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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0148; Project Identifier AD–2021–00922–T; Amendment 39–22110; AD 2022–14–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD superseded AD 2015–12–03, and applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, and certain Model 777F airplanes. As published, a freeplay indicator value in the regulatory text is incorrect, and certain credit service information was omitted for certain actions in the regulatory text. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This correction is effective October 12, 2022. The effective date of AD 2022–14–05 remains October 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 12, 2022 (87 FR 54609, September 7, 2022).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 21, 2015 (80 FR 34252, June 16, 2015).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0148; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this 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 regulations.gov by searching for and locating Docket No. FAA–2022–0148.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2022–14–05, Amendment 39–22110 (87 FR 54609, September 7, 2022) (AD 2022–14–05), superseded AD 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015) (AD 2015–12–03). AD 2022–14–05 retains the requirements for repetitive freeplay inspections and lubrication of the right and left elevators, rudder, and rudder tab, and related investigative and corrective actions if necessary. AD 2022–14–05 also requires revising the existing maintenance or inspection program, as applicable, for certain other airplanes, to incorporate a revised or new elevator freeplay maintenance procedure, as applicable. AD 2022–14–05 applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, and certain Model 777F airplanes.

Need for Correction

As published, paragraphs (j)(3) and (l) of AD 2022–14–05 are incorrect.

Paragraph (j)(3) of AD 2022–14–05 requires incorporating a revision of the elevator freeplay dial indicator limit to ''0.34 in. (152 mm) or less.'' The correct value is ''0.34 in. (8.636 mm) or less.''

Additionally, paragraph (l) of AD 2022–14–05 inadvertently omitted credit for certain actions that was previously provided in AD 2015–12–03 for the following service information: Boeing Special Attention Service Bulletin 777–27–0062, dated July 18, 2006, and Revision 1, dated October 1, 2009. The FAA intended for that service information to be retained as credit for the corresponding retained actions in AD 2022–14–05.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021. This service information specifies procedures for changing the elevator freeplay instructions by adding changes to the input force, elevator freeplay limit, and power control unit (PCU) bypass test setup.

This AD also requires Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, which the Director of the Federal Register approved for incorporation by reference as of July 21, 2015 (80 FR 34252, June 16, 2015).

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**.

Correction of Publication

This document corrects two errors and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains October 12, 2022.

Since this action only corrects a freeplay indicator value and adds credit service information, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) by correcting 87 FR 54609 (September 7, 2022), beginning at page 54611, column 1, 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 [Corrected]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015); and
■ b. Adding the following new AD:

2022–14–05 The Boeing Company: Amendment 39–22110; Docket No. FAA–2022–0148; Project Identifier AD–2022–00922–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 12, 2022.

(b) Affected ADs

This AD replaces AD 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015) (AD 2015–12–03).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) All Model 777–200, –200LR, –300, and –300ER series airplanes.

(2) Model 777F airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the manufacturer's determination that the procedure for the rudder freeplay inspection available at the time did not properly detect excessive freeplay in the rudder control load loop. This AD was also prompted by engineering testing that revealed that the force being applied to the elevator to detect excessive freeplay was insufficient. The FAA is issuing this AD to address excessive wear in the load loop components of the control surfaces, which could lead to excessive freeplay of the control surfaces, flutter, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections of Elevators, Rudder, and Rudder Tab, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–12–03, with revised service information. For Model 777–200, –200LR, –300, and –300ER series airplanes: At the applicable times specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraph (i)(1) of this AD: Inspect the freeplay of the right and left elevators, rudder, and rudder tab by accomplishing all of the actions specified in Parts 1, 3, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraphs (i)(2) through (5) of this AD. Repeat the inspections thereafter at the intervals specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. If, during any inspection required by this paragraph, the freeplay exceeds any applicable measurement specified in Part 1, 3, and 5, as applicable, of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, before further flight, do the applicable corrective actions in accordance with Part 1, 3, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. After the effective date of this AD use only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021.

(h) Retained Repetitive Lubrication, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2015–12–03, with revised service information. For Model 777–200, –200LR, –300, and –300ER series airplanes: At the applicable times specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraph (i)(1) of this AD: Lubricate the elevator components, rudder components, and rudder tab components, by accomplishing all of the actions specified in Parts 2, 4, and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. Repeat the lubrication thereafter at the interval specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. After the effective date of this AD use only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021.

(i) Exceptions To Service Information Specifications, With Revised Service Information and a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2015–12–03, with revised service information and a new exception, for Model 777–200, –200LR, –300, and –300ER series airplanes.

(1) Where Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, and Revision 4, dated July 15, 2021, specify a compliance time ''after the original issue date on this service bulletin,'' this AD requires compliance within the specified compliance time after July 25, 2007 (the effective date of AD 2007–13–05, Amendment 39–15109 (72 FR 33856, June 20, 2007)). After the effective date of this AD, only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021, may be used.

(2) Where Appendix B, paragraph 1.f., ''Freeplay Inspection,'' step (8), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specifies that the center of the pad must be within 1.0 inch (13 millimeters) of the center line of the rib rivets in the rudder tab, this AD requires that the center of the tab must be within 1.0 inch (25 millimeters) of the center line of the rib rivets in the rudder tab.

(3) Where Appendix C, paragraph 1.e., ''Rudder Tab Surface Freeplay–Inspection,'' step (2) and step (6), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specify that the placement of the force gage and pad should be within one inch of the centerline line of the middle rudder power control unit (PCU) rib and at 12 ± 1 inch (305 ± 72 millimeters) forward of the rudder tab trailing edge, this AD requires placement of the force gage and pad within one inch of the centerline line of the middle rudder PCU rib and at 12 ± 1 inch (305 ± 25 millimeters) forward of the rudder tab trailing edge.

(4) Where Appendix C, paragraph 1.e., ''Rudder Tab Surface Freeplay–Inspection,'' step (3), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specifies to apply a 30 ± pound (133 ± 14 newton) force, this AD requires applying a 30 ± 3 pound force (133 ± 14 newton) force.

(5) Where the CAUTION note just before step (6) of Appendix A, paragraph 1.f., ''Freeplay Inspection,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021, specifies using a pad that distributes the force over an area of 84 square inches (5,420 square centimeters) or more, this AD requires using a pad that distributes the force over an area of 84 square inches (542 square centimeters) or more.

(j) New Maintenance or Inspection Program Revision

For Model 777F airplanes: Within 30 days after the effective date of this AD, revise the 777F elevator freeplay maintenance procedure in the existing maintenance or inspection program, as applicable, by doing the actions specified in paragraphs (j)(1) through (3) of this AD.

(1) Remove the existing hydraulic depressurization PCU test setup procedure

step and replace it by incorporating the information specified in figure 1 to paragraph (j) of this AD.

(2) Revise the jack test force used to push the elevator up to 225 ± 10 lb (102.1 ± 4.5 kg).

(3) Revise the elevator freeplay dial indicator limit to 0.34 in. (8.636 mm) or less.

Figure 1 to paragraph (j): *Circuit breaker elevator freeplay test setup*

Do these steps to prepare for the freeplay inspection:

NOTE: Each PCU can be inspected in any order, as long as the setup for the inspection is performed per the steps below.

a) To inspect the left elevator outboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Center, M24301

Row	Col	Number	Name
A	7	CBA7-C	ELEV PCU

2. Make sure that the left elevator inboard PCU is in bypass mode

b) To inspect the left elevator inboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Left, M24101

Row	Col	Number	Name
A	7	CBA7-L	ELEV PCU

2. Make sure that the left elevator outboard PCU is in bypass mode.

c) To inspect the right elevator inboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Left Power Management Panel, P110

Row	Col	Number	Name
K	27	C27609	ELEV PCU RIB (BLK)/ROB(BYP)

2. Make sure that the right elevator outboard PCU is in bypass mode.

d) To inspect the right elevator outboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Right, M24201

Row	Col	Number	Name
A	7	CBA7-R	ELEV PCU

2. Make sure that the right elevator inboard PCU is in bypass mode.

Note 1 to paragraph (j): Refer to AMM task 27–31–09–200–801, dated September 5, 2021, for additional guidance.

(k) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m) of this AD.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before July 21, 2015 (the effective date of AD 2015–12–03) using the service information specified in paragraphs (l)(1)(i) or (ii) of this AD.

(i) Boeing Special Attention Service Bulletin 777–27–0062, dated July 18, 2006, which was incorporated by reference in AD 2007–13–05, Amendment 39–15109 (72 FR 33856, June 20, 2007).

(ii) Boeing Special Attention Service Bulletin 777–27–0062, Revision 1, dated October 1, 2009, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–27–0062, Revision 3, dated October 9, 2015, which is not incorporated by reference in this AD.

(m) 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 (n)(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.

(4) AMOCs approved previously for the freeplay measurements of the right and left rudder tab required by AD 2015–12–03, are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously for the freeplay measurements of the rudder required by AD 2015–12–03, are approved as

AMOCs for the corresponding provisions of this AD.

(6) AMOCs approved previously for the repetitive lubrications required by AD 2015–12–03, are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (6) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 12, 2022 (87 FR 54609, September 7, 2022).

(i) Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on July 21, 2015 (80 FR 34252, June 16, 2015).

(i) Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014.

