7M competitive threshold amounts set forth in § 124.506(a)(2) where a procuring agency has determined that a FAR 6.302 exception to full and open competition exists. For example, if a procuring agency has determined that there exists an unusual and compelling urgency and has identified an individually-owned 8(a) Participant that is capable of fulfilling its needs, it can offer that requirement to SBA as a sole source award on behalf of the identified Participant even if the requirement exceeds the applicable competitive threshold. The Agency would be free to use its FAR 6.302 authority to award a sole source contract outside the 8(a) BD program. SBA believes that it only makes sense to allow the agency to make an award as a sole source contract

within the 8(a) BD program if it chooses to do so.

In addition, if such an award exceeds $25M, or $100M for a Department of Defense (DoD) agency, the proposed rule would also clarify that the agency would be required to justify the use of a sole source contract under FAR 19.808–1 or Defense Federal Acquisition Regulation Supplement (DFARS) 219.808–1(a) before SBA could accept the requirement as a sole source 8(a) award. Although those justifications and approvals generally apply to sole source 8(a) contracts offered to SBA on behalf of entity-owned Program Participants, the FAR and DFARS justification and approval provisions are not restricted to entity-owned Participants. Instead, those provisions apply to any 8(a) sole source contract that exceeds the $25M or $100M threshold. As such the proposed rule merely adds language to clarify what SBA believes the current requirement is and does so in order to avoid any confusion.

Section 124.509

Section 124.509 establishes non-8(a) business activity targets to ensure that Participants do not develop an unreasonable reliance on 8(a) awards. SBA amended this section as part of a comprehensive final rule in October 2020. *See* 85 FR 66146, 66189 (Oct. 16, 2020). In that final rule, SBA recognized that a strict prohibition on a Participant receiving new sole source 8(a) contracts should be imposed only where the Participant has not made good faith efforts to meet its applicable non-8(a) business activity target. Since that rule became effective in November 2020, Participants have sought guidance as to what ''good faith efforts'' means in this context. This proposed rule seeks to provide guidance. The proposed regulatory language is how SBA has been interpreting good faith efforts since the good faith efforts change was effective. The proposed rule would provide two ways by which a Participant could establish that it has made good faith efforts. Specifically, a Participant could demonstrate to SBA either that it submitted offers for one or more non-8(a) procurements which, if awarded, would have given the Participant sufficient revenues to achieve the applicable non-8(a) business activity target during its just completed program year, or explain that there were extenuating circumstances that adversely impacted its efforts to obtain non-8(a) revenues. This proposed rule would also identify possible extenuating circumstances, which would include but not be limited to a reduction in government funding, continuing resolutions and budget uncertainties, increased competition driving prices down, or having one or more prime contractors award less work to the Participant than originally contemplated.

There has also been some confusion as to how SBA should best track business activity targets. The statutory requirement for such targets relates to program years, meaning a Participant should receive a certain percentage of non-8(a) business during certain years in the program. In the October 2020 final rule, SBA changed all references to looking at business activity compliance from fiscal year to program year to align with the statutory authority. A program year lines up with the date that a Participant was certified as eligible to participate in the 8(a) BD program. That date generally is not the same as a Participant's fiscal year. Participants have financial statements relating to their fiscal year activities, but most do not have financial statements relating to program year. To capture program year data, SBA has asked Participants to estimate as best they can program year revenues for both 8(a) and non-8(a) activities. Although this rule proposes no specific changes as to the revenue information provided to SBA, SBA specifically requests comments as to how firms believe it would be easiest for them to meet the program year information requirements. One approach that SBA is considering is to capture program year data based on the Participant's interim financial statements. This would require a Participant to submit monthly, quarterly, or semi-annual financial statements, as appropriate, to SBA where the close of its fiscal year and its program anniversary date are separated by more than 90 calendar days. SBA could then assess the Participant's compliance with the business activity target based on the breakdown of 8(a) and non-8(a) sales set forth in the applicable interim financial statements. For example, Participant A's fiscal year closes on December 31, and its program anniversary date is May 9. In connection with its annual review, Participant A would submit quarterly financial statements for the periods of April 1–June 30, July 1–September 30, and October 1–December 31, from its most recently completed fiscal year, and the period of January 1–March 31 in its current fiscal year. SBA could then determine Participant A's compliance with the applicable business activity target based on the breakdown of 8(a) and non-8(a) sales during the 12-month period covered by these quarterly financial statements. SBA recognizes that this approach would exclude revenues derived during the final weeks or months leading up to a Participant's program anniversary date. However, SBA believes that this approach would most closely capture a Participant's program year activities without placing an undue burden on the Participant to estimate its 8(a) and non-8(a) revenues on a program year basis.

Sections 124.513(a), 125.18(b), 126.616(a)(2), and 127.506(a)(3)

The proposed rule would add a new § 124.513(a)(3) to provide that a Program Participant cannot be a joint venture partner on more than one joint venture that submits an offer for a specific 8(a) contract. Although the proposed rule would apply this requirement to all contracts, procuring agencies and small businesses have raised concerns to SBA in the context of multiple award contracts where it is possible that one firm could be a member of several joint ventures that receive contracts. In such a situation, several agencies were troubled that orders under the multiple award contract may not be fairly competed if one firm was part of two, three or more quotes. They believed that one firm having access to pricing information for several quotes could skew the pricing received for the order.

To ensure that the HUBZone, WOSB and SDVOSB programs have rules as consistent as possible to those for the 8(a) BD program, the proposed rule adds similar language as that added to § 124.513(a)(3) for those programs in proposed §§ 125.18(b) (for SDVOSB), 126.616(a)(2) (for HUBZone), and 127.506(a)(3) (for WOSB).

SBA specifically requests comments as to whether this provision should be limited only to 8(a)/HUBZone/WOSB/SDVOSB multiple award contracts or whether it should apply to all contracts set-aside or reserved for 8(a)/HUBZone/WOSB/SDVOSB, and to all orders set-aside for such businesses under unrestricted multiple award contracts.

Section 124.515

Section 124.515 implements section 8(a)(21) of the Small Business Act, 15 U.S.C. 637(a)(21), which generally requires an 8(a) contract to be performed by the concern that initially received it. In addition, the statute and § 124.515 provide that where the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, any 8(a) contract that the concern is performing shall be terminated for the convenience of the Government unless the SBA Administrator, on a nondelegable basis,

grants a waiver based on one or more of five statutorily identified reasons. This proposed rule would revise § 124.515(c) for clarity. Specifically, it would break one longer paragraph into several smaller paragraphs and would clarify that if a Participant seeks a waiver based on the impairment of the agency's mission or objectives, it must identify and provide a certification from the procuring agency relating to each 8(a) contract for which a waiver is sought.

Currently, a Participant (or former Participant that is still performing an 8(a) contract) must submit its request for a waiver to the termination for convenience requirement to the Participant's (or former Participant's) SBA servicing district office. These requests for waivers are often complicated and can take a long time to be approved. Processing a waiver request can take several months in an SBA district office and then several months in SBA's Office of Business Development in SBA's Headquarters. In order to streamline the process, SBA is also considering changing where requests for waivers must be initiated from the servicing district office to the AA/BD, and requests comments on whether that would be beneficial.

Sections 124.604 and 124.108

Section 124.604 currently requires each Participant owned by a Tribe, ANC, NHO, or CDC to submit to SBA information showing how the Tribe, ANC, NHO, or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms. This rule proposes to require more precise benefits back to the Native community.

Specifically, SBA is proposing a requirement that each entity having one or more Participants in the 8(a) BD program establish a Community Benefits Plan that outlines the anticipated approach it expects to deliver to strengthen its Native or underserved community over the next three or five years. Each entity would decide how best to serve and meet the needs of its community, though SBA would expect some commitment in areas relating to health, education, housing, infrastructure, cultural preservation, and economic development, as appropriate. SBA requests comments on whether this Community Benefits Plan should be its own, separate plan or be included in the business plan submission and updates required as part of the annual review process. Further, SBA requests comment on the period the Community Benefits Plan should cover.

SBA understands the dual purposes of the entity-owned component of the 8(a) BD program: to develop viable small business concerns while at the same time creating opportunities to provide significant benefits to the native or disadvantaged communities that they serve. SBA seeks to ensure that both of those purposes are advanced and requests comments on how best that can be accomplished. Specifically, SBA seeks comments as to whether specific monetary targets should be established for providing support to the native or disadvantaged communities, and if that amount should change based upon the length of time an entity owns business concerns participating in the 8(a) BD program and depending upon the number of Participants an entity owns that are operating in the program. In addition, SBA requests comments as to whether there should be consequences to an entity or an entity-owned Participant that does not meet or does not make good faith efforts to meet the commitments that it made in its initial application to provide benefits to its native or underserved community.

Section 124.604 requires each entity-owned Participant to submit information relating to the benefits that the entity has provided to the Native or underserved community as part of its annual review submissions. The SBA collects this information and provides summary level reporting as part of SBA's Annual 408 Report to the Congress as required by section 408 of the Business Opportunity Development Reform Act of 1988, Public Law 100–656 (codified at section 7(j)(16) of the Small Business Act, 15 U.S.C. 636(j)(16)). For more transparent reporting, the proposed rule would provide that each entity-owned Participant must submit to SBA information showing how the Tribe, ANC, NHO, or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms, whether the benefits provided meet the benefits target set forth in its Community Benefits Plan, and how the benefits provided directly impacted the native or underserved community.

SBA specifically asks for comments on how best to implement proposed changes for benefits reporting.

Section 124.1002

Section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99–661 (100 Stat. 3816, 3973), authorized a set-aside program at DoD for small disadvantaged businesses, separate from the authority for contracts awarded under the 8(a) BD program. The ''Section 1207'' or Small Disadvantaged Business (SDB) Program also had a price evaluation preference and a subcontracting component. SBA implemented regulations establishing the eligibility requirements for the SDB Program and authorizing a protest and appeal process to SBA regarding the SDB status of apparent successful offerors. In 2008, the United States Court of Appeals for the Federal Circuit ruled that preferential treatment in the award of DoD prime defense contracts based on race under the Section 1207 program (as implemented in 10 U.S.C. 2323) was unconstitutional. *Rothe Dev. Corp.* v. *DoD,* 545 F.3d 1023. This effectively eliminated the SDB Program.

In response, the FAR Council changed the SBA protest process for SDBs in the FAR to a ''review'' process in a final rule effective October 2014 (79 FR 61746). The FAR Council stated that its changes to the SDB program were based on the Federal Circuit's decision in the *Rothe* case. SBA brought its own regulations up to date in 2020 by removing references to an SDB protest. 85 FR 27290 (May 8, 2020). Recently, SBA's Office of Inspector General (OIG) has questioned why a protest process no longer exists to challenge a firm's SDB status. Despite SBA's explanation that the Section 1207 program (the basis for SBA's previous SDB regulatory authorities) no longer exists, OIG continues to believe that general authority to protest a firm's SDB status should exist. SBA notes that since the FAR Council replaced the protest process with a review process in 2014, SBA has not received any requests for review. Although SBA believes that such authority would not be often utilized, in response to OIG's concerns the proposed rule would add a new § 124.1002 authorizing reviews and protests of SDB status in connection with prime contracts and subcontracts to a federal prime contract.

The proposed rule copies similar authority contained in section 19.305 of the Federal Acquisition Regulation, title 48 of the Code of Federal Regulations. Under proposed § 124.1002, SBA could initiate the review of the SDB status on any firm that has represented itself to be an SDB on a prime contract (for goaling purposes or otherwise) or subcontract to a federal prime contract whenever it receives credible information calling into question the SDB status of the firm. In addition, as already stated in the FAR, the proposed rule would allow the contracting officer or the SBA to protest

the SDB status of a proposed subcontractor or subcontract awardee. Finally, where SBA determines that a subcontractor does not qualify as an SDB, the proposed rule would require prime contractors to exclude subcontracts to that subcontractor as subcontracts to an SDB in its subcontracting reports, starting from the time that the protest was decided. SBA believes that a prime contractor should not get SDB credit for using a subcontractor that does not qualify as an SDB. However, in order not to penalize a prime contractor who acted in good faith in awarding a subcontract or to impose an additional burden of correcting past subcontracting reports, the proposed rule would disallow SDB subcontracting credit only prospectively from the point of an adverse SDB determination.

Sections 125.1 and 125.3(c)(1)(i) and (x) and (c)(2)

SBA proposes to make changes to several provisions in part 125 that reference the term commercial item. This is in response to recent changes made to the Federal Acquisition Regulation (FAR) with regard to the definition of ''commercial item''. 86 FR 61017. Primarily, the changes to the FAR split the definition of commercial items into two categories, commercial products and commercial services. SBA is proposing to amend its regulations to adopt these changes when SBA's regulation is referring to a commercial product, a commercial service, or both. Specifically, SBA is amending the definition for ''cost of materials'' in 125.1 to refer only to commercial products. Further, SBA proposes to amend § 125.3(c)(1)(i) and (x) and (c)(2) to update the references to both commercial products and commercial services.

Section 125.1

The proposed rule would add definitions of the terms ''Small business concerns owned and controlled by socially and economically disadvantaged individuals'' and ''Socially and economically disadvantaged individuals'' for purposes of both SBA's subcontracting assistance program in 15 U.S.C. 637(d) and the goals described in 15 U.S.C. 644(g). The proposed rule seeks to implement consistency among SBA's programs and would refer to requirements set forth in part 124 for 8(a) eligibility. SBA believes that this change is also needed to provide clarity for small disadvantaged business eligibility requirements contained in other statutes that refer to 15 U.S.C. 637(d) for their eligibility.

SBA proposes to include blanket purchase agreements (BPAs) in the list of contracting vehicles that are covered by the definitions of consolidation and bundling. There are two kinds of BPAs: GSA's FSS BPAs covered under FAR 8.4 and BPAs established under Simplified Acquisition Procedures (*see* FAR 13.303). SBA requests comments as to whether this should apply to both types of BPAs, FSS, and FAR 13.303, and whether it should apply to both single-award and multiple-award BPAs. Generally, a consolidated requirement is one that consolidates two or more previous requirements into one action. A bundled requirement is a type of consolidated requirement in which multiple small-business requirements are consolidated into a single, larger requirement that is not suitable for award to small businesses. In most cases, because of the potential negative impact on small business contracting opportunities, the contracting agency is required to conduct a financial analysis, execute a determination that the action is necessary and justified, and in some cases notify impacted small businesses and the public, before proceeding with a bundled or consolidated requirement. The Small Business Act, 15 U.S.C. 632(j), requires agencies to avoid unnecessary bundling of ''contract requirements.'' SBA interprets the term ''contract requirements'' to include BPAs for the purposes of this statutory provision on avoiding bundling. This is similar to how SBA interprets the term ''proposed procurement'' under the Small Business Act's requirement for agencies to coordinate with procurement center representatives on prime contract opportunities.

SBA thus intended the consolidation and bundling provisions to apply to BPAs. The Government Accountability Office (GAO), however, ruled in two recent bid protests that, because SBA's regulations do not specifically address BPAs, the consolidation and bundling procedures do not apply when the resulting requirement is a BPA.

SBA routinely sees consolidation in BPAs. Bundling on a BPA has the same detrimental effect on small-business incumbents as bundling on other vehicles, such as contracts or orders. Regardless of whether the resulting requirement is a BPA, the bundled action will convert multiple small business contracting actions into a single action to be awarded to a large business. If agencies are not required to follow SBA regulations regarding notification and a written determination for bundled BPAs, the small business incumbents may not know that work that they are currently performing has been bundled and moved to a single award to a large business and may not have the opportunity to challenge such action. Awarding a requirement as a BPA does not lessen the negative impact of bundling on small businesses, and, therefore, SBA proposes to incorporate into the regulations its current belief that the bundling and consolidation rules should apply with equal force where the resulting award will be a BPA.

Additionally, several procuring agencies have asserted that the analysis, determination, and notification requirements for consolidation or bundling do not apply when existing requirements are combined with new requirements. SBA disagrees. There is no basis in statute, regulation, or case law for agencies to interpret ''requirement'' as excluding a combination of existing and new work. To eliminate any confusion, the proposed rule clarifies SBA's current position that agencies are required to comply with the Small Business Act and all SBA regulations regarding consolidation or bundling regardless of whether the requirement at issue combines both existing and new requirements into one larger procurement that is considered to be ''new.''

Section 125.2

Section 125.2 sets forth guidance as to SBA's and procuring agencies' responsibilities when providing contracting assistance to small businesses. Section 125.2(d) contains guidance on how procuring agencies determine whether contract bundling and substantial bundling is necessary and justified. Specifically, § 125.2(d)(2)(ii) states that a cost or price analysis may be included to support an agency's determination of the benefits of bundling. This language combined with the language at § 125.2(d)(2)(v) is intended to mean that price analysis is always necessary, and, if the analysis results in a price reduction, the agency may use the price reduction to demonstrate benefits of the bundled approach. In order to demonstrate ''measurably substantial'' benefits as required by the Small Business Act, SBA's regulations and the FAR (benefits equivalent to 10 percent of the contract or order value where the contract or order value is $94 million or less, or benefits equivalent to 5 percent of the contract or order value or $9.4 million, whichever is greater, where the contract or order value exceeds $94 million), SBA believes that a cost or price

analysis must be conducted. Some have argued that the Small Business Act does not require a cost/price analysis. They point to the language of section 15(e)(2)(B) of the Small Business Act which provides that in demonstrating ''measurably substantial benefits'' the identified benefits ''may include'' cost savings, quality improvements, reduction in acquisition cycle times, better terms and conditions, and any other benefits. 15 U.S.C. 644(e)(2)(B). However, if a cost/price analysis is not required, SBA does not believe that it is possible to demonstrate benefits equivalent to 10 percent (or 5 percent/ $9.4 million) of the contract or order value—exactly what is required by SBA's regulations and the FAR. This interpretation is even clearer in § 125.2(d)(2)(v), which acknowledges that an agency will perform a price analysis and describes a specific type of price comparison to include in the analysis.

In order to clarify any misperceptions, SBA proposes to clarify § 125.2(d)(2)(ii) to plainly state that an analysis comparing the cumulative total value of all separate smaller contracts with the estimated cumulative total value of the bundled procurement is required as part of the analysis of whether bundling is necessary and justified. Neither a procuring agency nor SBA can have a complete view of the small business contact dollars impacted by a bundled procurement if this price analysis is not performed. The analysis requires that an agency identify all impacted separate smaller contracts. An agency can search the Federal Procurement Data System or use the agency's own contract records to determine the complete universe of separate contracts impacted by the bundled procurement. Identification of every impacted firm is not only important for purposes of the price analysis but is also necessary to comply with the statutory and regulatory notice requirements for bundled contracts. Furthermore, if 8(a) contracts will be subsumed in the bundled procurement, an agency must know which 8(a) contracts are impacted in order to comply with the required 8(a) program release or notification requirements.

Section 125.3

Section 125.3 discusses the types of subcontracting assistance that are available to small businesses and the rules pertaining to subcontracting generally. Section 125.3(a)(1)(i)(B) provides that purchases from a corporation, company, or subdivision that is an affiliate of the prime contractor or subcontractor are not included in the subcontracting base. SBA received an inquiry as to whether this language would allow a prime contractor to count an award to a joint venture in which it is a partner as subcontracting credit. That was not SBA's intent. SBA believes that exclusion is covered in the current regulatory text, which already alludes to not counting awards to affiliates. Nevertheless, in order to clarify that a prime contractor cannot count an award to a joint venture in which it is a partner as subcontracting credit, SBA has added clarifying language to that effect.

SBA also proposes to amend § 125.3(a)(1)(iii) to delete bank fees from the list of exclusions from the subcontracting base. SBA's current regulations provide that bank fees are excluded from the subcontracting base. This means that when a large contractor is calculating the percentage of work being subcontracted to small businesses, it does not have to factor bank fees into this calculation. This gives the contractor little incentive to work with small banks. However, there are over 900 small businesses registered in the Dynamic Small Business Search (DSBS) database under banking NAICS codes. Given the number of small banks available to do work on federal prime contracts, SBA does not believe bank fees should be excluded from the subcontracting base.

In addition, SBA proposes to amend § 125.3(c)(1)(iv) to require that large businesses include indirect costs in their subcontracting plans. Currently, large businesses have the option of including or excluding indirect costs in their individual subcontracting plans. Many large businesses opt to exclude indirect costs. As a result, small businesses that provide services generally considered to be indirect costs—such as legal services, accounting services, investment banking, and asset management—are often overlooked by large contractors. SBA believes that by requiring indirect costs to be included in their individual subcontracting plans, large businesses will have an incentive to give work to small businesses that provide those services.

Section 125.6

Section 125.6 sets forth the requirements pertaining to the limitations on subcontracting applicable to prime contractors for contracts and orders set-aside or reserved for small business. Section 125.6(d) provides that the period of time used to determine compliance for a total or partial set-aside contract will generally be the base term and then each subsequent option period. This makes sense when one agency oversees and monitors a contract. However, on a multi-agency set aside contract, where more than one agency can issue orders under the contract, no one agency can practically monitor and track compliance. In order to ensure that this statutory requirement is met for the contract, SBA believes that compliance should be measured order by order by each ordering agency. The proposed rule would clarify § 125.6(d) accordingly.

SBA is proposing to add a new § 125.6(e) to provide consequences to a small business where a contracting officer determines at the conclusion of contract performance that the business did not meet the applicable limitation on subcontracting on any set-aside contract (small business set-aside; 8(a); WOSB; HUBZone; or SDVOSB). The current rules provide discretion to contracting officers to require contractors to demonstrate compliance with the limitations on subcontracting at any time during performance and upon completion of a contract. SBA's current rules do not, however, address what happens if a contracting officer determines that a firm fails to meet the statutorily required limitation on subcontracting requirement at the conclusion of contract performance. SBA's proposed rule would provide that a contracting officer could not give a satisfactory/positive past performance evaluation for the appropriate evaluation factor or subfactor to a contractor that the contracting officer determined did not meet the applicable limitation on subcontracting requirement at the conclusion of contract performance. Of course, if a small business were found to be in non-compliance during the performance of the contract and took steps to come into compliance before completion of the contract, the contractor's final rating for conformance to requirements could be satisfactory. The proposed rule would not alter the contracting officer's discretion to require contractors to demonstrate compliance with the limitations on subcontracting where the contracting officer deems it to be appropriate; it merely would provide consequences (*i.e.,* negative past performance evaluation) where the contracting officer determined that a contractor did not meet the limitation on subcontracting requirement at the conclusion of contract performance. SBA believes that having negative consequences for not meeting the applicable limitation on subcontracting would help ensure the requirements are being met, and that set-aside contracts are being performed in a manner consistent with SBA's regulations and

the Small Business Act. Some have argued that there should be extenuating circumstances under which a contracting officer should still be able to give a satisfactory/positive past performance evaluation to a contractor that the contractor officer determined did not meet the applicable limitation on subcontracting requirement. SBA believes that any such discretion, if ultimately authorized, should be very limited in scope. Again, SBA believes that it is important to have consequences for small business concerns that do not meet the applicable limitation on subcontracting. SBA wants small businesses to take those requirements seriously and strive to achieve them. Nevertheless, SBA requests comments as to whether the regulations should allow a contracting officer to give a satisfactory/positive past performance evaluation to a contractor that the contractor officer determined did not meet the applicable limitation on subcontracting requirement, and, if so, under what limited circumstances should that discretion be authorized.

Section 125.9

Section 125.9 sets forth the rules governing SBA's small business mentor-protégé program. SBA's regulations currently provide that a mentor can have no more than three protégé small business concerns at one time. SBA has been asked whether a mentor that purchases another business concern that is also an SBA-approved mentor can take on those mentor-protégé relationships if the total number of protégés would exceed three. The reason SBA has limited the number of protégé firms one mentor can have at any time is to ensure that a large business mentor does not unduly benefit from programs intended to benefit small businesses. That is also the reason that the limit of three protégés applies to the mentor family (*i.e.,* the parent and all of its subsidiaries in the aggregate cannot have more than three protégé small business concerns at one time). If each separate business entity could itself have three protégés, conceivably a parent with three subsidiaries could have 12 small business protégé firms. SBA believes that that would allow a large business to unduly benefit from small business programs. The regulations implementing the mentor-protégé program also provide that a small business can have only two mentor-protégé relationships in total. Thus, if SBA were to say that a mentor that purchased another business entity which is also a mentor could not take on the selling business entity's mentor-protégé relationships, the ones who would be hurt the most would be the small business protégés of the selling business. Their mentor-protégé relationships with the selling mentor would end early and would count as one of the two mentor-protégé relationships that they were authorized to have. Because SBA did not intend to adversely affect protégé firms in these circumstances, SBA has informally permitted a mentor to take on the mentor-protégé relationships of a firm that it purchased even where its total number of mentor-protégé relationships would exceed three. The proposed rule would add language to § 125.9(b)(3)(ii) to recognize this exemption. Specifically, the proposed rule would add a paragraph that where a mentor purchases another business entity that is also an SBA-approved mentor of one or more protégé small business concerns and the purchasing mentor commits to honoring the obligations under the seller's mentor-protégé agreement(s), that entity may have more than three protégés. In such a case, the entity could not add another protégé until it fell below three in total.

The proposed rule would also amend § 125.9(e) to add language recognizing that a mentor that is a parent or subsidiary of a larger family group may identify one or more subsidiary firms that it plans to participate in the mentor-protégé arrangement by providing assistance and/or participating in joint ventures with the protégé firm. The proposed rule would provide that all entities intended to participate in the mentor-protégé relationship should be identified in the mentor-protégé agreement itself.

Sections 126.306(b) and 127.304(c)

Sections 126.306 and 127.304 set forth the procedures by which SBA processes applications for the HUBZone and WOSB programs, respectively. This proposed rule would add language to both processes to provide that where SBA is unable to determine a concern's compliance with any of the HUBZone or WOSB/EDWOSB eligibility requirements due to inconsistent information contained in the application, SBA will decline the concern's application. In addition, this proposed rule would add language providing that if, during the processing of an application, SBA determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. This language is consistent with that already appearing in SBA's regulations for the 8(a) BD program, and SBA believes that all of SBA's certification programs should have similar language on this issue.

Sections 125.28(e), 126.801(e)(2), and 127.603(d)(2)

For purposes of SDVO, HUBZone and WOSB/EDWOSB contracts, the SDVO/HUBZone/WOSB/EDWOSB prime contractor together with any similarly situated entities must meet the applicable limitation on subcontracting (or must perform a certain portion of the contract). If a subcontractor is intended to perform primary and vital aspects of the contract, the subcontractor may be determined to be an ostensible subcontractor under proposed § 121.103(h)(3), and the prime contractor and its ostensible subcontractor would be treated as a joint venture. However, if the ostensible subcontractor qualifies independently as a small business, a size protest would not find the arrangement ineligible for any small business contract. To address that situation, the current regulations for the SDVO program (in §§ 125.18(f) and 125.29(c)), the HUBZone program (in §§ 126.601(d) and 126.801(a)(1)) and the WOSB program (in §§ 127.504(g) and 127.602(a)) prohibit a non-similarly situated subcontractor from performing primary and vital requirements of a contract and permit a SDVO/HUBZone/WOSB/EDWOSB status protest where an interested party believes that will occur. The proposed rule would add a paragraph to each of the SDVO/HUBZone/WOSB/EDWOSB status protest provisions to clarify that any protests relating to whether a non-similarly situated subcontractor will perform primary and vital aspects of the contract will be reviewed by the SBA Government Contracting Area Office serving the geographic area in which the principal office of the SDVO/HUBZone/WOSB/EDWOSB business is located. SBA's Government Contracting Area Offices are the offices that decide size protests and render formal size determinations. They are the offices with the expertise to decide ostensible subcontractor issues. Thus, for example, if a status protest filed in connection with a WOSB contract alleges that the apparent successful offeror should not qualify as a WOSB because (1) the husband of the firm's owner actually controls the business, and (2) a non-WOSB subcontractor will perform primary and vital requirements of the contract, SBA's WOSB staff in the Office of Government Contracting will review

the control issue and refer the ostensible subcontractor issue to the appropriate SBA Government Contracting Area Office. The SBA Government Contracting Area Office would determine whether the proposed subcontractor should be considered an ostensible subcontractor and send that determination to the Director of Government Contracting, who then would issue one WOSB status determination addressing both the ostensible subcontractor and control issues. The same would be true for SDVO status protests and HUBZone status protests (except that in the HUBZone context the Director of the Office of HUBZones would issue the HUBZone status determination). To accomplish this, the proposed rule would add clarifying language in §§ 125.28(e) (for SDVO), 126.801(e)(2) (for HUBZone), and 127.603(d) (for WOSB/EDWOSB).

Section 126.503(c)

The proposed rule would § 126.503 by adding a new paragraph (c) to specifically authorize SBA to initiate decertification proceedings if after admission to the HUBZone program SBA discovers that false information has been knowingly submitted by a certified HUBZone small business concern. SBA believes that this is currently permitted under the HUBZone regulations, but proposes to add this provision to eliminate any doubt.

Section 126.601(d)

The proposed rule would amend § 126.601(d) to clarify how the ostensible subcontractor rule may affect a concern's eligibility for a HUBZone contract. Where a subcontractor that is not a certified HUBZone small business will perform the primary and vital requirements of a HUBZone contract, or where a HUBZone prime contractor is unduly reliant on one or more small businesses that are not HUBZone-certified to perform the HUBZone contract, the prime contractor would not be eligible for award of that HUBZone contract.