(ii) [Reserved]

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

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

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

Issued on September 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–21021 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–949]

Schedules of Controlled Substances: Placement of Daridorexant in Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim final rule with request for comments published in the **Federal Register** on April 7, 2022, placing daridorexant ([(S)-2-(5-chloro-4-methyl-1*H*-benzo[*d*]imidazol-2-yl)-2-methylpyrrolidin-1-yl](5-methoxy-2-(2*H*-1,2,3-triazol-2-yl)phenyl)methanone), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of such isomers is possible, in schedule IV of the Controlled Substances Act (CSA). With the issuance of this final rule, the Drug Enforcement Administration maintains daridorexant in schedule IV of the CSA.

DATES: The effective date of this rulemaking is October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (section 2(b) of Pub. L. 114–89), when the Drug Enforcement Administration (DEA) receives notification from the Department of Health and Human Services (HHS) that the Secretary has approved a certain new drug and HHS recommends control in the CSA schedule II–V, DEA is required to issue an interim final rule (IFR), with opportunity for public comment and to request a hearing, controlling the drug within a specified 90-day timeframe and to subsequently issue a final rule. 21 U.S.C. 811(j). When controlling a drug pursuant to subsection (j), DEA must apply the scheduling criteria of 21 U.S.C. 811 (b) through (d) and 812(b). 21 U.S.C. 811(j)(3).

On January 7, 2022, DEA received notification that the United States Food and Drug Administration (FDA) approved, on the same date, a new drug application (NDA) for QUVIVIQ (daridorexant) tablets for use as a treatment of adult patients with insomnia, characterized by difficulties with sleep onset and/or sleep maintenance. Daridorexant, chemically known as [(S)-2-(5-chloro-4-methyl-1*H*-benzo[*d*]imidazol-2-yl)-2-methylpyrrolidin-1-yl](5-methoxy-2-(2*H*-1,2,3-triazol-2-yl)phenyl)methanone, is a new molecular entity (NME) with central nervous system activity. Previously, on December 22, 2021, DEA received HHS's recommendation that DEA place daridorexant and ''its salts'' in schedule IV of the CSA, in the event that FDA approves the NDA for daridorexant. On April 7, 2022, DEA, pursuant to 21 U.S.C. 811(j), published an IFR (87 FR 20313) to place daridorexant (including its salts, isomers, and salts of isomers) in schedule IV of the CSA; the regulatory text only listed the chemical name for daridorexant. In the preamble of the IFR, DEA incorrectly misspelled the proprietary name for daridorexant's approved drug product as ''QUIVIVIQ.'' The preamble of this final rule now correctly uses ''QUVIVIQ.'' It bears emphasis that the regulatory text used in this final rule remains unchanged from that used in the IFR.

The IFR provided an opportunity for interested persons to submit comments, as well as to file a request for hearing or waiver of hearing, on or before May 9, 2022. DEA did not receive any requests for hearing or waivers of hearing.

Comment Received

In response to the IFR, DEA received one comment. The submission was from an anonymous commenter. The commenter supported the placement of daridorexant in schedule IV of the CSA, and noted its safety, effectiveness, and approved indication for use as a treatment of patients with insomnia.

DEA Response: DEA appreciates the support for this rulemaking.

Requirements for Handling Daridorexant

As indicated above, daridorexant has been a schedule IV controlled substance by virtue of an IFR issued by DEA on April 7, 2022. Thus, this final rule does not alter the regulatory requirements applicable to handlers of daridorexant that have been in place since that time. Nonetheless, for informational purposes, DEA restates here those requirements. Daridorexant is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the

manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) daridorexant, or who desires to handle daridorexant, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who intends to handle daridorexant and is not registered with DEA must submit an application for registration and may not handle daridorexant unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

2. *Disposal of stocks.* Any person who obtains a schedule IV registration to handle daridorexant but who subsequently does not desire or is not able to maintain such registration must surrender all quantities of daridorexant, or may transfer all quantities of daridorexant to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Daridorexant is subject to schedule III–V security requirements for DEA registrants and must be handled and stored in accordance with 21 CFR 1301.71–1301.77. Non-practitioners handling daridorexant must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93. These requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of daridorexant must comply with 21 U.S.C. 825 and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of daridorexant was required to keep an inventory of daridorexant on hand, as of April 7, 2022, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. These requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for daridorexant, pursuant to 21 U.S.C. 827 and 832(a), and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for daridorexant, or products containing daridorexant, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule IV controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of daridorexant may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act (FDCA), as applicable, and the CSA.

9. *Importation and Exportation.* All importation and exportation of daridorexant must comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving daridorexant not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

This final rule adopts, without change, the amendment made by the IFR that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is (1) approved by HHS, under section 505(c) of the FDCA and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an IFR scheduling the drug within 90 days. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause. DEA issued an IFR on April 7, 2022, and solicited public comments on that rule. Subsection (j) further states that after giving interested persons the opportunity to comment and to request a hearing, the Attorney General, as delegated to the Administrator of DEA, shall issue a final rule in accordance with the scheduling criteria of 21 U.S.C. 811(b) through (d) and 812(b). DEA is now responding to the comment submitted by the public and issuing the final rule, in accordance with 21 U.S.C. 811(j).

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications warranting the application of E.O. 13175. It does 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding the applicability of the APA, DEA was not required to publish a general notice

of proposed rulemaking. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521.

Congressional Review Act

This final rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 26, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ Accordingly, the interim final rule (87 FR 20313) amending 21 CFR part 1308, which published on April 7, 2022, is adopted as a final rule without change.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–21253 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0371]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL

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

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the West 79th Street Bridge crossing the Atlantic Intracoastal Waterway (AICW), mile 1084.6 at Miami, Florida, and the East 79th Street Bridge crossing Miami Beach Channel, mile 2.20 at Miami Beach, Florida. North Bay Village requested the Coast Guard consider placing additional weekday restrictions during rush hour on both drawbridges to assist with alleviating vehicle congestion. This deviation will test a proposed change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these proposed changes.

DATES: This deviation is effective from 12:01 a.m. on October 1, 2022, through 11:59 p.m. on March 29, 2023.

Comments and relate material must reach the Coast Guard on or before December 29, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0371 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The West 79th Street Bridge crossing the AICW, mile 1084.6, at Miami, FL, is a double-leaf bascule bridge with a 21 foot vertical clearance (25 feet charted at the center span) at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.261 (mm-1). The East 79th Street Bridge crossing the Miami Beach Channel, mile 2.20, at Miami Beach, FL, is a double-leaf bascule bridge with a 21 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.304. Navigation on the waterways consists of recreational and commercial mariners.

North Bay Village with the support of the bridge owner, Florida Department of Transportation (FDOT), requested the Coast Guard consider allowing the drawbridges to remain closed to navigation during morning and evening rush hour with top of the hour openings provided at pre-determined times. North Bay Village is requesting this change to assist with alleviating vehicle traffic in the area.

On June 7, 2022, the Coast Guard published a notice of proposed rulemaking entitled, ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL'' in the **Federal Register** (87 FR 34601). We received one hundred twenty-six comments. Those comment will be addressed during the rulemaking.

Under this test deviation both drawbridges shall operate as follows, Monday through Friday, except Federal holidays, both drawbridges need only open on the hour between 7 a.m. and 10 a.m. Between 10 a.m. and 4 p.m., both drawbridges need only open on the hour and half hour. From 4 p.m. to 7 p.m., both drawbridges need only open on the hour. From 7 p.m. to 7 a.m., both drawbridges shall open on signal. Saturday, Sunday, and Federal holidays, both drawbridges shall open on signal. Vessels that can pass beneath the drawbridges without an opening may do so at any time.

The Coast Guard will also inform waterway users of the temporary change to the operating schedules via the Local and Broadcast Notice to Mariners so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0371 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this deviation as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the deviation. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published of any posting or updates to the docket.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Dated: September 19, 2022.

Randall D. Overton,

Director, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 2022–21207 Filed 9–29–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0799]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, Cape Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of the Atlantic Ocean, adjacent to Cape Canaveral, FL. This safety zone would implement a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Coast Guard is establishing this zone for the launch of the Artemis I rocket, which is being launched by the National Aeronautics and Space Administration (NASA). The temporary safety zone will be located within the Coast Guard District Seven area of responsibility offshore of Cape Canaveral, Florida. This temporary interim rule prohibits U.S.-flagged vessels from entering the temporary safety zone unless authorized by the District Commander, or the Captain of the Port of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. This action is necessary to protect vessels and waterway users from the potential hazards created by launch of the Artemis I rocket, flying over the U.S. Exclusive Economic Zone (EEZ).

DATES: This temporary interim rule is effective without actual notice September 30, 2022 through December 31, 2022. For the purposes of enforcement, actual notice will be used from September 27, 2022 until September 30, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0799 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Ryan Gilbert, District Seven, Waterways Management Division, U.S. Coast Guard; telephone 305–415–6750, email *Ryan.A.Gilbert@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FAA Federal Aviation Administration
FL Florida
FR Federal Register
MSIB Marine Safety Information Bulletin
NASA National Aeronautics and Space Administration
NM Nautical Mile
NOE Notice of Enforcement
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area
§ Section
U.S. United States
U.S.C. United States Code

II. Background Information and Regulatory History

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a 2-year pilot program to establish and implement a process to establish safety zones to address special activities,[1] including space activities carried out by United States (U.S.) citizens in the U.S. Exclusive Economic Zone (EEZ).[2] Terms used to describe space activities, including *launch,* are defined in 51 U.S.C. 50902.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety

[1] *Special Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

[2] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

of launch operations and waterway users.