Section 126.616(a)(1)

The proposed rule would amend § 126.616(a) to clarify that a HUBZone joint venture should be registered in the System for Award Management (SAM) (or successor system) and identified as a HUBZone joint venture, with the HUBZone-certified joint venture partner identified. SBA has received numerous questions from HUBZone firms and contracting officers expressing confusion about how to determine whether an entity qualifies as a HUBZone joint venture and thus is eligible to submit an offer for a HUBZone contract. Part of the confusion stems from the fact that there is no way for an entity to be designated as a HUBZone joint venture in SBA's DSBS database; this certification can only be made in SAM. In addition, the process for self-certifying as a HUBZone joint venture in SAM is apparently unclear because such certification does not appear in the same section as the other socioeconomic self-certifications. Since it is not known when these systems might be updated to clear up this confusion, SBA is proposing to amend § 126.616(a) by adding a new paragraph (a)(1) to help HUBZone firms and contracting officers understand how to determine whether an entity may be eligible to submit an offer as a HUBZone joint venture.

Section 126.801

The proposed rule would amend § 126.801(b) to clarify the bases on which a HUBZone protest may be filed, which include: (i) the protested concern did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for HUBZone certification or on the anniversary date of such certification; (ii) the protested joint venture does not meet the requirements set forth in § 126.616; (iii) the protested concern, as a HUBZone prime contractor, is unduly reliant on one or more small subcontractors that are not HUBZone-certified, or subcontractors that are not HUBZone-certified will perform the primary and vital requirements of the contract; and/or (iv) the protested concern, on the anniversary date of its initial HUBZone certification, failed to attempt to maintain compliance with the 35% HUBZone residence requirement. The proposed rule also would amend § 126.801(d)(1), addressing timeliness for HUBZone protests.

The proposed rule would add a new paragraph (d)(1)(i) to clarify the timeliness rules for protests relating to orders or agreements that are set-aside for certified HUBZone small business concerns where the underlying multiple award contract was not itself set-aside or reserved for certified HUBZone small business concerns. Specifically, a protest challenging the HUBZone status of an apparent successful offeror for such an order or agreement will be considered timely if it is submitted within 5 business days of notification of the identity of the apparent successful offeror for the order or agreement. The proposed rule also would add a new paragraph (d)(1)(ii) to clarify that where a contracting officer requires recertification in connection with a specific order under a multiple award contract that itself was set-aside or reserved for certified HUBZone small business concerns, a protest challenging the HUBZone status of an apparent successful offeror will be considered timely if it is submitted within five business days of notification of the identity of the apparent successful offeror for the order.

Section 127.102

SBA proposes to amend the definition of WOSB to clarify that the definition applies to any certification as to a concern's status as a WOSB, not solely to those certifications relating to a WOSB contract. SBA has received inquiries as to whether this definition applies to a firm that certifies as a WOSB for goaling purposes on an unrestricted procurement. It has always been SBA's intent to apply that definition to all instances where a concern certifies as a WOSB, and this proposed rule merely clarifies that intent.

Section 127.200

Section 127.200 specifies the requirements a concern must meet to qualify as an EDWOSB or WOSB. In order to qualify as an EDWOSB, an entity must be a small business. Section 127.200(a)(1) requires a concern to be a small business for its primary industry classification to qualify as an EDWOSB, while § 127.200(b)(1) merely states that a concern must be a small business to qualify as a WOSB. In terms of demonstrating that an applicant for either WOSB or EDWOSB certification qualifies as a small business, the proposed rule would provide that the applicant must demonstrate that it qualifies as small under the size standard corresponding to any NAICS code under which it currently conducts business activities. SBA believes that this standard makes more sense than requiring an applicant to qualify as small under the size standard corresponding to its primary industry classification. In order to be eligible for a specific WOSB/EDWOSB contract, a firm must qualify as small under the size standard corresponding to the NAICS code assigned to that contract. Whether a firm qualifies as small under its primary industry classification is not relevant to that determination (unless the size standard for the firm's primary industry classification is that same as that for the NAICS code assigned to the contract, but even then, the only relevant size standard is that corresponding to the NAICS code

assigned to the contract). SBA believes that a firm that does not qualify as small under its primary industry classification should not be precluded from seeking and being awarded WOSB/EDWOSB contracts if it qualifies as small for those contracts. SBA believes that the certification process should ensure that an applicant is owned and controlled by one or more women and that it could qualify as a small business for a WOSB/EDWOSB set-aside contract. As such, SBA believes that requiring an applicant to demonstrate that it qualifies as small for any industry under which it currently conducts business is more appropriate than requiring it to demonstrate that it qualifies as small under its primary industry classification. Finally, SBA believes that it is important to align the WOSB/EDWOSB eligibility requirements with the eligibility requirements for veteran-owned small business (VOSB) concerns and service-disabled veteran-owned small business (SDVOSB) concerns wherever possible. SBA is also proposing that a VOSB or SDVOSB must be small under the size standard corresponding to any NAICS code under which it currently conducts business activities in a separate rulemaking.

Section 127.201(b)

Section 127.201 sets forth the requirements for control of a WOSB or EDWOSB. Paragraph (b) specifies that one or more women or economically disadvantaged women must unconditionally own the concern seeking WOSB or EDWOSB status. The proposed rule would clarify that this requirement was not meant to preclude a condition that can be given effect only after the death or incapacity of the woman owner. This change would make the WOSB unconditional ownership requirement the same as that for eligibility for the 8(a) BD program.

Section 127.202(c)

Section 127.202 sets forth the requirements for control of a WOSB or EDWOSB. The current regulatory language has caused confusion as to whether a woman or economically-disadvantaged woman claiming to control a WOSB or EDWOSB can engage in employment other than that for the WOSB or EDWOSB. The current regulations provide that the woman or economically-disadvantaged woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations. The regulations also provide that such individual must manage the business concern on a full-time basis and devote full-time to it during the normal working hours of business concerns in the same or similar line of business. Taking the two provisions together, a woman or economically-disadvantaged woman can engage in outside employment, but only if such employment occurs outside the normal working hours of business concerns in the same or similar line of business and does not prevent her from devoting sufficient time and attention to control the concern's management and daily business operations. SBA believes that this requirement is overly restrictive. SBA is charged with determining whether a business concern is owned and controlled by one or more women or economically-disadvantaged women. If a woman starts a small business that she alone operates, SBA does not believe that it makes sense to conclude that she does not control the business simply because she operates it outside the normal hours of similar businesses. Whether the business can win and perform government contracts is a different question, and not one contemplated by SBA's regulations. Where a woman is the sole individual involved in operating a specific business, there is no question that she controls the business, regardless of how many hours she devotes to the business.

This rule proposes to revise the limitations on outside activities. Per § 127.202(a), a woman or economically-disadvantaged woman must demonstrate that she controls the long-term planning and daily operations of the business. The proposed rule would continue to provide that a woman or economically-disadvantaged woman cannot engage in outside activities that prevent her from devoting sufficient time and attention to the business concern to control its management and daily operations. Where a woman claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, the proposed rule would impose a rebuttable presumption that she does not control the business concern. This is not meant to imply that a specific individual must be present at the business premises all hours that the business is open, particularly if the business is open more than a normal workday (*e.g.,* where the business is open 24 hours and has multiple shifts). In such instances the woman would merely be required to provide evidence that she has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management and administration of the business.

Section 127.400

Section 127.400 describes how a concern maintains its certification as a WOSB or EDWOSB. This rule proposes to amend § 127.400 by omitting § 127.400(a), which requires a certified concern to annually represent to SBA that it meets all program eligibility requirements, and replacing it with § 127.400(b), which states that a certified concern must undergo a program examination at least every three years to maintain program eligibility. SBA believes that these program examinations, in conjunction with other eligibility assessments like material change reviews, status protests, third-party certifier compliance reviews, and program audits, will sufficiently capture eligibility information. The proposed rule would also amend the examples to § 127.400 to reflect the proposed change and provide additional clarity to small businesses.

SBA believes small businesses will further benefit from the proposed change because it will align the WOSB Program regulations with the continuing eligibility requirements for veteran-owned small business concerns outlined in 13 CFR 128.306. The WOSB Program permits veteran owned-certified small business concerns to submit evidence of their veteran-owned certification, along with documentation demonstrating that the firms are 51% owned and controlled by one or more women, to support their applications for WOSB Program certification. Going forward, the reverse will also be true. SBA believes that when there is reciprocity between programs, small businesses benefit from as much consistency as practicable. Regulatory alignment reduces confusion, ambiguity, and administrative burden for firms that are eligible for more than one program.

Compliance With Executive Orders 12866, 12988, 13132, 13563, the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) anticipates that this proposed rule will be a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. Accordingly, the next section contains SBA's Regulatory Impact Analysis.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

This action proposes to implement a statutory enactment—the NDAA FY22—as well as codify a federal court decision into regulation, and revise SBA guidelines on 8(a) BD program eligibility, 8(a) BD program participation, and subcontracting plan compliance. With respect to the 8(a) BD program, this action is needed to clarify several policies that SBA already has put in place and to apply existing regulations to new scenarios, such as the recently created SBA mentor-protégé program. This action also is needed to integrate section 863 of NDAA FY22 into SBA regulations and to adopt the holding of a recent federal court decision.

2. What is the baseline, and the incremental benefits and costs of this regulatory action?

SBA has determined that this proposed rule includes eight proposals that are associated with incremental benefits or incremental costs. Outside of the following eight proposals, the other changes would merely clarify existing policy, modify language to avoid confusion, or adopt interpretations already issued by SBA's Office of Hearings and Appeals or through SBA casework.

a. *Require a firm to update SAM within two days and notify certain contracting officers if the firm is found ineligible through size determination, SDVO Small Business Concern (SBC) protests, HUBZone protests, or WOSB Program protests.*

SBA would amend §§ 125.30(g)(4) and 127.405(c) to provide that a firm found ineligible through a final program protest must update *SAM.gov* within two days with its new status and notify agencies with which it has pending offers that are affected by the status change. This requirement already exists in SBA's regulations for size protests.

The change extends the requirement to the SDVO SBC and WOSB programs. SBA has determined that this proposed change would impose costs on the business associated with its notification of contracting agencies of the adverse decision. The number of adverse protest decisions in the SDVOSBC and WOSB programs is less than five per year. For each such protest, the ineligible business is estimated to be required to notify two agencies. The notification does not take any particular form, so SBA estimates that each notification would take 15 minutes. Thus, the total cost of this change would be 2.5 hours across all firms. At a project-manager-equivalent level, the total cost is less than $280 annually.[1]

b. *Prohibit nonmanufacturer rule waivers from specifically applying to a contract with a duration longer than five years, including options.*

SBA proposes to amend § 121.1203 to restrict the grant of individual (*i.e.,* contract-specific) nonmanufacturer rule waivers to contracts with durations of five years or less. In the prior fiscal year, SBA granted 24 individual waivers each year for contracts that exceed five years. The estimated total value for contracts covered by these waivers was $4.6 billion.

The most probable effect of denying waivers for such contracts in the future is that the procuring agencies will choose not to set aside those contracts for small business resellers. Instead, the procuring agencies would solicit many of those contracts as full-and-open competitions. It is also possible, however, that the agencies could limit the duration of the contracts to five years in order to promote small-business opportunity through the use of a set-aside.

Of those two possibilities, the first (a full-and-open solicitation) is an economic transfer of the reseller's markup from a small business reseller to what most likely would be an other-than-small reseller. The second (limiting the contract to five years) creates possible benefits at the sixth year for newly established domestic small-business manufacturers. Under the current policy, those manufacturers might be overlooked by the agency and its contractors (*i.e.,* resellers) because the ongoing contract does not require the contractor to purchase from a domestic small-business manufacturer.

SBA estimates that, in a quarter of the cases in which an agency would otherwise seek a waiver for a contract exceeding five years, the agencies would choose to limit the contract (and thus the effect of the waiver) to five years. This amounts to six contracts, with a total value of $1.2 billion. Assuming that these contracts are ten years in length and agencies would recompete the contracts in the five final years, the potential recompeted value is $575 million, unadjusted for inflation. However, it is unknown whether domestic small-business manufacturers would be available to supply the resellers at the point of recompetition—five years after the initial award. Thus, although this change results in potential more opportunities for small business manufacturers in years six and beyond, the benefits of the additional opportunities are not quantifiable because of lack of information about the domestic small-business manufacturing base in the future.

c. *Require information from 8(a) applicants about the terms and restrictions of a retirement account only at the request of SBA, instead of in every instance.*

SBA proposes to amend § 124.104(c)(2)(ii) to eliminate the prior requirement that 8(a) applicants must provide the terms and conditions of retirement accounts in order to have the values of those accounts excluded from the owner's net worth. SBA would require the applicant to submit documentation of a retirement account only upon SBA's request.

SBA processes approximately 600 8(a) applications from individual-owned firms per year. Based on sampling, SBA found that 70 percent of those applications disclosed retirement accounts to SBA. Thus, this regulatory change will reduce the documentation burden for about 420 8(a) applicants per year. SBA estimates the existing burden to be 20 minutes per applicant, and the benefit of the proposed rule's cancellation of the documentation requirement therefore to be about $15,500 per year.[2]

d. *Permit 8(a) applications to go forward where the firm or its affected principals can demonstrate that federal financial obligations have been settled and discharged or forgiven by the Federal Government.*

Section 124.108(e) of the proposed rule states that an applicant will not be denied eligibility to the 8(a) program on the basis that the applicant's prior federal financial obligations have been settled and either discharged or forgiven by the Federal Government. In rare cases, SBA has denied 8(a) eligibility based on prior federal financial obligations, even though the government has discharged the obligation. SBA internal data shows that SBA rejects approximately two applications per year on this basis. SBA estimates that the average financial obligation in those cases is $10,000. Therefore, this proposed change results in an estimated annual benefit to future 8(a) applications of $20,000, from an

[1] From 2.5 hours saved valued at the median wage of $55.41 for General and Operations Managers, according to the Bureau of Labor Statistics (BLS) General and Operations Managers (*bls.gov*) (retrieved April 12, 2022), plus 100% for benefits and overhead.

[2] From 20 minutes of time saved by 420 applicants valued at the median wage of $55.41 for General and Operations Managers, according to the BLS General and Operations Managers (*bls.gov*) (retrieved April 12, 2022), plus 100% for benefits and overhead.

average of two applicants annually with obligations of $10,000 each.

e. *Delete bank fees from the list of exclusions in the subcontracting base.*

SBA would amend § 125.3(a)(1)(iii) to delete bank fees from the list of costs excludable from the subcontracting base when a contractor seeks to comply with a subcontracting plan. After reviewing Federal Deposit Insurance Corporation (FDIC) and Federal Reserve data, SBA estimates that the average bank fee expense per account holder is $300 per year. The number of contractors that hold a subcontracting plan is 5,500. Thus, the total amount to be added to the subcontracting base across all contractors is $1.65 million.

The benefit to small-business subcontractors of the amendment would be additional dollars subcontracted to small business. Assuming that the total level of small-business subcontracting stays consistent at 32%, contractors would spend $525,000 of the added amount with small businesses. However, 18% of economy-wide spending on banking services is spent with banks that qualify as small businesses. Assuming contractor spending approximates economy-wide spending, this equates to $297,000 of the current spending on bank fees through contractors with subcontracting plans. Thus, after subtracting the amount already spent with small-business banks, new spending with small business subcontractors would be $228,000 annually.

The proposed rule would pose a cost to contractors to track their spending on bank fees in order to include them in the subcontracting base. This may require updating vendor management systems. To determine a cost per contractor for this change, SBA reviewed the Paperwork Reduction Act Supporting Statement for the FAR's Subcontracting Plan forms, under OMB Control No. 9000–0007. Considering the burdens estimated in the Supporting Statement, SBA estimates that the average cost of this change would come to $100 per contractor annually. The cost therefore amounts to $550,000 across all contractors with subcontracting plans.

The total regulatory impact is therefore a net cost of $322,000 annually. The benefits accrue to small business subcontractors, whereas the cost is borne by other-than-small prime contractors with subcontracting plans.

f. *Require businesses to include indirect costs in their subcontracting plans.*

Section 125.3(c)(1)(iv) would require contractors with individual subcontracting plans to report indirect costs in their individual subcontracting reports (ISRs). Contractors already are required to report indirect costs in their summary subcontracting reports (SSRs). Thus, the only cost associated with the proposed change would be the cost of allocating indirect costs to the ISRs. To determine a cost per contractor for this change, SBA reviewed the Paperwork Reduction Act Supporting Statement for the FAR's Subcontracting Plan forms, under OMB Control No. 9000–0007. Considering the burdens estimated in the Supporting Statement, SBA estimates the cost to be $50 per contractor with an ISR.[3] In FY20, 4,389 contractors submitted an ISR. Thus, the aggregate cost of this proposed change amounts to $220,000 annually.

There may be a benefit to the change because agencies use the ISR to evaluate a contractor's compliance with its subcontracting plan. Thus, by including more indirect costs in the base subcontracting value, contractors will have the incentive to subcontract more to small businesses in order to meet small business goals in their subcontracting plans. This effect may be short-lived because contractors can compensate by negotiating lower subcontracting goals. Thus, SBA cannot quantify the potential benefit for this change.

g. *Require agencies to assign a negative past performance rating to a small-business contract awardee where the contracting officer determined that the small business failed to meet required limitations on subcontracting.*

SBA proposes to require that, where a contracting officer determines that at the conclusion of contract performance a small business contractor fails to satisfy the limitations on subcontracting for a particular contract, that contractor would receive a negative past-performance rating for that contract for the appropriate factor or subfactor in accordance with FAR 42.1503. SBA determines that this change does not have any incremental cost or incremental benefit. Agencies already are required to submit past performance ratings. Though a negative rating might affect a firm's ability to obtain a contract in the future, there is no way to gauge the impact on the firm's odds, and, regardless, the end result would likely be only a transfer in the contract award from the noncompliant firm to a firm without a negative past-performance rating. This change therefore does not present a net cost nor net benefit.

[3] This number is based on results from OMB's ICR Agency Submission, available at View Information Collection Request (ICR) Package (*reginfo.gov*). Retrieved April 12, 2022.

3. What are the alternatives to this rule?

The alternative to the proposed rule would be to keep SBA's processes and procedures as currently stated in the Code of Federal Regulations. However, because so much of this proposed rule codifies practices and interpretations already in place, using the alternative would impose an information-search cost on 8(a) BD participants in particular and small business contractors in general. Many of the clarifications in this proposed rule already have been applied at the case level but are not widely known. This proposed rule makes those clarifications known to the public.

Additionally, this proposed rule implements section 863 of NDAA FY22, regarding changes to *SAM.gov* after an adverse SBA status decision. There is no alternative to implementing this statutory requirement.

Summary of Costs and Cost Savings

SBA calculates $262,000 in annual aggregate benefits, and approximately $770,500 in annual aggregate costs, with many costs and benefits uncertain. SBA calculates the net annual cost of the proposed rule to be $500,000.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this proposed 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. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review, directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the

public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this proposed rule, as discussed below.

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to Executive Order 12866 (*e.g.,* identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, DSBS, and SAM.

Public participation: Did the agency: (a) afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov*; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The proposed rule will have a 60-day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. SBA has also discussed some of the proposals in this rule with stakeholders at various small business on-line procurement conferences.

Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?

The proposed rule is intended to eliminate confusion in its existing regulations and reduce unnecessary burdens on small business.

Congressional Review Act (5 U.S.C. 801–808)

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

Paperwork Reduction Act, 44 U.S.C. Ch. 35

This rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

In 2019, SBA revised its regulations to give contracting officers discretion to request information demonstrating compliance with the limitations on subcontracting requirements. *See* 84 FR 65647 (Nov. 29, 2019). In conjunction with this revision, SBA requested an Information Collection Review by OMB (Limitations on Subcontracting Reporting, OMB Control Number 3245–0400). OMB approved the Information Collection. The proposed rule would not alter the contracting officer's discretion to require a contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract. It merely provides consequences where a contracting officer, utilizing his or her discretion, determines that a contractor did not meet the applicable limitation of subcontracting requirement. The estimated number of respondents, burden hours, and costs remain the same as that identified by SBA in the previous Information Collection. As such, SBA believes this provision is covered by its existing Information Collection, Limitations on Subcontracting Reporting.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The RFA defines ''small entity'' to include small businesses, small organizations, and small governmental jurisdictions. This proposed rule involves requirements for participation in SBA's 8(a) Business Development (BD) Program. Some BD Participants are owned by Tribes, ANCs, NHOs, or CDCs. As such, the proposed rule relates to various small entities. The number of entities affected by the proposed rule includes all Participants in SBA's 8(a) BD program. For reference, SBA Business Opportunity Specialists assisted over 11,000 entities in 2020.

This proposed rule implements a statutory enactment and a federal court decision and codifies practices and interpretations already in place for Participants. In doing so, it adds reporting requirements but these requirements relate to information collected in the normal course of business. SBA therefore expects the collection costs to be de minimis and the costs of reporting to be minimal. Moreover, the reporting requirements, such as the requirement that contractors report indirect costs in their individual subcontracting reports (ISRs), will not fall on small entities. Some of the proposed rule's changes, such as that to documentation for retirement plans, reduce reporting requirements for small entities that are Participants. Additionally, the proposed rule's clarification of practices and interpretations decreases uncertainty for Participants. Therefore, SBA does not believe the proposed rule would have a disparate impact on small entities or would impose any additional significant costs on them. For the reasons discussed, SBA certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 121, 124, 125, 126, and 127 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

■ 2. Amend § 121.103 by:
■ a. Revising paragraph (h) introductory text and the third sentence of Example 2 to paragraph (h) introductory text;
■ b. Redesignating paragraphs (h)(1) through (4) as paragraphs (h)(2) through (5), respectively;
■ c. Adding a new paragraph (h)(1);
■ d. Revising newly redesignated paragraphs (h)(3) and (4); and
■ e. Adding paragraph (i).

The revisions and additions read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion intending to engage in and carry out business ventures for joint profit over a two-year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that a specific joint venture generally may not be awarded contracts beyond a two-year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for the joint venture. However, a joint venture may be issued an order under a previously awarded contract beyond the two-year period. Once a joint venture receives a contract, it may submit additional offers for a period of two years from the date of that first award. An individual joint venture may be awarded one or more contracts after that two-year period as long as it submitted an offer prior to the end of that two-year period. SBA will find joint venture partners to be affiliated, and thus will aggregate their receipts and/or employees in determining the size of the joint venture for all small business programs, where the joint venture submits an offer after two years from the date of the first award. The same two (or more) entities may create additional joint ventures, and each new joint venture may submit offers for a period of two years from the date of the first contract to the joint venture without the partners to the joint venture being deemed affiliates. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners may lead to a finding of general affiliation between and among them. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture pursuant to paragraph (h)(3) of this section. For purposes of this paragraph (h), contract refers to prime contracts, novations of prime contracts, and any subcontract in which the joint venture is treated as a similarly situated entity as the term is defined in part 125 of this chapter.

* * * * *

Example 2 to paragraph (h) introductory text. * * * On March 19, year 3, XY receives its fifth contract. * * *

* * * * *

(1) *Form of joint venture.* A joint venture: must be in writing; must do business under its own name and be identified as a joint venture in the System for Award Management (SAM) for the award of a prime contract or agreement; and may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity.

(i) If a joint venture exists as a formal separate legal entity, it cannot not be populated with individuals intended to perform contracts awarded to the joint venture for any contract or agreement which is set aside or reserved for small business, unless all parties to the joint venture are similarly situated as that term is defined in part 125 of this chapter (*i.e.,* the joint venture may have its own separate employees to perform administrative functions, including one or more Facility Security Officer(s), but may not have its own separate employees to perform contracts awarded to the joint venture).

(ii) A populated joint venture that is not comprised entirely of similarly situated entities will be ineligible for any contract or agreement which is set aside or reserved for small business.

(iii) In determining the size of a populated joint venture, SBA will aggregate the revenues or employees of all partners to the joint venture.

* * * * *

(3) *Ostensible subcontractors.* A contractor and its ostensible subcontractor are treated as joint venturers for size determination purposes. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in § 125.1 of this chapter, and performs primary and vital requirements of a contract, or of an order, or is a subcontractor upon which the prime contractor is unusually reliant. As long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract (or the prime contractor is small if the subcontractor is the SBA-approved mentor to the prime contractor), the arrangement will qualify as a small business.

(i) All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, transfer of the subcontractor's incumbent managers, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation, and whether the prime contractor relies on the subcontractor's experience because it lacks relevance experience of its own.

(ii) In a general construction contract, the primary and vital requirements of the contract are the management and oversight of the project, not the actual construction or specialty trade construction work performed.

(4) *Receipts/employees attributable to joint venture partners.* For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts. Proportionate receipts do not include proceeds from transactions between the concern and its joint ventures (*e.g.,* subcontracts from a joint venture entity to joint venture partners) already accounted for in the concern's tax return. In determining the number of employees, a concern must include in its total number of employees its proportionate share of joint venture employees. For the calculation of receipts, the appropriate proportionate share is the same percentage of receipts or employees as the joint venture partner's percentage share of the work performed by the joint venture. For a populated joint venture (where work is performed by the joint venture entity itself and not by the individual joint venture partners) the appropriate share is the same percentage as the joint venture partner's percentage ownership

share in the joint venture. For the calculation of employees, the appropriate share is the same percentage of employees as the joint venture partner's percentage ownership share in the joint venture, after first subtracting any joint venture employee already accounted for in one of the partner's employee counts.

Example 1 to paragraph (h)(4). Joint Venture AB is awarded a contract for $10M. The joint venture will perform 50% of the work, with A performing $2M (40% of the 50%, or 20% of the total value of the contract) and B performing $3M (60% of the 50% or 30% of the total value of the contract). Since A will perform 40% of the work done by the joint venture, its share of the revenues for the entire contract is 40%, which means that the receipts from the contract awarded to Joint Venture AB that must be included in A's receipts for size purposes are $4M. A must add $4M to its receipts for size purposes, unless its receipts already account for the $4M in transactions between A and Joint Venture AB.

* * * * *

(i) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

■ 3. Amend § 121.404 by:

■ a. Revising paragraphs (a)(1)(i)(B), (a)(1)(ii)(B), and (a)(1)(iv);

■ b. Removing the reference ''§ 121.103(h)(2)'' in paragraph (d) and adding in its place ''§ 121.103(h)(3)'';

■ c. Revising the first sentence in paragraph (g)(2)(i) and the second sentence in paragraph (g)(2)(iii);

■ d. Removing the reference ''§ 121.103(h)(4)'' in paragraph (g)(5) and adding in its place ''§ 121.103(h)(3)''; and

■ e. Adding paragraph (g)(6).

The revisions and addition read as follows:

§ 121.404 When is the size status of a business concern determined?

(a) * * *

(1) * * *

(i) * * *

(B) *Set-aside Multiple Award Contracts.* Except as set forth in § 124.503(i)(1)(iv) of this chapter for sole source 8(a) orders, for a Multiple Award Contract that is set aside or reserved for small business (*i.e.,* small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business), if a business concern (including a joint venture) is small at the time of offer and contract-level recertification for the Multiple Award Contract, it is small for each order or Blanket Purchase Agreement issued against the contract, unless a contracting officer requests a size recertification for a specific order or Blanket Purchase Agreement.

(ii) * * *

(B) *Set-aside Multiple Award Contracts.* Except as set forth in § 124.503(i)(1)(iv) of this chapter for sole source 8(a) orders, for a Multiple Award Contract that is set aside or reserved for small business (*i.e.,* small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business), if a business concern (including a joint venture) is small at the time of offer and contract-level recertification for discrete categories on the Multiple Award Contract, it is small for each order or Agreement issued against any of those categories, unless a contracting officer requests a size recertification for a specific order or Blanket Purchase.

* * * * *

(iv) *Multiple award contract where price not required.* For a Multiple Award Contract, where concerns are not required to submit price as part of the offer for the contract, size for the contract will be determined as of the date of initial offer, which may not include price. Size for set-aside orders will be determined in accordance with paragraph (a)(1)(i)(A) or (B) or (a)(1)(ii)(A) or (B) of this section, as appropriate.

* * * * *

(g) * * *

(2)(i) In the case of a merger, acquisition, or sale which results in a change in controlling interest under § 121.103, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. * * *

* * * * *

(iii) * * * If the merger, sale, or acquisition (including agreements in principle) occurs within 180 days of the date of an offer relating to the award of a contract, order, or agreement and the offeror is unable to recertify as small, it will not be eligible as a small business to receive the award of the contract, order, or agreement. * * *

* * * * *

(6) Where a joint venture must recertify its small business size status under paragraph (g) of this section, the joint venture can recertify as small where all parties to the joint venture qualify as small at the time of recertification, or the protégé small business in a still active mentor-protégé joint venture qualifies as small at the time of recertification. A joint venture can recertify as small even though the date of recertification occurs more than two years after the joint venture received its first contract award (*i.e.,* recertification is not considered a new contract award under § 121.103(h)).

* * * * *

■ 4. Amend § 121.411 by revising paragraph (c) to read as follows:

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

* * * * *

(c) *Notice of awardee.* Upon determination of the successful subcontract offeror for a competitive subcontract over the simplified acquisition threshold, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

* * * * *

■ 5. Amend § 121.507 by adding paragraph (d) to read as follows:

§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

* * * * *

(d) The Director of Government Contracting (D/GC) may waive one or more of the requirements set forth in paragraphs (a)(3) and (4) of this section in limited circumstances where conditions make the requirement(s) impractical or prohibitive. A request for waiver must be made to the D/GC and contain facts, arguments, and any appropriate supporting documentation as to why a waiver should be granted.