The Coast Guard has an existing permanent regulated navigation area (RNA) that prevents vessels from operating in the waters adjacent to the Cape Canaveral launch area; however, that area only extends to the limits of the territorial seas.[3] With this temporary interim rule, the Coast Guard is establishing a temporary safety zone in the Atlantic Ocean in the U.S. EEZ that will abut the existing RNA near Cape Canaveral, FL. The Coast Guard intends to activate the existing RNA in § 165.775 concurrently with the temporary safety zone established by this temporary interim rule for the launch of the Artemis I rocket.

The Artemis I is the first launch of the Artemis Program, and the only Artemis rocket launch anticipated until May of 2024. It is being launched to conduct a test flight for future missions to the moon, and the mission will include orbiting the moon. The Artemis rocket is much larger than most rockets that have been launched from the Eastern Range in Cape Canaveral, FL in recent years. While it is of a similar size to the Space Shuttle and Apollo rockets, an untested rocket of this size has not been launched from Cape Canaveral in decades. As the rocket is much larger, and has never been launched before, there is a higher risk profile than with a typical launch. Additionally, based on the historic nature of this launch it is expected that there will be additional recreational boating traffic; therefore, it has been determined that the best way to reduce risk is to establish this offshore safety zone abutting the established RNA.

The Coast Guard is issuing this temporary interim 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 temporary interim rule because doing so would be impracticable. This safety zone must be established by September 27, 2022, in order to protect vessels and waterway users from the potential hazards associated with the next scheduled launch of the Artemis I rocket.

[3] See 33 CFR 165.775.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the rule's objectives of ensuring the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by the next scheduled launch operation.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent temporary interim rule or temporary final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under section 8343 of the Authorization Act. The Seventh District Commander has determined that there are potential hazards in the U.S. EEZ created by the launch of the Artemis I rocket. The purpose of this temporary interim rule is to ensure safety of vessels and waterway users before, during, and after the scheduled launch.

IV. Discussion of the Rule

This temporary interim rule establishes a temporary safety zone with an effective date starting with the next scheduled launch on September 27, 2022 through December 31, 2022. However, the temporary safety zone would only be subject to enforcement for 5 to 6 hours for the Artemis I rocket launch from Cape Canaveral, FL. The Coast Guard will inform the public of the activation of the temporary safety zone through a Notice of Enforcement (NOE) that will be issued once the Coast Guard receives notification of the launch date from NASA. The Coast Guard intends to enforce the temporary safety zone for the Artemis I rocket launch with assets on scene to ensure the temporary safety zone is cleared of persons and vessels.

The temporary safety zone will cover certain navigable waters in the path of the rocket being launched. The safety zone will cover approximately 720 square miles, and is rectangular in shape. It will directly abut the RNA established in § 165.775. U.S.-flagged vessels will be prohibited from entering the temporary safety zone unless authorized by the District Commander or the Captain of the Port (COTP) of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. The coordinates of the safety zone are provided in the regulatory text.

No U.S. flagged vessel will be permitted to enter the safety zone without obtaining permission from the District Commander, the COTP, or a designated representative.

Once the Artemis I rocket has been launched, the safety zone will no longer be needed. At that time, the Coast Guard will notify the public of the cancellation of the safety zone through a Broadcast Notice to Mariners (BNM), and through social media.

V. Regulatory Analyses

We developed this temporary interim 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 temporary interim rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zone. The temporary safety zone is limited in size and location to only to the areas where Artemis I rocket launch may pose a danger to vessels outside the RNA. The temporary safety zone is limited in scope, as vessel traffic will be able to safely transit around the zone. The safety zone is expected to be enforced for approximately 5 to 6 hours for each launch window. After the launch has been completed, and there is no longer any danger to vessels from the Artemis I rocket, the Coast Guard will cancel the safety zone and notify waterway users and vessels of its cancellation. The safety zone will ensure the protection of vessels and waterway users from the potential hazards created by the launch of the Artemis I rocket.

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 temporary interim 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 temporary interim 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 (Public Law 104–121), we want to assist small entities in understanding this temporary interim rule. If the temporary interim 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 temporary interim rule or any policy or action of the Coast Guard.

C. Collection of Information

This temporary interim 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 temporary interim 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 temporary interim 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 temporary interim 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 temporary interim rule will not result in such an expenditure, we do discuss the effects of this temporary interim rule elsewhere in this preamble.

F. Environment

We have analyzed this temporary interim 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 temporary interim rule involves enforcement of a safety zone for approximately 5 to 6 hours during the duration of the rocket launch of the Artemis I rocket. The zone will be activated as many times as it is needed until the rocket is launched, or 11:59 p.m. on December 31, 2022, whichever comes first. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0799 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; section 8343 of Pub. L. 116–283, 134 Stat. 3388, 4710; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T07–0799 to read as follows:

§ 165.T07–0799 Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, Cape Canaveral, FL.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at Point 1: 28°47′51″ N, 080°27′43.4″ W, thence to Point 2: 28°59′24.5″ N, 080°03′37.4″ W, thence to Point 3: 28°29′1.2″ N, 079°53′33.7″ W, thence to Point 4: 28°30′38.3″ N, 080°18′13.9″ W, following along the 12 nautical mile line back to Point 1. These coordinates are based on WGS 84.

(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, U.S. Space Force range safety personnel, and Federal, State, and local officers designated by or assisting the District Commander or the Captain of the Port (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, U.S.-flagged vessels may not enter the safety zone described in paragraph (a) of this section unless authorized by the District Commander, the COTP, or a designated representative. All foreign-flagged vessels are encouraged to remain outside the safety zone.

(2) To seek permission to enter, transit through, anchor in or remain within the safety zone contact Sector Jacksonville by telephone at (904) 714–7557 or the District Commander's or the COTP's representative via VHF–FM radio on channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the District Commander, the COTP, or a designated representative.

(d) *Notification of enforcement.* (1) The District Commander, or the COTP, or a designated representative will inform the public of the activation of the safety zone described in paragraph (a) of this section by Notice of Enforcement that will be issued once the Coast Guard receives notification of the launch date from NASA.

(2) The Coast Guard intends to enforce the temporary safety zone for the Artemis I rocket launch with assets on scene to ensure the temporary safety zone is cleared of persons and vessels.

(3) Once the Artemis I rocket has been launched, the safety zone will no longer be needed. At that time, the Coast Guard will notify the public of the cancellation of the safety zone through a Broadcast Notice to Mariners on VHF–FM channel 16, and through social media.

(e) *Effective period.* This section is effective from 12:01 a.m. on September 27, 2022, through 11:59 p.m. on December 31, 2022.

Dated: September 22, 2022.

Brendan C. McPherson,

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

[FR Doc. 2022–21206 Filed 9–29–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0828]

RIN 1625–AA00

Safety Zone; Mutiny Bay, Whidbey Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Mutiny Bay, Whidbey Island, Washington. The temporary safety zone encompasses all waters within a 1000-yard radius of a barge anchored in Mutiny Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associate with operations to recover a downed aircraft in this area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Puget Sound (COTP).

DATES: This rule is effective without actual notice from September 30, 2022 through 10 p.m. October 5, 2022. For the purposes of enforcement, actual notice will be used from 1 a.m. September 26, 2022 until September 30, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0828 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 Chief Warrant Officer William E. Martinez, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Puget Sound
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 the Coast Guard was notified of the planned salvage operation on September 16, 2022 and immediate action is needed to respond to the potential safety hazards associated with the recovery of the downed aircraft. It is impracticable to publish an NPRM because we must establish this safety zone by the start of recovery operations on September 26, 2022.

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

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 COTP

has determined that potential hazards associated with salvage operations starting September 26, 2022 will be a safety concern for anyone within a 1000-yard radius of the barge anchored in Mutiny Bay, Whidbey Island. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during ongoing salvage operations.

IV. Discussion of the Rule

This rule establishes a safety zone from 1 a.m. on September 26, 2022 until 10 p.m. October 5, 2022. The safety zone will cover all navigable waters from surface to the bottom within a 1000-yard radius of the barge anchored in position 47°59′25.994″ N 122°35′06.817″ W in Mutiny Bay, Whidbey Island, Washington. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during salvage operations of a downed aircraft. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone may be suspended early at the discretion of the COTP .

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.

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 Mutiny Bay, Whidbey Island for a total of 10 days and operations may be suspended early at the discretion of the COTP. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about 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 with a duration of 10 days or until salvage operations are completed. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination will be produced. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0828 to read as follows:

§ 165.T13–0828 Safety Zone; Mutiny Bay, Whidbey Island, WA.

(a) *Location.* The safety zone is located within the Captain of the Port Puget Sound (COTP) zone (See 33 CFR 3.65–10) and will encompass all navigable waters, from the surface to the bottom, within a 1000-yard radius of a barge anchored in position 47°59′25.994″ N 122°35′06.817″ W in Mutiny Bay, Whidbey Island, WA. These coordinates are based 1984 World Geodetic System (WGS 84).

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(d) *Enforcement period.* This safety zone is in effect from 1 a.m. on September 26, 2022 through 10 p.m. on October 5, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Broadcast Notice to Mariners on VHF–FM marine channel 16.

Dated: September 26, 2022.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2022–21204 Filed 9–29–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0758]

RIN 1625–AA00

Safety Zone; 25th Annual Key West Paddle Classic, Atlantic Ocean, Key West, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on certain navigable waters of the Atlantic Ocean and adjoining waterways, surrounding Key West, Florida, during the 25th Annual Key West Paddle Classic event. The safety zone is necessary to ensure the safety of event participants and spectators. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

DATES: This rule is effective from 7 a.m. until 3 p.m. on October 1, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0758 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Hailye Reynolds, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768; e-mail *SKWWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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 it is impracticable and contrary to the public interest. The primary justification for this action is that the Coast Guard did not receive final details from the event sponsor for this year's event within the reporting threshold requirements. The Coast Guard has an existing safety zone for this event in 33 CFR 165.786, Table to § 165.786, Item No. 4.1; however, the existing regulation only covers the event when it is scheduled on the last weekend of April. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of participants, spectators, the public, and vessels transiting the waters adjacent to Key West, FL.

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 the event is taking place on October 1, 2022, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with open water swim events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the

general public, vessels and the marine environment in the navigable waters within the safety zone during the 25th Annual Key West Paddle Classic paddle board event.

IV. Discussion of the Rule

This rule establishes a moving safety zone on October 1, 2022, for a period of 8 hours, from 7 a.m. until 3 p.m. The moving safety zone will cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach. The event is scheduled to take place from 7 a.m. until 3 p.m. Approximately 150 paddle boarders and five safety vessels are anticipated to participate in the event. The safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the event. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

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 the following reasons: (1) the temporary safety zone will only be enforced for a total of 8 hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 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. The regulated area will impact small designated areas of the Atlantic Ocean and Gulf of Mexico around Key West, Florida, for only 8 hours and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T07–0758 to read as follows:

§ 165.T07–0758 Safety Zone; 25th Annual Key West Paddle Classic, Key West, FL.

(a) *Location.* The following regulated area is a moving safety zone: All waters extending 100 yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach.

(b) *Definition.* As used in this section, the term *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 Key West (COTP) in the enforcement of the safety zone.

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

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. until 3 p.m. on October 1, 2022.

Dated: September 27, 2022.

J. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2022–21340 Filed 9–29–22; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2020–1]

Remitter Payment Options and Deposit Account Requirements

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending certain regulations related to remitter payments for its services and requirements for maintaining a deposit account. This final rule adopts regulatory language set forth in the Office's February 2022 notice of proposed rulemaking with some modifications in response to public comments. These amendments consolidate regulatory provisions related to payment options and update existing regulations to articulate current Office practices. They also simplify requirements for maintaining a deposit account and clarify procedures related to noncompliant accounts.

DATES: Effective October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 2022, the Office published a notice of proposed rulemaking (''NPRM'') to amend its regulations governing remitter payments for its services and requirements for maintaining a deposit account.[1] Specifically, the Office proposed to consolidate all regulations related to the types of payment methods it will accept for services into a single set of provisions to ensure consistency as it moves to an integrated enterprise information technology (IT) system.[2] The proposed rule enumerated three methods accepted for remitting a payment: (1) Electronic payments through *Pay.gov;* (2) mailed payments by check or money order; and (3) in-person payments by check, money order, credit or debit card, or currency, by appointment at the Office's Public Information Office.[3]

Next, the Office proposed simplifying requirements to maintain a deposit account, and set forth rules establishing the procedures for account closures. The proposed rule set forth five substantive amendments. First, the Office recommended eliminating the requirement that a deposit account holder engage in a minimum number of transactions per year.[4] Second, the Office proposed imposing a service charge of $25 for each month a deposit account balance fell below $450.[5] Third, the NPRM provided for the inactivation of deposit accounts if (1) there has been no activity in the account for 24 months; (2) the account holder overdraws the account; or (3) the account has insufficient funds at the end of the month to pay the service charge for an account balance below $450.[6] Fourth, the Office proposed codifying its procedures for closing noncompliant

[1] 87 FR 6452 (Feb. 4, 2022).

[2] *Id.* at 6454.

[3] *Id.* at 6454.

[4] *Id.* at 6454.

[5] *Id.* at 6454.

[6] *Id.* at 6454–55.

and inactivated deposit accounts, including the circumstances for closure and the process for returning any remaining funds to the account holder.[7] Finally, the Office recommended eliminating from the regulations references to automatic replenishment of deposit accounts, based on its understanding at the time the NPRM was prepared that *Pay.gov* lacked the ability to provide such an automatic replenishment feature.[8]

The Office received four relevant comments in response to the NPRM. Author Services, Inc. endorsed the proposed amendments in full, and had no further suggestions.[9] The Motion Picture Association, Inc. (''MPA''), expressing no objection to the proposed rules regarding deposit accounts, noted that its members valued the automatic-replenishment feature available in other areas of the Office (*e.g.,* the eCo system for registrations), and ''urge[d] the Office to ensure that the payment systems in any updated versions of the registration and recordation systems include an automatic replenishment feature as well.'' [10] Finally, Copyright Alliance and Marilyn D. Cameron submitted comments that were generally supportive of the amendments in the proposed rule, but contained several concerns that are addressed in more detail below.[11]

II. Discussion

A. Remitter Payment Options

Most commenters supported the provisions of the proposed rule that consolidate the regulations governing the types of payment methods the Office will accept for services.[12] Accordingly, those provisions are adopted in the final rule without alteration.

In addition to ''applaud[ing] the Office's efforts to modernize and consolidate regulations regarding payment options for Copyright Office services,'' Copyright Alliance encouraged the Office to ''accommodate the diversity of copyright owners engaging with the Office's systems'' by permitting payment using ''prepaid cards and other widely accepted online payment options, like PayPal, Zelle, Venmo, and CashApp.'' [13] The Office appreciates Copyright Alliance's concern and shares its aim to broaden participation in the copyright system. While payment using prepaid cards is not currently supported by *Pay.gov,* the Office will enable the *Pay.gov* feature to accept Paypal and Amazon digital wallet options to better accommodate a broader range of stakeholders. The Office will continue to consider additional options to improve accessibility as *Pay.gov* expands its capabilities.

B. Deposit Accounts

With respect to the proposed rule simplifying requirements for maintaining deposit accounts, commenters universally endorsed the Office's amendment to eliminate the minimum-transaction-per-year requirement.[14] Copyright Alliance expressed appreciation for the ''Office's decision to continue allowing stakeholders to use deposit accounts, as well as the decision to eliminate the requirement for a minimum number of transactions per year.'' [15]

However, some commenters disagreed with the Office's proposal to assess a service charge of $25 for each month a deposit account balance fell below $450. One commenter opposed the fee outright, calling it ''[t]oo much'' as ''many individuals find a minimum deposit amount a challenge, especially during the pandemic.'' [16] Copyright Alliance argued that imposing a service charge ''without first notifying the account holder that the account has fallen below the minimum balance'' ''will only exacerbate a problem . . . that might otherwise be easily resolved.'' [17] Commenters encouraged the Office to ''notify the account holder so that they can add the necessary funds'' before assessing any service charge [18] and before any account inactivation.[19] Finally, Copyright Alliance probed whether the Office could permit automatic replenishment, advising, ''rather than assessing a $25 service charge if an account falls below the minimum balance, the regulations should permit automatic replenishment of those deposit accounts.'' [20]

As an initial matter, it has been and will remain the Office's practice to send automatic notifications to account holders when their balances drop below the minimum balance. Similarly, notifications are and will be provided before the Office takes any action to inactivate or close an account. To ensure that these notifications are received, the Office encourages account holders to keep their contact information current.

Regarding the service charge, the Office proposed the fee to incentivize deposit account holders to maintain sufficient funds in deposit accounts and avoid any overdraft of the account, which is subject to a penalty (currently $285). Ultimately, the Office's goal is to help account holders maintain sufficient balances to prevent additional penalties and delays. Copyright Alliance's comment led the Office to consider again the availability of an automatic replenishment option. While our initial inquiry had suggested that this option was not available,[21] further investigation has determined that an automatic recurring payment option (via ACH transactions) can be used to automatically replenish deposit accounts through *Pay.gov*. Therefore, the Office will test the practical application of such a feature for deposit accounts. Once confirmed operable, the Office will announce details on how this feature can be used.

In addition, given commenters' concern regarding the potential financial burden for those account holders who find the minimum balance amount difficult to maintain, we will pause the implementation of any service charge to further assess whether there is a need for measures to incentivize balance maintenance. Accordingly, the final rule omits any reference to the proposed service charge, and instead provides that the Office will automatically notify account holders when their accounts fall below a minimum balance of $450, as the previous rule prescribed.

Finally, while commenters did not raise specific concerns regarding the NPRM's inactivation and closure procedures beyond objecting to inactivation or closure based on a failure to pay the proposed service charge, the Office acknowledges their general desire for more communication regarding account status issues. Thus, in addition to removing references to the previously proposed service charge, the

[7] *Id.* at 6455.

[8] 87 FR 6455.

[9] Author Services, Inc. Comments at 1.

[10] MPA Comments at 2.