■ 6. Amend § 121.702 in paragraph (c)(7) by revising the first sentence and adding a sentence following the first sentence to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

* * * * *

(c) * * *

(7) * * * A concern and its ostensible subcontractor are treated as joint venturers. As such, they are affiliates for size determination purposes and must meet the ownership and control requirements applicable to joint ventures. * * *

* * * * *

■ 6. Amend § 121.1001 by revising paragraphs (a)(6)(i), (a)(8)(i), (a)(9)(i), (b)(2)(ii) introductory text, and (b)(2)(ii)(A) and (C) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(6) * * *

(i) Any offeror for a specific HUBZone set-aside contract that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability, or outside of the competitive range;

* * * * *

(8) * * *

(i) Any offeror for a specific service-disabled veteran-owned small business set-aside contract that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability, or outside of the competitive range;

* * * * *

(9) * * *

(i) Any offeror for a specific contract set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB) that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

* * * * *

(b) * * *

(2) * * *

(ii) Concerning individual sole source 8(a) contract awards and competitive 8(a) contract awards where SBA cannot verify the eligibility of the apparent successful offeror because SBA finds the concern to be other than small, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract, or found to be ineligible for a competitive 8(a) contract due to its size;

* * * * *

(C) The SBA District Director in the district office that services the Participant, the Associate Administrator for Business Development, or the Associate General Counsel for Procurement Law.

* * * * *

■ 7. Amend § 121.1004 by:

■ a. Revising paragraph (a)(1);

■ b. Adding the words ''without a reserve'' at the end of paragraph (a)(2)(iii); and

■ c. Adding paragraphs (f) and (g).

The revision and addition read as follows:

§ 121.1004 What time limits apply to size protests?

(a) * * *

(1) *Sealed bids or sales (including protests on partial set-asides and reserves of Multiple Award Contracts and set-asides of orders against Multiple Award Contracts).* (i) A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid opening for:

(A) The contract;

(B) An order issued against a Multiple Award Contract if the contracting officer requested a new size certification in connection with that order; or

(C) Except for orders or Blanket Purchase Agreements issued under any Federal Supply Schedule contract, an order or Blanket Purchase Agreement set aside for small business (*i.e.,* small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business) where the underlying Multiple Award Contract was awarded on an unrestricted basis.

(ii) Where the identified low bidder is determined to be ineligible for award, a protest of any other identified low bidder must be received prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified interested parties of the identity of that low bidder.

* * * * *

(f) *Apparent successful offeror.* A party with standing, as set forth in § 121.1001(a), may file a protest only against an apparent successful offeror or an offeror in line to receive an award.

(g) *GAO corrective action.* SBA will dismiss any size protest relating to an initial apparent successful offeror where an agency decides to reevaluate offers as a corrective action in response to a protest before the Government Accountability Office (GAO). When the apparent successful offeror is announced after reevaluation, interested parties will again have the opportunity to protest the size of the new or same apparent successful offeror within five business days after such notification.

■ 8. Amend § 121.1009 by revising paragraphs (a)(1) and (3) and (g)(5) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

(a) * * *

(1) After receipt of a protest or a request for a formal size determination:

(i) If no protest is pending before GAO, the SBA Area Office will issue a formal size determination within 15 business days, if possible;

(ii) If a protest is pending before GAO, the SBA Area Office will place the size determination case in suspense. Once GAO issues a decision, the SBA the Area Office will recommence the size determination process and issue a formal size determination within 15 business days of the GAO decision, if possible.

* * * * *

(3) If SBA does not issue its determination in accordance with paragraph (a)(1) of this section (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (g) of this section apply to the procurement in question.

* * * * *

(g) * * *

(5) A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to § 121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small under the same or a smaller size standard on a pending procurement or on an application for SBA assistance, the concern must immediately inform the contracting officer or responsible official of the adverse size determination.

(i) Not later than two days after the date on which SBA issues a final size determination finding a business concern to be other than small, such

concern must update its size status in the System for Award Management (or any successor system).

(ii) If a business concern fails to update its size status in the System for Award Management (or any successor system) in response to an adverse size determination, SBA will make such update within two days of the business's failure to do so.

* * * * *

■ 9. Amend § 121.1203 by:
■ a. Redesignating paragraph (d) as paragraph (g);
■ b. Adding a new paragraph (d) and paragraphs (e) and (f); and
■ c. In newly redesignated paragraph (g)(2), removing ''(d)(1)'' and adding ''(g)(1)'' in its place.

The additions read as follows:

§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

* * * * *

(d) *Applicability of individual waiver.* An individual waiver applies only to the contract for which it is granted and does not apply to modifications outside the scope of the contract or other procurement actions (*e.g.,* follow-on or bridge contracts).

(e) *Long term contracts.* SBA will not grant an individual waiver in connection with a long-term contract (*i.e.,* a contract with a duration of longer than five years, including options).

(f) *Multiple item procurements.* For a multiple item procurement, a waiver must be sought and granted for each item for which the procuring agency believes no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of the solicitation. SBA's waiver applies only to the specific item(s) identified, not to the entire contract.

* * * * *

■ 10. Amend § 121.1204 by:
■ a. Revising paragraphs (b)(1)(i) and (ii);
■ b. Adding a sentence after the first sentence in paragraph (b)(1)(iii);
■ c. Redesignating paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4), respectively;
■ d. Adding a new paragraph (b)(2);
■ e. Revising newly redesignated paragraph (b)(4); and
■ f. Adding paragraph (b)(5).

The revisions and additions read as follows:

§ 121.1204 What are the procedures for requesting and granting waivers?

* * * * *

(b) * * *

(1) * * *

(i) A definitive statement of each specific item sought to be waived and justification as to why the specific item is required;

(ii) The proposed solicitation number, NAICS code, dollar amount of the procurement, dollar amount of the item(s) for which a waiver is sought, and a brief statement of the procurement history;

(iii) * * * For a multiple item procurement, a contracting officer must determine that no small business manufacturer or processor reasonably can be expected to offer each item for which a waiver is sought. * * *

* * * * *

(2) Unless an agency has justified a brand-name acquisition, the market research conducted to support the waiver request should be tailored to attract the attention of potential small business manufacturers or processors, not resellers or distributors.

* * * * *

(4) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request.

(i) If SBA's research verifies that no small business manufacturers or processors exist for the item, the Director, Office of Government Contracting will grant an individual, one-time waiver.

(ii) If a small business manufacturer or processor is found for the product in question, the Director, Office of Government Contracting will deny the request.

(iii) Where an agency requests a waiver for multiple items, SBA may grant a waiver for all items requested, deny a waiver for all items requested, or grant a waiver for some but not all of the items requested. SBA's determination will specifically identify the items for which a waiver is granted, and the procuring agency must then identify the specific items for which the waiver applies in its solicitation.

(iv) The Director, Office of Government Contracting's decision to grant or deny a waiver request represents the final agency decision by SBA.

(5) A nonmanufacturer rule waiver for a specific solicitation expires one year after SBA's determination to grant the waiver. This means that contract award must occur within one year of the date SBA granted the waiver. Where a contract is not awarded within one year, the procuring agency must come back to SBA with revised market research requesting that the waiver (or waivers in the case of a multiple item procurement) be extended.

§ 121.1205 [Amended]

■ 11. Amend § 121.1205 by removing ''*http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.html*'' and adding in its place ''*https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver-list*''.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 12. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644, 42 U.S.C. 9815; and Pub. L. 99–661, 100 Stat. 3816; Sec. 1207, Pub. L. 100–656, 102 Stat. 3853; Pub. L. 101–37, 103 Stat. 70; Pub. L. 101–574, 104 Stat. 2814; Sec. 8021, Pub. L. 108–87, 117 Stat. 1054; and Sec. 330, Pub. L. 116–260.

■ 13. Amend § 124.102 by revising paragraph (c) to read as follows:

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

* * * * *

(c) A concern whose application is denied due to size by 8(a) BD program officials may request a formal size determination with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the business is located under part 121 of this chapter. Where the SBA Government Contracting Area Office determines that an applicant qualifies as a small business concern for the size standard corresponding to its primary NAICS code:

(1) The Associate Administrator for Business Development (AA/BD) will certify the concern as eligible to participate in the 8(a) BD program if size was the only reason for decline; or

(2) The concern may reapply for participation in the 8(a) BD program at any point after 90 days from the AA/BD's decline if size was not the only reason for decline. In such a case, the AA/BD will accept the size determination as conclusive of the concern's small business status, provided the applicant concern has not completed an additional fiscal year in the intervening period and SBA believes that the additional fiscal year changes the applicant's size.

§ 124.103 [Amended]

■ 14. Amend § 124.103 by removing the words ''physical handicap'' in paragraph (c)(2)(i) and adding in their place the words ''identifiable disability''.
■ 15. Amend § 124.104 by:
■ a. Revising the second sentence of paragraph (c)(2)(ii);

■ b. Removing paragraph (c)(2)(iii); and
■ c. Redesignating paragraph (c)(2)(iv) as paragraph (c)(2)(iii).

The revision reads as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(c) * * *

(2) * * *

(ii) * * * In order to properly assess whether funds invested in a retirement account may be excluded from an individual's net worth, SBA may require the individual to provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

* * * * *

■ 16. Amend § 124.105 by:
■ a. Revising paragraphs (h)(2) and (i)(1); and
■ b. Adding a sentence after the first sentence in paragraph (i)(2).

The revisions and addition read as follows:

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

* * * * *

(h) * * *

(2) A non-Participant concern in the same or similar line of business or a principal of such concern may generally not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in the transitional stage of the program, except that:

(i) A former Participant in the same or similar line of business or a principal of such a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant; and

(ii) A business concern approved by SBA to be a mentor pursuant to § 125.9 of this chapter may own up to 40 percent of its 8(a) Participant protégé as set forth in § 125.9(d)(2) of this chapter, whether or not that concern is in the same or similar line of business as the Participant.

(i) * * *

(1) Any Participant or former Participant that is performing one or more 8(a) contracts may substitute one disadvantaged individual or entity for another disadvantaged individual or entity without requiring the termination of those contracts or a request for waiver under § 124.515, as long as it receives SBA's approval prior to the change.

(2) * * * In determining whether a non-disadvantaged individual involved in a change of ownership has more than a 20 percent interest in the concern, SBA will aggregate the interests of all immediate family members. * * *

* * * * *

■ 17. Amend § 124.107 by revising the introductory text to read as follows:

§ 124.107 What is potential for success?

SBA must determine that with contract, financial, technical, and management support from the 8(a) BD program, the applicant concern is able to perform 8(a) contracts and possess reasonable prospects for success in competing in the private sector. To do so, the applicant concern must show that it has operated and received contracts (either in the private sector, at the state or local government level, or with the Federal Government) in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted pursuant to paragraph (b) of this section.

* * * * *

■ 18. Amend § 124.108 by adding a sentence at the end of paragraph (e) to read as follows:

§ 124.108 What other eligibility requirements apply for individuals or businesses?

* * * * *

(e) * * * However, a firm will not be ineligible to participate in the 8(a) BD program if the firm or the affected principals can demonstrate that the financial obligations owed have been settled and discharged/forgiven by the Federal Government.

■ 19. Amend § 124.109 by revising the second sentence of paragraph (c)(1) and paragraph (c)(6)(i) to read as follows:

§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to and remaining eligible for the 8(a) BD program?

* * * * *

(c) * * *

(1) * * * Where an applicant or participating concern is owned by a federally recognized tribe, the concern's articles of incorporation, partnership agreement, limited liability company articles of organization, or other similar incorporating documents for tribally incorporated applicants must contain express sovereign immunity waiver language, or a ''sue and be sued'' clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance. * * *

* * * * *

(6) * * *

(i) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) or financial statements (either audited, reviewed or in-house as set-forth in § 124.602) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant seeks 8(a) BD certification; or

* * * * *

■ 20. Amend § 124.110 by:
■ a. Adding paragraph (d)(3);
■ b. Redesignating paragraphs (e) through (h) as paragraphs (f) through (i), respectively; and
■ c. Adding a new paragraph (e).

The additions read as follows:

§ 124.110 Do Native Hawaiian Organizations (NHOs) have any special rules for applying to and remaining eligible for the 8(a) BD program?

* * * * *

(d) * * *

(3) The individuals responsible for the management and daily operations of an NHO-owned concern cannot manage more than two Program Participants at the same time.

(i) An individual's officer position, membership on the board of directors, or position as a Native Hawaiian leader does not necessarily imply that the individual is responsible for the management and daily operations of a given concern. SBA looks beyond these corporate formalities and examines the totality of the information submitted by the applicant to determine which individual(s) manage the actual day-to-day operations of the applicant concern.

(ii) NHO officers, board members, and/or leaders may control a holding company overseeing several NHO-owned business concerns, provided they do not actually control the day-to-day management of more than two current 8(a) BD Program Participant firms.

(iii) Because an individual may be responsible for the management and daily business operations of two NHO-owned concerns, the full-time devotion requirement (§ 124.106(a)) does not apply to NHO-owned applicants and Participants.

(e) For corporate entities, an NHO must unconditionally own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, an NHO must unconditionally own at least a 51 percent interest.

* * * * *

§ 124.111 [Amended]

■ 21. Amend § 124.111 by removing the words ''SIC code'' in paragraph (d) introductory text and adding in their place the words ''NAICS code.''

■ 22. Amend § 124.204 by revising paragraph (a) to read as follows:

§ 124.204 How does SBA process applications for 8(a) BD program admission?

(a) The AA/BD is authorized to approve or decline applications for admission to the 8(a) BD program.

(1) Except as set forth in paragraph (a)(2) of this section, the Division of Program Certification and Eligibility (DPCE) will receive, review and evaluate all 8(a) BD applications.

(2) Where an applicant answers on its electronic application that it is not a for-profit business (*see* §§ 121.105 of this chapter and 124.104), that one or more of the individuals upon whom eligibility is based is not a United States citizen (*see* § 124.104), that the applicant or one or more of the individuals upon whom eligibility is based has previously participated in the 8(a) BD program (*see* § 124.108(b)), or that the applicant is not an entity-owned business and has generated no revenues (*see* § 124.107(a) and (b)(1)(iv)), its application will be closed automatically and it will be prevented from completing a full electronic application.

(3) SBA will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application.

(4) SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the DPCE. Incomplete packages will not be processed. Where during its screening or review SBA requests clarifying, revised or other information from the applicant, SBA's processing time for the application will be suspended pending the receipt of such information.

* * * * *

■ 23. Amend § 124.302 by:

■ a. Revising paragraph (b)(4);

■ b. Removing paragraph (b)(5); and

■ c. Redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6), respectively.

The revision reads as follows:

§ 124.302 What is graduation and what is early graduation?

* * * * *

(b) * * *

(4) Current ability to obtain bonding, where applicable;

* * * * *

§ 124.303 [Amended]

■ 24. Amend § 124.303 by removing ''§ 124.507'' in paragraph (a)(15) and adding in its place ''§ 124.509.''

■ 25. Amend § 124.304 by:

■ a. Revising paragraph (b); and

■ b. Removing ''§ 124.1010'' in paragraph (f)(3) and adding in its place ''§ 124.1002''.

The revision reads as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(b) *Letter of Intent to Terminate or Graduate Early.* (1) Except as set forth in paragraph (b)(2) of this section, when SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation.

(2) Where SBA obtains evidence that a Participant has ceased its operations, the AA/BD may immediately terminate a concern's participation in the 8(a) BD program by notifying the concern of its termination and right to appeal that decision to OHA.