[11] Copyright Alliance Comments at 1–4; Marilyn D. Cameron Comments at 1.

[12] *See e.g.,* Copyright Alliance Comments at 1. Marilyn D. Cameron requested that ''all other rules attached to the announcement and do not have any relevance to Remitter Payment Options and Deposit Account Requirements, for example Section 201.33, be removed from this round of comments and a new **Federal Register** proposal written for a later date.'' Marilyn D. Cameron Comments at 1. Because each of the proposed amendments, including the amendment proposed to § 201.33(e) regarding the fee and method of payment, relate to payment options available to remitters, the Office declines to remove the rule.

[13] Copyright Alliance Comments at 1–2.

[14] *See e.g., id.* at 2.

[15] *Id.*

[16] Marilyn D. Cameron Comments at 1.

[17] Copyright Alliance Comments at 2–3.

[18] *Id.* at 3.

[19] Marilyn D. Cameron Comments at 1.

[20] Copyright Alliance Comments at 3.

[21] 87 FR 6454.

final rule explains that the Office will automatically notify account holders when their accounts are made inactive due to prolonged inactivity or overdrawal of the account. Reflecting current procedures, the final rule further provides that an inactive deposit account will only be closed 30 days from the date of the inactivation notice if there continues to be no activity or if insufficient funds remain in the account.

C. Technical Changes

Lastly, the final rule includes a few non-substantive technical revisions to clarify certain phrases and terms.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

■ 2. Amend § 201.6 by:
■ a. Revising paragraphs (a) and (b); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 201.6 Payment and refund of Copyright Office fees.

(a) *In general*—(1) *Electronic payments.* All fees for online applications and services must be paid by electronic payment through *Pay.gov*.

(2) *Mailed payments.* All fees mailed to the Copyright Office should be in the form of a money order or check payable to the U.S. Copyright Office. Currency will not be accepted; any payment received in currency will be refunded via check, and the registration or other service request will not be processed. Where the statutory fee is submitted in the form of a check, the registration of the copyright claim or other record made by the Office is provisional until the funds associated with the check are received. In the event the fee is not paid, the provisional registration or other record shall be expunged.

(3) *In-person payments.* All fees for services rendered in person at the Copyright Office Public Information Office must be paid by cash, money order, check, or credit or debit card.

(4) *Foreign remittances.* Foreign remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office are not acceptable. International checks and money orders must be drawn from a United States bank and payable in United States dollars for the full amount of the fee required. Uncertified checks are accepted subject to collection.

(5) *Other.* In addition to the payment options in paragraphs (a)(1) through (3) of this section, payment for any application or service can be made using a Copyright Office deposit account.

(b) *Deposit accounts*—(1) *Establishment.* Persons or firms may prepay copyright expenses by establishing a deposit account.

(2) *Minimum balance.* The Office will automatically notify the deposit account holder when the account goes below a minimum balance of $450.

(3) *Contact information.* (i) Deposit account holders are responsible for keeping contact information with the Copyright Office current.

(ii) If the Copyright Office is unable to correspond with the deposit account holder (*e.g.,* due to returned/undeliverable postal or email), the Office will deem the deposit account undeliverable.

(4) *Inactivation.* (i) The Copyright Office will inactivate a deposit account if there has been no activity in the account for 24 months.

(ii) The Copyright Office will inactivate a deposit account if the deposit account holder overdraws his or her account.

(iii) The Copyright Office will automatically notify the deposit account holder when the account has been inactivated.

(5) *Closure.* (i) An inactive deposit account will be closed no sooner than 30 days from the date of the inactivation notice if there continues to be no activity in the account or if insufficient funds remain in the deposit account after the deposit account holder overdraws the account.

(ii) The Copyright Office may permanently close a deposit account if the deposit account holder overdraws his or her account twice in any calendar year.

(iii) An undeliverable deposit account as defined in paragraph (b)(3)(ii) of this section will be closed after the Copyright Office has made at least three unsuccessful attempts, including at least one attempt by phone if a deposit account holder provided a telephone number, to correspond with the deposit account holder. Attempts at corresponding with the deposit account holder may be considered unsuccessful if the postal or email correspondence is returned as undeliverable.

(iv) Any funds remaining in a closed deposit account will be applied to any pending or processed service request(s) for which payment is due. If there are insufficient funds to cover the total of all fees due for any service, the service request(s) will not be processed.

(v) Any balance remaining in a closed deposit account will be refunded to the account holder in accordance with Copyright Office policies. Unredeemed refunds will be handled in accordance with Library of Congress and U.S. Treasury rules and policies.

(vi) The Copyright Office may refer any overdraft in a closed deposit account for collections.

(6) *Further information.* For information on deposit accounts, see Circular 5 on the Copyright Office's website, or request a copy at the address specified in § 201.1(b).

* * * * *

■ 3. Amend § 201.33 by revising paragraph (e) to read as follows:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

* * * * *

(e) *Fee.* The filing fee for recording Notices of Intent to Enforce is prescribed in § 201.3(c).

* * * * *

§ 201.39 [Amended]

■ 4. Amend § 201.39 by removing paragraph (g)(3).

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 5. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 [Amended]

■ 6. Amend § 202.3 by removing paragraph (b)(2)(i)(C) and redesignating paragraph (b)(2)(i)(D) as paragraph (b)(2)(i)(C) and removing the parenthetical authority citation at the end of the section.

■ 7. Amend § 202.12 by revising paragraph (c)(2) to read as follows:

§ 202.12 Restored copyrights.

* * * * *

(c) * * *

(2) *Fee.* The filing fee for registering a copyright claim in a restored work is prescribed in § 201.3(c) of this chapter.

* * * * *

■ 8. Amend § 202.16 by revising paragraph (c)(5) to read as follows:

§ 202.16 Preregistration of copyrights.

* * * * *

(c) * * *

(5) *Fee.* The filing fee for preregistration is prescribed in § 201.3(c) of this chapter.

* * * * *

■ 9. Amend § 202.23 by revising paragraph (e)(2) to read as follows:

§ 202.23 Full term retention of copyright deposits.

* * * * *

(e) * * *

(2) Payment in the amount prescribed in § 201.3(d) of this chapter payable to the U.S. Copyright Office, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full-term retention has been granted for a particular copyright deposit.

* * * * *

Dated: September 22, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–21294 Filed 9–29–22; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0391; FRL–10080–02–R4]

Air Plan Approval; Kentucky; Source Specific Revision for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a revision to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on March 29, 2021. The revision was submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (District or Jefferson County), which has jurisdiction over Jefferson County, Kentucky. The revision removes from the SIP several source-specific permits for a facility, which were previously incorporated by reference, and replaces them with a Board Order with emissions controls that are at least as stringent as those in the permits.

DATES: This rule is effective October 31, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2017–0391. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Huey can be reached by telephone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, EPA approved a revision to the Kentucky SIP that added an emission reduction plan in the form of a ''bubble rule'' for the Alcan Foil Products [1] (now LL Flex) plant in Louisville, Kentucky. *See* 55 FR 20268 (May 16, 1990). That revision allowed the facility to average, or ''bubble,'' volatile organic compound (VOC) emissions from nine rotogravure printing/coating machines in lieu of achieving compliance with Jefferson County's SIP-approved reasonably available control technology (RACT) regulation—Regulation 6.29, ''Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography''—which limits VOC emissions from graphic arts facilities on a line-by-line [2] basis. The revision treated the nine machines as one affected facility and required the facility to achieve a VOC emissions reduction equivalent to at least 20 percent of the baseline emissions from the affected units.[3] Jefferson County included these provisions in various permits issued by the District to Alcan Foil Products (now LL Flex), and those permits were incorporated by reference into the Kentucky SIP. Specifically, the May 16, 1990, approval incorporated into the SIP the Air Pollution Control District of Jefferson County's (APCDJC's) Permits 103–74, 104–74, 105–74, 106–74, 110–74, and 111–74, as effective on February 28, 1990.

Subsequently, in 1998, EPA approved a revision to the Kentucky SIP that provided additional flexibilities to the plant operations of Reynolds Metals Company (now LL Flex) so that customer printing demands could be satisfied. *See* 63 FR 1927 (January 13, 1998). The revision lowered the daily maximum VOC emissions allowed from the facility's nine rotogravure printing/coating machines but retained the tons per year limit for the facility while increasing the number of operating days allowed. Additionally, the revision removed the maximum operating speeds for the nine machines. Jefferson County included these provisions in permits issued by the District to Reynolds Metals Company, and those permits were incorporated by reference into the Kentucky SIP. Specifically, the January 13, 1998, approval incorporated into the SIP updates to the previously approved APCDJC Permits 103–74, 104–74, 105–74, 106–74, 110–74, and 111–74, as effective on April 16, 1997.

On March 29, 2021, Jefferson County submitted a new SIP revision to remove the permits previously incorporated by

[1] The company, originally named Alcan Foil Products, later became Reynolds Metals Company, then LL Flex, LLC.

[2] ''Line'' refers to ''printing line,'' which is defined, in part, as ''a series of processes, and the associated process equipment, used to apply, dry, and cure an ink containing a VOC.'' *See* Definition 1.8 of Regulation 6.29, Section 1.

[3] As described in the notice of proposed rulemaking for the 1990 action, ''Baseline emissions were determined using the lowest of actual, SIP-allowable or RACT-allowable emissions for each source involved in the bubble, with values for the actual quantity of VOC content of coatings used based on the most recent two-year period.'' *See* 55 FR 2842 (January 29, 1990).

reference and replace them with a Board Order, which was issued by the District to the facility on November 18, 2020, and which imposes control requirements that are at least as stringent as those in the old permits.[4] [5] This way, the Board Order becomes the source-specific SIP-approved provision, and any future amendments made by the District to the facility's permits for matters that are unrelated to the Board Order conditions will not necessitate a SIP revision.

On August 1, 2022 (87 FR 46916) EPA published a Notice of Proposed Rulemaking (NPRM), which included additional background on the changes and EPA's analysis. Comments on the August 1, 2022, NPRM were due on or before August 31, 2022. No comments were received on the August 1, 2022, NPRM, and EPA is now finalizing the changes as proposed.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Jefferson County's source-specific Board Order for LL Flex, LLC, effective on November 18, 2020. Also in this document, EPA is approving the removal of APCDJC Permits 103–74, 104–74, 105–74, 106–74, 110–74, and 111–74, effective on February 28, 1990, for Alcan Foil Products and effective on April 16, 1997, for the Reynolds Metals Company, from the Kentucky SIP, which were previously incorporated by reference in accordance with requirements of 1 CFR 51.5. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by 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 EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[6]

III. Final Action

EPA is approving the March 29, 2021, SIP revision and replacing the existing source-specific permits for the LL Flex facility in the Kentucky SIP with the November 18, 2020, Board Order.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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 29, 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 in 40 CFR Part 52

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

Dated: September 15, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

[4] The November 18, 2020, Board Order also formally changes the name of the owner to LL Flex, LLC, and the name of the facility to LL Flex, LLC, Louisville Laminating Plant.

[5] Found under 40 CFR 52.920(d), the old permits being removed were approved in the Kentucky SIP as ''Operating Permits for nine presses at the Alcan Foil Products facility—Louisville'' and ''Reynolds Metals Company.''

[6] *See* 62 FR 27968 (May 22, 1997).

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 S—Kentucky

■ 2. In § 52.920(d), amend the table by:

■ a. Removing the entries for ''Operating Permits for nine presses at the Alcan Foil Products facility—Louisville'' and ''Reynolds Metals Company''; and

■ b. Adding a new entry for ''Board Order for LL Flex, LLC'' at the end of the table.

The addition reads as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
*	*	*	*	*
Board Order for LL Flex, LLC	N/A	11/18/2020	9/30/2022, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2022–20431 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0167; FRL–10150–02–R4]

Air Plan Approval; Kentucky; Boyd and Christian County Limited Maintenance Plans for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving state implementation plan (SIP) revisions submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), on March 29, 2021. The SIP revisions include the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) Limited Maintenance Plans (LMPs) for the Kentucky portion (hereinafter referred to as the Boyd County Area) of the Huntington-Ashland, WV-KY 1997 8-hour ozone maintenance area (hereinafter referred to as the Huntington-Ashland, WV-KY Area) and the Kentucky portion (hereinafter referred to as the Christian County Area) of the Clarksville-Hopkinsville, TN-KY 1997 8-hour ozone maintenance area (hereinafter referred to as the Clarksville-Hopkinsville, TN-KY Area). EPA is approving Kentucky's LMPs for the Boyd County and Christian County Areas because they provide for the maintenance of the 1997 8-hour ozone NAAQS within these Areas through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Boyd County and Christian County Areas federally enforceable as part of the Kentucky SIP.

DATES: This rule is effective October 31, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2022–0167. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 can either be retrieved electronically via *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at *ortizborrero.josue@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[1] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and for individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Huntington-Ashland, WV-KY Area, which consists of Boyd County in Kentucky and Cabell County and Wayne County in West Virginia, and the Clarksville-Hopkinsville, TN-

[1] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed another review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

KY Area, which consists of Christian County in Kentucky and Montgomery County in Tennessee, as nonattainment for the 1997 8-hour ozone NAAQS. Those designations became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004).

Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the Boyd County and Christian County Areas as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. These designations became effective on July 20, 2012. *See* 77 FR 30088 (May 21, 2012). On November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Boyd County and Christian County Areas were again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018, for both areas. *See* 82 FR 54232 (November 16, 2017).

Pursuant to the CAA, a state may submit a request that EPA redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met the criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.[2] One of the criteria for redesignation is for the area to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans. The Calcagni memo [3] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas can meet the CAA section 175A requirement to provide for maintenance by showing that they are unlikely to violate the NAAQS in the future, using information such as the area design values [4] when they are well below the standard and have been historically stable.[5] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking a LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking a LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[6] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[7]

In this case, EPA is approving Kentucky's LMPs because the Commonwealth has made a showing, consistent with EPA's prior LMP guidance, that ozone concentrations in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas are well below the 1997 8-hour ozone NAAQS and have been historically stable and that the Commonwealth has met the other maintenance plan requirements. The Cabinet submitted the LMPs for the Boyd County and Christian County Areas to fulfill the CAA's second maintenance plan requirement.

On May 20, 2005, and September 29, 2006, the Cabinet submitted requests to EPA to redesignate the Christian County and Boyd County Areas, respectively, to attainment for the 1997 8-hour ozone NAAQS. Those submittals included plans, for inclusion in the Kentucky SIP, to provide for maintenance of the 1997 8-hour ozone NAAQS in the Clarksville-Hopkinsville, TN-KY Area through 2016 and in the Huntington-Ashland, WV-TN Area through 2018. EPA approved the Boyd County and the Christian County Areas' Maintenance Plans and the Commonwealth's requests to redesignate these Areas to attainment for the 1997 8-hour ozone NAAQS, effective September 4, 2007, and February 24, 2006, respectively. *See* 72 FR 43172 (August 3, 2007) and 71 FR 4047 (January 25, 2006), respectively. Kentucky's March 29, 2021, submittal contains the second 10-year maintenance plans for the 20-year maintenance period of the 1997 8-hour ozone NAAQS to ensure continued maintenance for the Clarksville-Hopkinsville, TN-KY and Huntington-Ashland, WV-TN Areas.

Section 175A(b) of the CAA requires states to submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. However, EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for

[2] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[4] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[5] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas,'' from Sally L. Shaver, OAQPS, November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' from Joseph Paisie, OAQPS, October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas,'' from Lydia Wegman, OAQPS, August 9, 2001.

[6] The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

[7] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b). *See* 80 FR 12264, 12315 (March 6, 2015).

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on March 29, 2021, Kentucky submitted second maintenance plans for the Boyd County and Christian County Areas that show that the Areas are expected to remain in attainment of the 1997 8-hour ozone NAAQS through 2027 and 2026, respectively.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations well below the 1997 8-hour ozone NAAQS in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas, the Cabinet chose the LMP option for the development of second 1997 8-hour ozone NAAQS maintenance plans. On March 29, 2021, the Cabinet adopted the second 10-year 1997 8-hour ozone maintenance plans and also submitted the Boyd County and the Christian County Areas' LMPs to EPA as revisions to the Kentucky SIP.

In a notice of proposed rulemaking (NPRM), published on August 24, 2022 (87 FR 51933), EPA proposed to approve Kentucky's LMP because the State made a showing, consistent with EPA's prior LMP guidance, that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it met the other maintenance plan requirements. The details of Kentucky's submission and the rationale for EPA's action are explained in the NPRM. Comments on the August 24, 2022, NPRM were due on or before September 14, 2022. EPA did not receive any comments on the August 24, 2022, NPRM.

II. Final Action

EPA is approving the Boyd County and Christian County Areas' LMPs for the 1997 8-hour ozone NAAQS, submitted by the Cabinet on March 29, 2021, as revisions to the Kentucky SIP. EPA is approving the Boyd County and Christian County Areas' LMPs because they include an acceptable update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and essentially carry forward all of the control measures and contingency provisions relied upon in the earlier plans.

EPA also finds that the Boyd County and Christian County Areas qualify for the LMP option and that the Boyd County and Christian County Areas' LMPs adequately demonstrate maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes that the Boyd County and Christian County Areas' 1997 8-Hour Ozone LMPs are sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas, respectively, over the second 10-year maintenance period, through 2027 and 2026, respectively, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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 29, 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 in 40 CFR Part 52

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

Dated: September 23, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 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 S—Kentucky

■ 2. In § 52.920(e), amend the table by adding at the end of the table entries for ''1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Kentucky portion of the Huntington-Ashland, WV-KY Maintenance Area'' and ''1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Kentucky portion of the Clarksville-Hopkinsville, TN-KY Maintenance Area'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
* * *	*	*	*	*
1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Kentucky portion of the Huntington-Ashland, WV-KY Maintenance Area.	Boyd County	3/29/2021	9/30/2022, [Insert citation of publication].	
1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Kentucky portion of the Clarksville-Hopkinsville, TN-KY Maintenance Area.	Christian County	3/29/2021	9/30/2022, [Insert citation of publication].	