* * * * *

■ 26. Amend § 124.402 by adding a sentence to the end of paragraph (b) to read as follows:

§ 124.402 How does a Participant develop a business plan?

* * * * *

(b) * * * Where a sole source 8(a) requirement is offered to SBA on behalf of a Participant or a Participant is the apparent successful offeror for a competitive 8(a) requirement and SBA has not yet approved the Participant's business plan, SBA will approve the Participant's business plan as part of its eligibility determination prior to contract award.

* * * * *

■ 27. Amend § 124.403 by:

■ a. Adding two sentences after the first sentence in paragraph (a); and

■ b. Removing ''§ 124.507'' in paragraph (c)(1) and adding in its place ''§ 124.509''.

The addition reads as follows:

§ 124.403 How is a business plan updated and modified?

(a) * * * If there are no changes in a Participant's business plan, the Participant need not resubmit its business. A Participant must submit a new or modified business plan only if its business plan has changed from the previous year. * * *

* * * * *

■ 28. Amend § 124.501 by:

■ a. Revising paragraph (b), the introductory text to paragraph (g), the first sentence of paragraph (h), and the introductory text to paragraph (k);

■ b. Redesignating paragraph (k)(4) and (5) as paragraphs (k)(7) and (8), respectively; and

■ c. Adding new paragraphs (k)(4) and (5) and paragraphs (k)(6) and (9).

The revisions and additions read as follows:

§ 124.501 What general provisions apply to the award of 8(a) contracts?

* * * * *

(b) 8(a) contracts may either be sole source awards or awards won through competition with other Participants. In addition, for multiple award contracts not set aside for the 8(a) BD program, a procuring agency may award an 8(a) sole source order or set aside one or more specific orders to be competed only among eligible 8(a) Participants. Such an order may be awarded as an 8(a) award where the order was offered to and accepted by SBA as an 8(a) award and the order specifies that the limitations on subcontracting (§ 124.510) and/or non-manufacturer rule (§ 121.406(b)) requirements apply as appropriate. A procuring activity cannot restrict an 8(a) competition (for either a contract or order) to require SBA socioeconomic certifications other than 8(a) certification (*i.e.,* a competition cannot be limited only to business concerns that are both 8(a) and HUBZone, 8(a) and women-owned small business (WOSB), or 8(a) and service-disabled veteran-owned (SDVO) small business).

* * * * *

(g) Before a Participant may be awarded either a sole source or competitive 8(a) contract, SBA must determine that the Participant is eligible for award. SBA will determine eligibility at the time of its acceptance of the underlying requirement into the 8(a) BD program for a sole source 8(a) contract, and after the apparent successful offeror is identified for a competitive 8(a) contract. Where a joint venture is the apparent successful offeror in connection with a competitive 8(a) procurement, SBA will determine whether the 8(a) partner to the joint

venture is eligible for award, but will not review the joint venture agreement to determine compliance with § 124.513 (*see* § 124.513(e)(1)). In any case in which an 8(a) Participant is determined to be ineligible, SBA will notify the 8(a) Participant of that determination. Eligibility is based on 8(a) BD program criteria, including whether the 8(a) Participant:

* * * * *

(h) For a sole source 8(a) procurement, a concern must be a current Participant in the 8(a) BD program at the time of award and must qualify as small for the size standard corresponding to the NAICS code assigned to the contract or order on the date the contract or order is offered to the 8(a) BD program. * * *

* * * * *

(k) In order to be awarded a sole source or competitive 8(a) construction contract, a Participant must have a bona fide place of business within the applicable geographic location determined by SBA. This will generally be the geographic area serviced by the SBA district office, a Metropolitan Statistical Area (MSA), a contiguous county (whether in the same or different state), or the geographical area serviced by a contiguous SBA district office to where the work will be performed. A Participant with a bona fide place of business within a state will be deemed eligible for a construction contract anywhere in that state (even if that state is serviced by more than one SBA district office). SBA may also determine that a Participant with a bona fide place of business in the geographic area served by one of several SBA district offices or another nearby area is eligible for the award of an 8(a) construction contract.

* * * * *

(4) If a Participant is currently performing a contract in a specific state, it qualifies as having a bona fide place of business in that state for one or more additional contracts. The Participant may not use contract performance in one state to allow it to be eligible for an 8(a) contract in a contiguous state unless it officially establishes a bona fide place of business in the location in which it is currently performing a contract.

(5) A Participant may establish a bona fide place of business through a full-time employee in a home office.

(6) An individual designated as the full-time employee of the Participant seeking to establish a bona fide place of business in a specific geographic location need not be a resident of the state where he/she is conducting business.

* * * * *

(9) For an 8(a) construction contract requiring work in multiple locations, a Participant is eligible if:

(i) For a single award contract, the Participant has a bona fide place of business where a majority of the work is to be performed; and

(ii) For a multiple award contract, the Participant has a bona fide place of business in any location where work is be performed.

* * * * *

■ 29. Amend § 124.502 by revising paragraph (a) to read as follows:

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

(a) A procuring activity contracting officer indicates his or her formal intent to award a procurement requirement as an 8(a) contract by submitting a written offering letter to SBA.

(1) Except as set forth in § 124.503(a)(4)(ii) and (i)(1)(ii), a procuring activity contracting officer must submit an offering letter for each intended 8(a) procurement, including follow-on 8(a) contracts, competitive 8(a) orders issued under non-8(a) multiple award contracts, and sole source 8(a) orders issued under 8(a) multiple award contracts.

(2) The procuring activity may transmit the offering letter to SBA by electronic mail, if available, or by facsimile transmission, as well as by mail or commercial delivery service.

* * * * *

■ 30. Amend § 124.503 by:

■ a. Revising the introductory text to paragraph (a) and paragraphs (a)(4)(ii) and (a)(5);

■ b. Adding two sentences to the end of paragraph (i)(1)(ii); and

■ c. Revising paragraphs (i)(1)(iv) and (i)(2)(ii).

The revisions and additions read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

(a) *Acceptance of the requirement.* Upon receipt of the procuring activity's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) BD program. SBA's decision whether to accept the requirement will be sent to the procuring activity in writing within 10 business days of receipt of the written offering letter if the contract is valued at more than the simplified acquisition threshold, and within two days of receipt of the offering letter if the contract is valued at or below the simplified acquisition threshold, unless SBA requests, and the procuring activity grants, an extension. SBA and the procuring activity may agree to a shorter timeframe for SBA's review under a Partnership Agreement delegating 8(a) contract execution functions to the agency. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

* * * * *

(4) * * *

(ii) Where SBA has delegated its 8(a) contract execution functions to an agency through a signed Partnership Agreement, SBA may authorize the procuring activity to award an 8(a) contract below the simplified acquisition threshold without requiring an offer and acceptance of the requirement for the 8(a) BD program. However, the procuring activity must request SBA to determine the eligibility of the intended awardee prior to award. SBA shall review the 8(a) Participant's eligibility and issue an eligibility determination within two business days after a request from the procuring activity. If SBA does not respond within this timeframe, the procuring activity may assume the 8(a) Participant is eligible and proceed with award. The procuring activity shall provide a copy of the executed contract to the SBA servicing district office within fifteen business days of award.

(5) Where SBA does not respond to an offering letter within the normal 10 business-day time period, the procuring activity may seek SBA's acceptance through the AA/BD. The procuring activity may assume that SBA accepts its offer for the 8(a) program if it does not receive a reply from the AA/BD within 5 business days of his or her receipt of the procuring activity request.

* * * * *

(i) * * *

(1) * * *

(ii) * * * However, where the order includes work that was previously performed through another 8(a) contract, the procuring agency must notify SBA prior to issuing the order that it intends to procure such specified work through an order under an 8(a) Multiple Award Contract. Where that work is critical to the business development of a current Participant that previously performed the work through another 8(a) contract and that Participant is not a contract holder of the 8(a) Multiple Award Contract, SBA may request that the procuring agency fulfill the requirement through a

competition available to all 8(a) BD Program Participants.

* * * * *

(iv) An agency may issue a sole source award against a Multiple Award Contract that has been set aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) BD Program Participants or reserved solely for 8(a) Program Participants if the required dollar thresholds for sole source awards are met. Where an agency seeks to award an order on a sole source basis (*i.e.,* to one particular 8(a) contract holder without competition among all 8(a) contract holders), the agency must offer and SBA must accept the order into the 8(a) program on behalf of the identified 8(a) contract holder.

(A) To be eligible for the award of a sole source order, a concern must be a current Participant in the 8(a) BD program at the time of award of the order, qualify as small for the size standard corresponding to the NAICS code assigned to the order on the date the order is offered to the 8(a) BD program, and be in compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509. Where the intended sole source recipient is a joint venture, the 8(a) managing partner to the joint venture is the concern whose eligibility is considered.

(B) Where an agency seeks to issue a sole source order to a joint venture, the two-year restriction for joint venture awards set forth in § 121.103(h) of this chapter does not apply and SBA will not review and approve the joint venture agreement as set forth in § 124.513(e)(1).

(2) * * *

(ii) The order must be either an 8(a) sole source award or be competed exclusively among only the 8(a) awardees of the underlying multiple award contract. Where an agency seeks to issue an 8(a) competitive order under a multiple award contract that was awarded under full and open competition or as a small business set-aside, all eligible 8(a) BD Participants who are contract holders of the underlying multiple award contract must have the opportunity to compete for the order. Where an agency seeks to issue an 8(a) competitive order under the Federal Supply Schedule, an agency can utilize the procedures set forth in FAR subpart 8.4 (48 CFR part 8, subpart 8.4) to award to an eligible 8(a) BD Participant. Where an agency seeks to issue an 8(a) sole source order under a multiple award contract that was awarded under full and open competition or as a small business set-aside, the identified 8(a) Participant that is a contract holder of the underlying multiple award contract must be an eligible Participant on the date of the issuance of the order;

* * * * *

■ 31. Amend § 124.504 by:

■ a. In paragraph (d)(1) introductory text:

■ i. Removing the word ''notify'' and adding in its place ''coordinate with'' wherever it appears;

■ ii. Removing the word ''SBA'' in the second sentence of paragraph (d)(1) introductory text and adding in its place the words ''the SBA District Office servicing the 8(a) incumbent firm and the SBA Procurement Center Representative assigned to the contracting activity initiating a non-8(a) procurement action''; and

■ iii. Adding a sentence following the second; and

■ b. Revising paragraph (d)(3).

The addition and revision read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract, and when can a requirement be released from the 8(a) BD program?

* * * * *

(d) * * *

(1) * * * Such notification must identify the scope and dollar value of any work previously performed through another 8(a) contract and the scope and dollar value of the contract determined to be new. * * *

* * * * *

(3) SBA may release a requirement under this paragraph (d) only where the procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside or otherwise identifies a procurement strategy that would emphasize or target small business participation.

* * * * *

■ 32. Amend § 124.506 by revising paragraph (b)(3) and adding two sentences to the end of paragraph (d) to read as follows:

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

* * * * *

(b) * * *

(3) There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a Tribally-owned or ANC-owned concern, or a concern owned by an NHO for DoD contracts. However, a current procurement requirement may not be removed from competition and awarded to a Tribally-owned, ANC-owned, or NHO-owned concern on a sole source basis (*i.e.,* a procuring agency may not evidence its intent to fulfill a requirement as a competitive 8(a) procurement, through the issuance of a competitive 8(a) solicitation or otherwise, cancel the solicitation or change its public intent, and then procure the requirement as a sole source 8(a) procurement to an entity-owned Participant). A follow-on requirement to one that was previously awarded as a competitive 8(a) procurement may be offered, accepted and awarded on a sole source basis to a Tribally-owned or ANC-owned concern, or a concern owned by an NHO for DoD contracts.

* * * * *

(d) * * * The AA/BD may also accept a requirement that exceeds the applicable competitive threshold amount for a sole source 8(a) award if he or she determines that a FAR exception (48 CFR 6.302) to full and open competition exists (*e.g.,* unusual and compelling urgency). An agency may not award an 8(a) sole source contract under this paragraph (d) for an amount exceeding $25,000,000, or $100,000,000 for an agency of the Department of Defense, unless the contracting officer justifies the use of a sole source contract in writing and has obtained the necessary approval under FAR 19.808–1 or the Defense Federal Acquisition Regulation Supplement (DFARS) at 48 CFR 219.808–1(a).

■ 33. Amend § 124.509 by adding paragraphs (d)(1)(i) and (ii) to read as follows:

§ 124.509 What are non-8(a) business activity targets?

* * * * *

(d) * * *

(1) * * *

(i) SBA will determine whether the Participant made good faith efforts to attain the targeted non-8(a) revenues during the just completed program year. A Participant may establish that it made good faith efforts by demonstrating to SBA that:

(A) It submitted offers for one or more non-8(a) procurements which, if awarded, would have given the Participant sufficient revenues to achieve the applicable non-8(a) business activity target during its just completed program year. In such a case, the Participant must provide copies of offers submitted in response to solicitations and documentary evidence of its projected revenues under these missed contract opportunities; or

(B) Individual extenuating circumstances adversely impacted its

efforts to obtain non-8(a) revenues, including but not limited to: a reduction in government funding, continuing resolutions and budget uncertainties, increased competition driving prices down, or having one or more prime contractors award less work to the Participant than originally contemplated. Where available, supporting information and documentation must be included to show how such extenuating circumstances specifically prevented the Participant from attaining its targeted non-8(a) revenues during the just completed program year.

(ii) The Participant bears the burden of establishing that it made good faith efforts to meet its non-8(a) business activity target. SBA's determination as to whether a Participant made good faith efforts is final and no appeal may be taken with respect to that decision.

* * * * *

■ 34. Amend § 124.513 by adding paragraph (a)(3) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) * * *

(3) A Program Participant cannot be a joint venture partner on more than one joint venture that submits an offer for a specific 8(a) contract.

* * * * *

■ 35. Amend § 124.515 by revising paragraph (c) to read as follows:

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

* * * * *

(c) The 8(a) contractor must request a waiver in writing prior to the change of ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 calendar days after such occurrence.

(1) The Participant seeking to change ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds.

(2) If a Participant seeks a waiver based on the impairment of the agency's objectives under paragraph (b)(4) of this section, it must identify and provide a certification from the procuring agency relating to each 8(a) contract for which a waiver is sought.

* * * * *

■ 36. Amend § 124.521 by revising paragraph (e)(2) to read as follows:

§ 124.521 What are the requirements for representing 8(a) status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(2) For the purposes of 8(a) contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must verify in *SAM.gov* (or successor system) whether a business concern continues to be an eligible 8(a) Participant no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option thereafter. Where a concern fails to qualify or will no longer qualify as an eligible 8(a) Participant at any point during the 120 days prior to the end of the fifth year of the contract, the option shall not be exercised.

* * * * *

§ 124.603 [Amended]

■ 37. Amend § 124.603 by removing the words ''graduates or is terminated from the program'' and adding in their place the words ''leaves the 8(a) BD program (either through the expiration of the firm's program term, graduation, or termination)''.