[FR Doc. 2022–21234 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0416; FRL–9820–02–R9]

Limited Approval, Limited Disapproval of California Air Plan Revisions; California Air Resources Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4, Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (Oil and Gas Methane Rule) into the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from crude oil and natural gas facilities. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a state rule that regulates these emission sources and identifies deficiencies with the rule that must be corrected for the EPA to grant full approval of the rule. We are also finalizing disapprovals of the reasonably available control technology (RACT) demonstrations for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) for sources covered by the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (Oil and Gas CTG) for the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), South Coast Air Quality Management District (SCAQMD), Ventura County Air Pollution Control District (VCAPCD), and the Yolo-Solano Air Quality Management District (YSAQMD).

DATES: This rule will be effective on October 31, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2022–0416. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4126 or by email at *law.nicole@epa.gov.* Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.* Sina Schwenk-Mueller, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4100 or by email at *SchwenkMueller.Sina@epa.gov.*

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

Table of Contents

I. Proposed Action

On May 12, 2022 (87 FR 29103), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Agency	Rule title	Adopted	Submitted
California Air Resources Board.	California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (Oil and Gas Methane Rule).	03/23/2017	12/11/2018

The submission also contained a staff report evaluating the Oil and Methane Rule against the Federal RACT standard, concluding that the Oil and Gas Methane Rule, in combination with applicable SIP-approved local air district rules, met the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry for SMAQMD, SJVAPCD, SCAQMD, VCAPCD, and YSAQMD.

We proposed a limited approval of the Oil and Gas Methane Rule because we determined that this rule strengthens the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not comply with the requirements of section 110 and part D of the Act. In addition, we proposed a disapproval of the RACT demonstrations for the 2008 and 2015 ozone NAAQS for sources covered by the Oil and Gas CTG for SMAQMD, SJVAPCD, SCAQMD, VCAPCD, and YSAQMD.

The provisions identified in our proposed limited disapproval of the Oil and Gas Methane Rule include the following:

Reoccurring Deficiencies

1. Subsections 95668(a)(2)(C), 95669(b)(1), and 95670(a)(1) include insufficiently specific exemptions for storage tanks or components ''approved for use by a local air district'' or ''subject to a local air district requirement.''

2. Subsections 95668(a), 95668(b)(4), and 95671 do not contain a requirement for initial and continuous compliance demonstration and do not specify test methods or reporting requirements.

3. The Rule provides exemptions from the vapor control requirements of the Rule for low use compressors in subsections 95668(c)(2)(A) and 95668(d)(2)(A) that has not been demonstrated to implement RACT.

4. In subsections 95668(c)(4)(F) and 95668(d)(9) the Rule potentially allows a leak to go unrepaired for an additional year after being identified.

5. Subsections 95668(c)(4)(B), 95668(d)(4), and 95668(g)(1) do not specify test methods or a calculation methodology for determining flow rate.

6. Subsections of 95668: (c)(3)(D)(1)(a), (c)(4)(D)(1)(a), (d)(6)(A)(1) and Subsections of 95669: (h)(4)(A)(1) and (i)(5)(A)(1) provide for an open ended, and potentially indefinite period during which a leak could remain unrepaired.

Rule Deficiencies by Section

95668 Standards

7. According to the 2016 Oil and Natural Gas CTG, storage vessels with a potential to emit at or greater than 6 tons per year (tpy) VOC are required to implement RACT-level control. It is not clear whether the Rule captures all storage vessels at oil and gas facilities that meet or exceed the CTG Potential to Emit (PTE) threshold because the Oil and Gas Methane Rule only requires evaluation of the separator and first tank connected to the separator, to determine if they fall above or below the 10 tpy methane emissions applicability threshold.

8. Subsection (a)(2)(A) exempts separator and tank systems that receive an average of less than 50 barrels of crude oil or condensate per day from the Oil and Gas Methane Rule's flash testing and vapor control requirements for storage vessels. By using the word ''or,'' this exemption potentially exempts tanks that receive a minor amount of either crude oil or condensate, but a significant quantity of the other organic liquid.

9. Subsections (a)(3) and (a)(4) require existing and new tanks that are not equipped with vapor collection systems (VCS) to comply with specified requirements for flash testing. The Oil and Gas Methane Rule requires tanks with emissions greater than 10 tpy of methane to meet specified vapor control requirements. The Oil and Gas Methane Rule does not specify requirements for how tanks equipped with vapor control determine their emissions to assess whether they must meet RACT-level control requirements.

10. Subsection (b)(4) includes an exemption for when the California Air Resources Board (CARB) Executive Officer makes a determination that controlling emissions is not possible. This provides insufficiently bounded director's discretion, and is not an exemption included in the CTG.

11. Subsections (c)(3)(B) and (c)(4)(B)(3) contain the term ''inspection period.'' The term is not defined.

95669 Leak Detection and Repair

12. Subsection (b)(7) includes an exemption that is not included in the CTG for one-half inch and smaller stainless steel tube fittings used to supply natural gas to equipment or instrumentation.

13. Subsection (i)(1) requires leaks of 1,000–9,999 parts per million (ppm) be repaired in 14 days, but the CTG recommends that within 5 days of the detected leak an attempt at repair be made.

14. The CTG contains a requirement to maintain a list of identification numbers for all the equipment subject to leak regulation. Subsection 95669 does not contain a similar requirement.

15. The CTG contains a requirement to maintain a list of equipment that is designated as ''unsafe to monitor.'' Subsection 95669 does not contain a similar requirement.

95671 Vapor Collection Systems and Vapor Control Devices

16. Subsection (f) allows VCS to be taken out of service for up to 30 calendar days per year while maintenance is performed. The State has not justified that a smaller amount of time, or less frequent interval is not reasonably available. Moreover, this maintenance requirement is not bounded by requirements specifying the necessity of taking the system out of service and minimizing the outage time.

95672 Record Keeping Requirements

17. Subsection 95672 does not contain specification on what type of records need to be kept.

Appendix C Test Procedure for Determining Annual Flash Emission Rate of Gaseous Compounds From Crude Oil, Condensate, and Produced Water

18. The flash emission test procedure established in Appendix C relies upon

several test methods that have not been approved by the EPA. In addition, paragraph 13 of Appendix C indicates that alternative test procedures, sampling methods, or laboratory methods may be used if written permission is obtained from CARB. This constitutes unapprovable director's discretion.

In addition to the deficiencies identified in the CARB Oil and Gas Methane Rule, the following deficiencies, organized by California District Rule, serve as additional bases for disapproval of the RACT demonstrations that the CARB Oil and Gas Methane Rule along with the associated California District Rules meet RACT for sources covered by the 2016 Oil and Gas CTG in the associated districts.

Sacramento Metropolitan AQMD

Rule 446: Storage of Petroleum Products

A. The State has not demonstrated that Rule 446 will capture all storage vessels at oil and gas facilities that meet or exceed the CTG PTE threshold because the applicability of Rule 446 is based on vapor pressure of the liquid stored and the CTG applicability is based on a PTE threshold.

B. The definition of ''gas tight'' in section 202 of Rule 446 is much higher than the 500 ppm threshold used in the CTG and other California district rules and does not represent RACT.

C. Rule 446 does not contain initial or continuous testing requirements to demonstrate compliance with the vapor control efficiency requirements. While Rule 446 does require inspections, it does not require recordkeeping of these inspections.

South Coast AQMD

Rule 463: Organic Liquid Storage and Rule 1178: Further Reductions of VOC Emissions From Storage Tanks at Petroleum Facilities

D. The State has not demonstrated that Rules 463 and 1178 will capture all storage vessels at oil and gas facilities that meet or exceed the CTG PTE threshold because the applicability of Rules 463 and 1178 is based on a tank's volumetric capacity and the CTG applicability is based on a PTE threshold.

San Joaquin Valley APCD

Rule 4623: Storage of Organic Liquids

E. The State has not demonstrated that Rule 4623 will capture all storage vessels at oil and gas facilities that meet or exceed the CTG PTE threshold because the applicability of Rule 4623 is based on a tank's volumetric capacity and the CTG applicability is based on a PTE threshold.

Rule 4401: Steam-Enhanced Crude Oil Production Wells

F. Rule 4401 does not require controls that are reasonably available because the leak inspection requirements in Rule 4401 are less stringent than the CTG and other comparable California district rules.

Ventura County APCD

Rule 71.1: Crude Oil Production and Separation and Rule 71.2 Storage of Reactive Organic Compound Liquids

G. The State has not demonstrated that Rules 71.1 and 71.2 will capture all storage vessels at oil and gas facilities that meet or exceed the CTG PTE threshold because the applicability of Rules 71.1 and 71.2 is based on the vapor pressure of the liquid stored and a tank's volumetric capacity, while the CTG applicability is based on a PTE threshold.

H. Rule 71.1 does not contain inspection or initial compliance determination requirements.

Yolo Solano AQMD

Rule 2.21: Organic Liquid Storage and Transfer

I. The State has not demonstrated that Rule 2.21 will capture all storage vessels at oil and gas facilities that meet or exceed the CTG PTE threshold because the applicability of Rule 2.21 is based on vapor pressure of the liquid stored and a tank's volumetric capacity, while the CTG applicability is based on a PTE threshold.

Our proposed action and technical support document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During the comment period we received one comment submitted by Earthjustice on behalf of the Center for Biological Diversity, Central California Asthma Collaborative, Central Valley Air Quality Coalition, Clean Water Action, Earthjustice, Little Manila Rising, Mi Familia Vota, and Sierra Club (Kern-Kaweah Chapter) (collectively, the ''Valley Coalition''). The comment and our response are summarized below.