■ 38. Revise § 124.604 to read as follows:

§ 124.604 Report of benefits for firms owned by Tribes, ANCs, NHOs, and CDCs.

(a) Each entity having one or more Participants in the 8(a) BD program must establish a Community Benefits Plan that outlines the anticipated approach it expects to deliver to strengthen its Native or underserved community.

(b) As part of its annual review submission (*see* § 124.602), each Participant owned by a Tribe, ANC, NHO, or CDC must submit to SBA information showing how the Tribe, ANC, NHO, or CDC has provided benefits to the Tribal or native members and/or the Tribal, native, or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms, whether the benefits provided meet the benefits target set forth in its Community Benefits Plan, and how the benefits provided directly impacted the native or underserved community. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the Tribe, ANC, NHO, or CDC to the affected community.

■ 39. Add § 124.1002 to read as follows:

§ 124.1002 Reviews and protests of SDB status.

(a) SBA may initiate the review of SDB status on any firm that has represented itself to be an SDB on a prime contract (for goaling purposes or otherwise) or subcontract to a Federal prime contract whenever SBA receives credible information calling into question the SDB status of the firm.

(b) Requests for an SBA review of SDB status may be forwarded to the Small Business Administration, Associate Administrator for Business Development (AA/BD), 409 Third Street SW, Washington, DC 20416.

(c) The contracting officer or the SBA may protest the SDB status of a proposed subcontractor or subcontract awardee. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

(1) SBA will request relevant information from the protested concern pertaining to:

(i) The social and economic disadvantage of the individual(s) claiming to own and control the protested concern;

(ii) The ownership and control of the protested concern; and

(iii) The size of the protested concern.

(2) The concern whose disadvantaged status is under consideration has the burden of establishing that it qualifies as an SDB.

(3) Where SBA requests specific information and the concern does not submit it, SBA may draw adverse inferences against the concern.

(4) SBA will base its SDB determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(d) Where SBA determines that a subcontractor does not qualify as an SDB, the prime contractor must not include subcontracts to that subcontractor as subcontracts to an SDB in its subcontracting reports, starting from the time that the protest was decided.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 40. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657b, 657(f), and 657r.

■ 41. Amend § 125.1 by:

■ a. Revising the definition of ''Contract bundling, bundled requirement, bundled contract, or bundling'';
■ b. Removing the words ''commercial items'' from the definition of ''Cost of materials'' and adding in their place the words ''commercial products'';
■ c. Adding definitions of ''Small business concerns owned and controlled by socially and economically disadvantaged individuals'' and ''Socially and economically disadvantaged individuals'' in alphabetical order; and
■ d. Revising the definition of ''Substantial bundling''.

The revisions and additions read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

* * * * *

Contract bundling, bundled requirement, bundled contract, or bundling means the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract, a Multiple Award Contract, or Blanket Purchase Agreement that is likely to be unsuitable for award to a small business concern (but may be suitable for award to a small business with a Small Business Teaming Arrangement) due to:

(1) The diversity, size, or specialized nature of the elements of the performance specified;

(2) The aggregate dollar value of the anticipated award;

(3) The geographical dispersion of the contract performance sites; or

(4) Any combination of the factors described in paragraphs (1), (2), and (3) of this definition.

* * * * *

Small business concerns owned and controlled by socially and economically disadvantaged individuals means, for both SBA's subcontracting assistance program in 15 U.S.C. 637(d) and for the goals described in 15 U.S.C. 644(g), a small business concern unconditionally and directly owned by and controlled by one or more socially and economically disadvantaged individuals.

Socially and economically disadvantaged individuals, for both SBA's subcontracting assistance program in 15 U.S.C. 637(d) and for the goals described in 15 U.S.C. 644(g), means:

(1) Individuals who meet the criteria for social disadvantage in § 124.103(a) through (c) of this chapter and the criteria for economic disadvantage in § 124.104(a) and (c) of this chapter;

(2) Indian tribes and Alaska Native Corporations that satisfy the ownership, control, and disadvantage criteria in § 124.109 of this chapter;

(3) Native Hawaiian Organizations that satisfy the ownership, control, and disadvantage criteria in § 124.110 of this chapter; or

(4) Community Development Corporations that satisfy the ownership and control criteria in § 124.111 of this chapter.

* * * * *

Substantial bundling means any bundling that meets or exceeds the following dollar amounts (if the acquisition strategy contemplates multiple award contracts, orders placed under unrestricted multiple award contracts, or a Blanket Purchase Agreement issued against a GSA Schedule contract or a task or delivery order contract awarded by another agency, these thresholds apply to the cumulative estimated value of the Multiple Award Contracts, orders, or Blanket Purchase Agreement, including options):

(1) $8.0 million or more for the Department of Defense;

(2) $6.0 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(3) $2.5 million or more for all other agencies.

■ 42. Amend § 125.2 by adding a sentence after the second sentence in paragraph (d)(2)(ii) introductory text and revising paragraph (d)(3)(i) to read as follows:

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

* * * * *

(d) * * *

(2) * * *

(ii) * * * This analysis must include quantification of the reduction or increase in price of the proposed bundled strategy as compared to the cumulative value of the separate contracts. * * *

* * * * *

(3) * * *

(i) The analysis for bundled requirements set forth in paragraphs (d)(2)(i) and (ii) of this section;

* * * * *

■ 43. Amend § 125.3 by:
■ a. Revising paragraph (a)(1)(i)(B);
■ b. Removing the words ''bank fees;'' from paragraph (a)(1)(iii);
■ c. Removing the words ''commercial item'' in paragraph (c)(1)(i) and adding in their place the words ''commercial product or commercial service'';
■ d. Revising paragraph (c)(1)(iv) and the first sentence of paragraph (c)(1)(viii);
■ e. Removing the words ''commercial items'' in paragraph (c)(1)(x) and adding in their place the words ''commercial products or commercial services''; and
■ f. Revising paragraph (c)(2).

The revisions read as follows:

§ 125.3 What types of subcontracting assistance are available to small businesses?

(a) * * *

(1) * * *

(i) * * *

(B) Purchases from or sales to a corporation, company, joint venture, or subdivision that is an affiliate of the prime contractor or subcontractor are not included in the subcontracting base. Subcontracts by first-tier affiliates shall be treated as subcontracts of the prime.

* * * * *

(c) * * *

(1) * * *

(iv) When developing an individual subcontracting plan (also called individual contract plan), the contractor must include indirect costs in its subcontracting goals. These costs must be included in the Individual Subcontract Report (ISR) in *www.esrs.gov* (eSRS) or Subcontract Reports for Individual Contracts (the paper SF–294, if authorized). These costs must also be included on a prorated basis in the Summary Subcontracting Report (SSR) in the eSRS system. A contractor authorized to use a commercial subcontracting plan must include all indirect costs in its subcontracting goals and in its SSR;

* * * * *

(viii) The contractor must provide pre-award written notification to unsuccessful small business offerors on all competitive subcontracts over the simplified acquisition threshold (as defined in the FAR at 48 CFR 2.101).

* * *

* * * * *

(2) A commercial plan, also referred to as an annual plan or company-wide plan, is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. A commercial plan covers the offeror's fiscal year and applies to all of the commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.,* division, plant, or product line). Once approved, the plan remains in effect during the federal fiscal year for all Federal Government

contracts in effect during that period. The contracting officer of the agency that originally approved the commercial plan will exercise the functions of the contracting officer on behalf of all agencies that award contracts covered by the plan.

* * * * *

■ 44. Amend § 125.6 by:

■ a. Removing ''§ 121.103(h)(4)'' in paragraph (c) and adding in its place ''§ 121.103(h)(3)'';

■ b. In paragraph (d) introductory text:

■ i. Revising the first sentence; and

■ ii. Adding a sentence after the first sentence;

■ c. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively; and

■ d. Adding a new paragraph (e).

The revision and additions read as follows:

§ 125.6 What are the prime contractor's limitations on subcontracting?

* * * * *

(d) * * * The period of time used to determine compliance for a total or partial set-aside contract will generally be the base term and then each subsequent option period. However, for a multi-agency set aside contract where more than one agency can issue orders under the contract, the ordering agency must use the period of performance for each order to determine compliance.

* * *

* * * * *

(e) *Past performance evaluation.* Where a contracting officer determines that a contractor has not met the applicable limitation on subcontracting requirement at the conclusion of contract performance, the contracting officer may not give a satisfactory or higher past performance rating for the appropriate factor or subfactor in accordance with the FAR at 48 CFR 42.1503.

* * * * *

§ 125.8 [Amended]

■ 45. Amend § 125.8 by:

■ a. Removing ''§ 121.103(h)(3)'' in paragraph (a) and adding in its place ''§ 121.103(h)(4)''; and

■ b. Removing ''paragraph (d)'' in paragraph (b)(2)(vii) wherever it appears and adding in its place ''paragraph (c)''.

■ 46. Amend § 125.9 by:

■ a. Revising paragraph (b)(3)(ii);

■ b. Redesignating paragraphs (e)(1)(ii) and (iii) as paragraphs (e)(1)(iii) and (iv), respectively; and

■ c. Adding a new paragraph (e)(1)(ii).

The revision and addition read as follows:

§ 125.9 What are the rules governing SBA's small business mentor-protégé program?

* * * * *

(b) * * *

(3) * * *

(ii) A mentor (including in the aggregate a parent company and all of its subsidiaries) generally cannot have more than three protégés at one time.

(A) The first two mentor-protégé relationships approved by SBA between a specific mentor and a small business that has its principal office located in the Commonwealth of Puerto Rico do not count against the limit of three protégés that a mentor can have at one time.

(B) Where a mentor purchases another business entity that is also an SBA-approved mentor of one or more protégé small business concerns and the purchasing mentor commits to honoring the obligations under the seller's mentor-protégé agreement(s), that entity may have more than three protégés. In such a case, the entity could not add another protégé until it fell below three in total.

* * * * *

(e) * * *

(1) * * *

(ii) Identify the specific entity or entities that will provide assistance to or participate in joint ventures with the protégé where the mentor is a parent or subsidiary concern;

* * * * *

■ 47. Amend § 125.18 by:

■ a. Adding a sentence to the end of paragraph (b) introductory text; and

■ b. Removing ''§ 121.103(h)(4)'' in paragraph (f)(1) and adding in its place ''§ 121.103(h)(3)''.

The addition reads as follows:

§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?

* * * * *

(b) * * * ASDVO SBC cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract set-aside or reserved for SDVOs.

* * * * *

■ 48. Amend § 125.22 by adding paragraph (d) to read as follows:

§ 125.22 When may a contracting officer set-aside a procurement for SDVO SBCs?

* * * * *

(d) *Restricting competition.* A procuring activity cannot restrict an SDVO SBC competition (for either a contract or order) to require SBA socioeconomic certifications other than SDVO SBC certification (*i.e.,* a competition cannot be limited only to business concerns that are both SDVO SBC and 8(a), SDVO SBC and HUBZone, or SDVO SBC and WOSB).

■ 49. Amend § 125.28 by adding a sentence to the end of paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 125.28 What are the requirements for filing a service-disabled veteran-owned status protest?

* * * * *

(d) * * *

(2) * * * Where the identified low bidder is determined to be ineligible for award, a protest of any other identified low bidder must be received prior to the close of business on the 5th business day after the contracting officer has notified interested parties of the identity of that low bidder.

* * * * *

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature SDVO status protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send all protests, along with a referral letter, directly to the Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416 or by fax to (202) 205–6390, marked Attn: Service-Disabled Veteran Status Protest.

(1) The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number, and facsimile number of the contracting officer; whether the contract was sole source or set-aside; whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer (*i.e.,* made the self-representation that it was a SDVO SBC); whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protester received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

(2) Where a protestor alleges that an SDVO SBC is unduly reliant on one or more subcontractors that are not SDVO SBCs or a subcontractor that is not an SDVO SBC will perform primary and vital requirements of the contract, the D/GC or designee will refer the matter to the Government Contracting Area Office serving the geographic area in which the principal office of the SDVO SBC is

located for a determination as to whether the ostensible subcontractor rule has been met.

■ 50. Amend § 125.30 by revising paragraph (g)(4) to read as follows:

§ 125.30 How will SBA process an SDVO protest?

* * * * *

(g) * * *

(4) A concern found to be ineligible may not submit an offer as an SDVO SBC on a future procurement unless it demonstrates to SBA's satisfaction that it has overcome the reasons for its ineligibility set forth in the protest (*e.g.,* it changes its ownership to satisfy the definition of an SDVO SBC set forth in § 125.8) and SBA issues a decision to this effect. If a concern found to be ineligible submits an offer, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as an SDVO SBC on a pending procurement, the concern must immediately inform the contracting officer for the procuring agency of the adverse SDVO SBC determination.

(i) Not later than two days after SBA's determination finding a concern ineligible as an SDVO SBC, such concern must update its SDVO SBC status in the System for Award Management (or any successor system).

(ii) If a business concern fails to update its SDVO SBC status in the System for Award Management (or any successor system) in response to decertification, SBA will make such update within two days of the business's failure to do so.

PART 126—HUBZONE PROGRAM

■ 51. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a; Pub. L. 111–240, 124 Stat. 2504.

■ 52. Amend § 126.306 by adding paragraphs (b)(1) and (2) to read as follows:

§ 126.306 How will SBA process an application for HUBZone certification?

* * * * *

(b) * * *

(1) If a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the HUBZone eligibility requirements, SBA will decline the concern's application.

(2) If, during the processing of an application, SBA determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application.

* * * * *

■ 53. Amend § 126.503 by revising paragraph (a)(2) and adding paragraphs (c) and (d) to read as follows:

§ 126.503 What happens if SBA is unable to verify a HUBZone small business concern's eligibility or determines that a concern is no longer eligible for the program?

(a) * * *

(2) *SBA's decision.* SBA will determine whether the HUBZone small business concern remains eligible for the program within 90 calendar days after receiving all requested information, when practicable. The D/HUB will provide written notice to the concern stating the basis for the determination.

(i) If SBA finds that the concern is not eligible, the D/HUB will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system) within four business days of the determination.

(ii) If SBA finds that the concern is eligible, the concern will continue to be designated as a certified HUBZone small business concern in DSBS (or successor system).

* * * * *

(c) *Decertification due to submission of false information.* If, after admission to the HUBZone program, SBA discovers that false information has been knowingly submitted by a certified HUBZone small business concern, SBA will propose the firm for decertification pursuant to the procedures described in paragraph (a) of this section.

(d) *Effect of decertification.* Once SBA has decertified a concern, the concern cannot self-certify as a HUBZone small business concern. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified as a HUBZone small business on a pending procurement, the concern must immediately inform the contracting officer for the procuring agency of the adverse eligibility determination. A contracting officer shall not award a HUBZone contract to a concern that the D/HUB has determined is not an eligible HUBZone small business concern for the procurement in question.

■ 54. Amend § 126.601 by revising paragraph (d) to read as follows:

§ 126.601 What additional requirements must a certified HUBZone small business concern meet to submit an offer on a HUBZone contract?

* * * * *

(d) Where a subcontractor that is not a certified HUBZone small business will perform the primary and vital requirements of a HUBZone contract, or where a HUBZone prime contractor is unduly reliant on one or more small businesses that are not HUBZone-certified to perform the HUBZone contract, the prime contractor is not eligible for award of that HUBZone contract.

(1) When the subcontractor qualifies as small for the size standard assigned to the procurement, this issue may be grounds for a HUBZone status protest, as described in § 126.801. When the subcontractor is alleged to be other than small for the size standard assigned to the procurement, this issue may be grounds for a size protest under the ostensible subcontractor rule, as described at § 121.103(h)(3) of this chapter.

(2) SBA will find that a prime HUBZone contractor is performing the primary and vital requirements of a contract or order, and is not unduly reliant on one or more subcontractors that are not HUBZone-certified, where the prime contractor can demonstrate that it, together with any subcontractors that are certified HUBZone small business concerns, will meet the limitations on subcontracting provisions set forth in § 125.6 of this chapter.

■ 55. Add § 126.609 to read as follows:

§ 126.609 Can a HUBZone competition be limited to small business concerns having additional socioeconomic certifications?

A procuring activity cannot restrict a HUBZone competition (for either a contract or order) to require SBA socioeconomic certifications other than HUBZone certification (*i.e.,* a competition cannot be limited only to business concerns that are both HUBZone and 8(a), HUBZone and WOSB, or HUBZone and SDVO).

■ 56. Amend § 126.616 by revising paragraph (a) to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer and be eligible to perform on a HUBZone contract?

(a) *General.* A certified HUBZone small business concern may enter into a joint venture agreement with one or more other small business concerns, or with an SBA-approved mentor authorized by § 125.9 of this chapter, for the purpose of submitting an offer for a HUBZone contract.

(1) The joint venture itself need not be a certified HUBZone small business

concern, but the joint venture should be designated as a HUBZone joint venture in SAM (or successor system) with the HUBZone-certified joint venture partner identified.

(2) A certified HUBZone small business concern cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract set-aside or reserved for certified HUBZone small business concerns.

* * * * *

§ 126.618 [Amended]

■ 57. Amend § 126.618 by removing ''§ 121.103(h)(4)'' in paragraph (c)(2) and adding in its place ''§ 121.103(h)(3)''.

■ 58. Amend § 126.801 by:

■ a. Revising paragraph (b);

■ b. Adding paragraph (d) introductory text; and

■ c. Revising paragraphs (d)(1) and (2) and (e).

The revisions and additions read as follows:

§ 126.801 How does an interested party file a HUBZone status protest?

* * * * *

(b) *Format and specificity.* (1) Protests must be in writing and must state all specific grounds as to why the protestor believes the protested concern should not qualify as a certified HUBZone small business concern. Specifically, a protestor must explain why:

(i) The protested concern did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for HUBZone certification or on the anniversary date of such certification;

(ii) The protested joint venture does not meet the requirements set forth in § 126.616;

(iii) The protested concern, as a HUBZone prime contractor, is unduly reliant on one or more small subcontractors that are not HUBZone-certified, or subcontractors that are not HUBZone-certified will perform the primary and vital requirements of the contract; and/or

(iv) The protested concern, on the anniversary date of its initial HUBZone certification, failed to attempt to maintain compliance with the 35% HUBZone residency requirement during the performance of a HUBZone contract.

(2) Specificity requires more than conclusions of ineligibility. A protest merely asserting that the protested concern did not qualify as a HUBZone small business concern at the time of its initial certification or its most recent annual recertification, without setting forth specific facts or allegations, is insufficient and will be dismissed.

(3) A protest asserting that a concern was not in compliance with the HUBZone principal office and/or 35% HUBZone residency requirements at the time of offer or award will be dismissed.

(4) For a protest filed against a HUBZone joint venture, the protest must state all specific grounds as to why:

(i) The HUBZone small business partner to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or on the anniversary of such certification; and/or

(ii) The protested HUBZone joint venture does not meet the requirements set forth in § 126.616.

(5) For a protest alleging that the prime contractor has an ostensible subcontractor, the protest must state all specific grounds as to why:

(i) The protested concern is unduly reliant on one or more small subcontractors that are not HUBZone-certified; or

(ii) One or more subcontractors that are not HUBZone-certified will perform the primary and vital requirements of the contract.

(6) For a protest alleging that the protested concern failed to attempt to maintain compliance with the 35% HUBZone residency requirement during the performance of a HUBZone contract, the protest must state all specific grounds explaining why the protester believes the protested firm did not have at least 20% of its employees residing in a HUBZone on the anniversary of its HUBZone certification.

* * * * *

(d) * * * A protest challenging the HUBZone status of an apparent successful offeror on a HUBZone contract must be timely, or it will be dismissed.

(1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(i) Except for an order or Blanket Purchase Agreement issued under a Federal Supply Schedule contact, for an order or Agreement that is set-aside for certified HUBZone small business concerns under a multiple award contract that was not itself set aside or reserved for certified HUBZone small business concerns, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the intended awardee of the order or Agreement.

(ii) Where a contracting officer has required offerors for a specific order under a multiple award HUBZone contract to recertify their HUBZone status, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the intended awardee of the order.

(2) For sealed bid acquisitions:

(i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or where the identified low bidder is determined to be ineligible for award, by close of business on the fifth business day after the contracting officer has notified interested parties of the identity of that low bidder; or

(ii) If the price evaluation preference was not applied at the time of bid opening, an interested party must submit its protest by close of business on the fifth business day after the date of identification of the apparent successful low bidder.

* * * * *

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature HUBZone status protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send the protest, along with a referral letter, to the D/HUB by email to *hzprotests@sba.gov.*

(1) The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the following:

(i) The solicitation number;

(ii) The name, address, telephone number, email address, and facsimile number of the contracting officer;

(iii) The type of HUBZone contract at issue (*i.e.,* HUBZone set-aside; HUBZone sole source; full and open competition with a HUBZone price evaluation preference applied; reserve for HUBZone small business concerns under a Multiple Award Contract; or order set-aside for HUBZone small business concerns against a Multiple Award Contract);

(iv) If the procurement was conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;

(v) If the procurement was a HUBZone set-aside, whether the protester submitted an offer;

(vi) Whether the protested concern was the apparent successful offeror;

(vii) Whether the procurement was conducted using sealed bid or negotiated procedures;

(viii) If the procurement was conducted using sealed bid procedures, the bid opening date;

(ix) The date the protester was notified of the apparent successful offeror;

(x) The date the protest was submitted to the contracting officer;

(xi) The date the protested concern submitted its initial offer or bid to the contracting activity; and

(xii) Whether a contract has been awarded, and if applicable, the date of contract award and contract number.

(2) Where a protestor alleges that a certified HUBZone small business concern is unduly reliant on one or more subcontractors that are not certified HUBZone small business concerns or a subcontractor that is not a certified HUBZone small business concern will perform primary and vital requirements of the contract, the D/HUB will refer the matter to the Government Contracting Area Office serving the geographic area in which the principal office of the certified HUBZone small business concern is located for a determination as to whether the ostensible subcontractor rule has been met.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 59. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

■ 60. Amend § 127.102 by removing the definition of ''WOSB'' and adding the definition of ''Women-Owned Small Business (WOSB)'' in alphabetical order to read as follows:

§ 127.102 What are the definitions of the terms used in this part?

* * * * *

Women-Owned Small Business (WOSB) means a concern that is small pursuant to part 121 of this chapter, and that is at least 51 percent owned and controlled by one or more women who are citizens in accordance with §§ 127.200, 127.201, and 127.202. This definition applies to any certification as to a concern's status as a WOSB, not solely to those certifications relating to a WOSB contract.

* * * * *

■ 61. Amend § 127.200 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) * * *

(1) A small business as defined in part 121 of this chapter for the size standard corresponding to any NAICS code under which it currently conducts business activities; and

* * * * *

(b) * * *

(1) A small business as defined in part 121 of this chapter for the size standard corresponding to any NAICS code under which it currently conducts business activities; and

* * * * *

■ 62. Amend § 127.202 by revising the first sentence of paragraph (b) and paragraph (c) to read as follows:

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

* * * * *

(b) * * * To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another (other than after death or incapacity). * * *

(c) *Limitation on outside obligations.* The woman or economically-disadvantaged woman who holds the highest officer position of the business concern may not engage in outside obligations that prevent her from devoting sufficient time and attention to the business concern to control its management and daily operations. Where a woman or economically disadvantaged woman claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, there is a rebuttable presumption that she does not control the business concern. In such a case, the woman must provide evidence that she has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management and administration of the business.

* * * * *

■ 63. Amend § 127.202 by revising paragraph (c) to read as follows:

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

* * * * *

(c) *Limitation on outside obligations.* The woman or economically-disadvantaged woman who holds the highest officer position of the business concern may not engage in outside obligations that prevent her from devoting sufficient time and attention to the business concern to control its management and daily operations. Where a woman or economically disadvantaged woman claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, there is a rebuttable presumption that she does not control the business concern. In such a case, the woman must provide evidence that she has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management and administration of the business.

* * * * *

■ 64. Amend § 127.304 by adding paragraphs (c)(1) and (2) to read as follows:

§ 127.304 How is an application for certification processed?

* * * * *

(c) * * *

(1) If a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the WOSB or EDWOSB eligibility requirements, SBA will decline the concern's application.

(2) If, during the processing of an application, SBA determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application.

* * * * *

■ 65. Revise § 127.400 to read as follows:

§ 127.400 How does a concern maintain its WOSB or EDWOSB certification?

Any concern seeking to remain a certified WOSB or EDWOSB must undergo a program examination every three years.

(a) SBA or a third-party certifier will conduct a program examination three years after the concern's initial WOSB or EDWOSB certification (whether by SBA or a third-party certifier) or three years after the date of the concern's last program examination, whichever date is later.

Example 1 to paragraph (a). Concern A is certified by SBA to be eligible for the WOSB Program on March 31, 2023. Concern A is considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through March 30, 2026. On April 22, 2025, after Concern A is identified as the apparent successful offeror on a WOSB set-aside contract, its status as an eligible WOSB is protested. On May 15, 2025, Concern A receives a positive determination from SBA confirming that it is an eligible WOSB. Concern A's new certification date is May 15, 2025.

Concern A is now considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through May 14, 2028.

(b) The concern must either request a program examination from SBA or notify SBA that it has requested a program examination from a third-party certifier no later than 30 days prior to its certification anniversary. Failure to do so will result in the concern being decertified.

Example 1 to paragraph (b). Concern B is certified by a third-party certifier to be eligible for the WOSB Program on July 20, 2023. Concern B is considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2026. Concern B must request a program examination from SBA, or notify SBA that it has requested a program examination from a third-party certifier, by June 20, 2026, to continue participating in the WOSB Program after July 19, 2026.

■ 66. Amend § 127.405 by redesignating paragraph (c) as paragraph (e) and adding paragraph (c) and paragraph (d) to read as follows:

§ 127.405 What happens if SBA determines that the concern is no longer eligible for the program?

* * * * *

(c) *Decertification in response to adverse protest decision.* SBA will decertify a concern found to be ineligible during a WOSB/EDWOSB status protest.

(d) *Effect of decertification.* Once SBA has decertified a concern, the concern cannot self-certify as a WOSB or EDWOSB, as applicable, for any WOSB or EDWOSB contract. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as a WOSB or EDWOSB on a pending procurement, the concern must immediately inform the contracting officer for the procuring agency of its decertification.

(1) Not later than two days after the date on which SBA decertifies a business concern, such concern must update its WOSB/EDWOSB status in the System for Award Management (or any successor system).

(2) If a business concern fails to update its WOSB/EDWOSB status in the System for Award Management (or any successor system) in response to decertification, SBA will make such update within two days of the business's failure to do so.

* * * * *

■ 67. Amend § 127.503 by redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively, and adding a new paragraph (e) to read as follows:

§ 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?

* * * * *

(e) *Competitions requiring additional socioeconomic certifications.* A procuring activity cannot restrict a WOSB or EDWOSB competition (for either a contract or order) to require SBA socioeconomic certifications other than WOSB/EDWOSB certification (*i.e.,* a competition cannot be limited only to business concerns that are both WOSB/EDWOSB and 8(a), WOSB/EDWOSB and HUBZone, or WOSB/EDWOSB and service-disabled veteran owned (SDVO)).

* * * * *

§ 127.504 [Amended]

■ 68. Amend § 127.504 by removing ''§ 121.103(h)(2)'' in paragraph (g)(1) and adding in its place ''§ 121.103(h)(3)''.

■ 69. Amend § 127.506 by adding paragraph (a)(3) to read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(a) * * *

(3) A WOSB or EDWOSB cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract set-aside or reserved for WOSBs or EDWOSBs.

* * * * *

■ 70. Amend § 127.603 by adding a sentence to the end of paragraph (c)(2) and revising paragraph (d) to read as follows:

§ 127.603 What are the requirements for filing an EDWOSB or WOSB status protest?

* * * * *

(c) * * *

(2) * * * Where the identified low bidder is determined to be ineligible for award, a protest of any other identified low bidder must be received prior to the close of business on the 5th business day after the contracting officer has notified interested parties of the identity of that low bidder.

* * * * *

(d) *Referral to SBA.* The contracting officer must forward to SBA any WOSB or EDWOSB status protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all WOSB and EDWOSB status protests, along with a referral letter and documents, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, or by fax to (202) 205–6390, Attn: Women-Owned Small Business Status Protest.

(1) The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number, and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

(2) Where a protestor alleges that a WOSB/EDWOSB is unduly reliant on one or more subcontractors that are not WOSBs/EDWOSBs or a subcontractor that is not a WOSB/EDWOSB will perform primary and vital requirements of the contract, the D/GC or designee will refer the matter to the Government Contracting Area Office serving the geographic area in which the principal office of the SDVO small business concern (SBC) is located for a determination as to whether the ostensible subcontractor rule has been met.

(3) The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–18068 Filed 9–8–22; 8:45 am]

BILLING CODE 8026–03–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 174 September 9, 2022

Part IV

The President

Notice of September 7, 2022—Continuation of the National Emergency With Respect To Foreign Interference in or Undermining Public Confidence in United States Elections

Federal Register
Vol. 87, No. 174
Friday, September 9, 2022

Presidential Documents

Title 3—

The President

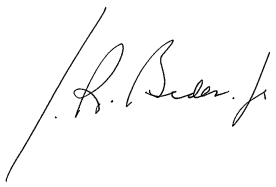
Notice of September 7, 2022

Continuation of the National Emergency With Respect To Foreign Interference in or Undermining Public Confidence in United States Elections

On September 12, 2018, by Executive Order 13848, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the threat of foreign interference in or undermining public confidence in United States elections.

Although there has been no evidence of a foreign power altering the outcomes or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference. The ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on September 12, 2018, must continue in effect beyond September 12, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13848 with respect to the threat of foreign interference in or undermining public confidence in United States elections.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 7, 2022.

[FR Doc. 2022–19701
Filed 9–8–22; 11:15 am]
Billing code 3395–F2–P

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