Comment: The Valley Coalition comment addresses ''what appears to be a systematic failure to control significant leaks of volatile organic compounds (VOCs) from oil and gas wells in neighborhoods in Bakersfield, California.'' The commenters state that the leaks may fall within loopholes in the Oil and Gas Methane Rule, and related local air district rules. They claim that such loopholes would preclude a finding that the State is implementing RACT.

The Valley Coalition writes that at least 30 idle wells in and nearby to Bakersfield neighborhoods are leaking methane, with many wells near homes, and leaking methane at volumes that would make the air near the escaping gas explosive. The comment describes the discovery of the leaks, and states that two wells were hissing audibly within a few hundred feet of homes, and that concentrations near other wells exceeded 50,000 parts per million.

The Valley Coalition asserts that the leaks are undoubtedly also sources of VOCs and that ''EPA therefore must assume these leaks are significant sources of VOCs.'' The commenters state that there are approximately 38,000 idle wells in California and cite a study that, according to the commenters, suggests that idle well leaks are widespread.

The commenters encourage the EPA to learn about where the leaks fall within the regulatory scheme, and then require state and local air districts to remedy any loopholes or inadequacies that may allow such leaks. Commenters assert that ''[s]uch remediation plainly falls within the scope of the requirement in section 182(b)(2) of the Clean Air Act that the State implement RACT.''

The Valley Coalition also writes: ''Specifically, it appears that if a well within the jurisdiction of the San Joaquin Valley Unified Air Pollution Control District is used for oil with an American Petroleum Institute (API) gravity below 20 and is not steam-enhanced, that well is exempt from leak detection and repair (LDAR) requirements under the Oil and Gas Methane Rule and the San Joaquin Valley Air District's relevant local rules. The Oil and Gas Methane Rule itself, in Cal. Code Regs., title 17, section 95669(b)(2), exempts 'components found on tanks, separators, wells, and pressure vessels [ ] used exclusively for crude oil with an API gravity less than 20 averaged on an annual basis.' San Joaquin Valley Rule 4401—which regulates VOC emissions from steam-enhanced crude oil production wells—applies only to components at wells that are steam-enhanced. And San Joaquin Valley Rule 4409—which regulates VOC emissions from leaking components at light crude oil production facilities, natural gas production facilities, and natural gas processing facilities—does

not apply to facilities used for oil with an API gravity below 30 degrees.''

The commenters write that it appears that the Bakersfield wells, and potentially the majority of wells in California, fall within these exemptions. The Valley Coalition states that the Bakersfield wells at issue were not involved in steam injection, and that oil from two of the fields at issue had API gravities of 15.3 and 19.2. They note that in 2018, 68% of California's crude oil production was heavy (that is, with an API gravity between 10 and 22.3). Consequently, the commenters claim, exemptions for equipment with an API gravity below 20 ''could allow a vast proportion of California's oil production to escape LDAR requirements.''

The Valley Coalition writes that other loopholes and exemptions may exist and encourages the EPA to identify and close any such loopholes and inadequacies.

Response: With respect to the commenters' concerns regarding leaking wells, the EPA agrees that if wells are leaking methane, they are likely to also leak VOCs. As a result, leaking wells might implicate the RACT requirement. We note, however, that this rulemaking evaluates California's Oil and Gas Methane Rule submittal with respect to a specific part of section 182(b)(2)'s RACT requirement. Section 182(b)(2) obligates states with nonattainment areas that are classified as Moderate or above to submit SIP revisions that require the implementation of RACT in these areas with respect to two distinct categories of VOC sources: sections 182(b)(2)(A) and (B) govern VOC sources covered by a CTG, whereas section 182(b)(2)(C) relates to major stationary sources of VOCs (*i.e.,* ''non-CTG major sources''). As explained in our proposed action, California submitted the Oil and Gas Methane Rule for the purpose of satisfying the RACT requirements for the first category, *i.e.,* VOC sources covered by a CTG (namely, the EPA's 2016 Oil and Gas CTG). Therefore, this rulemaking evaluates California's submissions with respect to CAA section 182(b)(2)(A) and the provisions of the 2016 Oil and Gas CTG and does not evaluate the submissions with respect to section 182(b)(2)(C) and non-CTG major sources in Moderate and above nonattainment areas.

The above point regarding the scope of this rulemaking is important because idle wells are not within the scope of the EPA's 2016 Oil and Gas CTG. Section 9.1 of the 2016 Oil and Gas CTG provides: ''[f]or purposes of this CTG, the emissions and programs to control emissions discussed herein would apply to the collection of fugitive emissions components at well sites with an average production of greater than 15 barrel equivalents per well per day.'' The CTG further explains that ''[f]or the purposes of this CTG, fugitive emission reduction recommendations would not apply to well sites that only contain wellheads.'' [1] We further note that no other CTGs apply to emissions from idle wells. As a result, the commenters' concerns regarding idle wells relate to emissions from sources not covered by the CTG (*i.e.,* well sites with average production less than or equal to 15 barrel equivalents per day) and are therefore beyond the scope of this rulemaking.[2]

Although the Valley Coalition comment focuses on idle wells, the comment also identifies specific exemptions that the commenters suggest may constitute loopholes or inadequacies in the regulatory scheme that could allow a large number of wells in California to escape LDAR requirements. To the extent that these exemptions may represent an inadequacy in the regulation of non-idle wells that are covered by the CTG, the validity of these exemptions is within the scope of the present rulemaking.

The commenters raise the following exemptions as potential loopholes in the regulatory scheme:

(1) CARB Oil and Gas rule section 95669(b)(2), exemption for ''components found on tanks, separators, wells, and pressure vessels [ ] used exclusively for crude oil with an API gravity less than 20 averaged on an annual basis.''

(2) San Joaquin Valley Rule 4401, which regulates VOC emissions from steam-enhanced crude oil production wells. applies only to components at wells that are steam-enhanced.

(3) San Joaquin Valley Rule 4409, which regulates VOC emissions from leaking components at light crude oil production facilities, natural gas production facilities, and natural gas processing facilities, does not apply to facilities used for oil with an API gravity below 30 degrees.

The commenters assert that this combination of regulations exempts from LDAR requirements wells in the San Joaquin Valley that are not steam-enhanced and that produce oil from fields with an API gravity below 20 degrees.

The exemption found in section 95669(b)(2) is not found in the CTG; the CTG does not provide for an exemption for wells based on API gravity or volatility of the oil in the produced field. Although a state may provide for an exemption for sources that are not exempted in the CTG, if it chooses to do so it must provide an analysis of why the exemption is consistent with the RACT requirement. The State has not done so here.[3] Although some of the active wells producing oil from fields with API gravity less than 20 degrees are regulated by SIP-approved local district rules, the submission does not analyze the impacts of this exemption or show how it is consistent with the section 182(b)(2) RACT requirement.

Based on the submission before us, the scope of the exemption from LDAR requirements is unclear in terms of number of wells and associated emissions. Similarly, the submission does not address the cost of potential monitoring and control options. As a result, the EPA agrees that CARB's submission does not sufficiently demonstrate that RACT is in place for wells that are subject to the section 95669(b)(2) exemption. We recognize that, given the low volatility of the oil in such fields, the State may have valid reasons for exempting such components. Analyses demonstrating that controls are not cost effective, or that emissions are minimal may, in some instances, satisfy the RACT requirement. However, no such analysis was included with the submission of the Oil and Gas Methane Rule.

Therefore, in addition to the grounds for disapproval that we identified in our notice of proposed rulemaking, we are also disapproving the CTG RACT demonstrations for the relevant districts based on the inclusion of an exemption for production from fields with API gravity below 20 degrees, that has not been justified as RACT.

III. EPA Action

No comments were submitted that change our proposed simultaneous limited approval and limited disapproval of the rule or our disapproval of the RACT demonstrations for the 2008 and 2015 ozone National Ambient Air Quality

[1] 2016 Oil and Gas CTG, 9–1.

[2] The EPA notes that the Biden Administration recently awarded $560 million to plug orphaned oil and gas wells across 24 states, including California. See U.S. Department of the Interior Press Release ''Through President Biden's Bipartisan Infrastructure Law, 24 States Set to Begin Plugging Over 10,000 Orphaned Wells'' August 25, 2022, *https://www.doi.gov/pressreleases/through-president-bidens-bipartisan-infrastructure-law-24-states-set-begin-plugging.*

[3] In its submission, the State indicated that components associated with heavy oil emit less total hydrocarbons than components found in gas or other liquid service. CARB Staff Report: Initial Statement of Reasons, Date of Release: May 31, 2016, 55. The fact that these wells emit less per well is not, on its own, sufficient to justify the exemption.

Standards (NAAQS) for sources covered by the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (Oil and Gas CTG) for the SMAQMD, SJVAPCD, SCAQMD, VCAPCD, and the YSAQMD. As noted in Section II of this rule, in addition to the deficiencies listed in the TSD, and summarized in Section I above, subsection 95669(b)(2) includes an exemption for components used for crude oil with an API Gravity less than 20 that is not in the CTG, that the State has not justified as meeting the RACT requirement.

Because the rule strengthens the SIP and is largely consistent with the relevant CAA requirements, the EPA is finalizing a limited approval of the submitted rule, as authorized in sections 110(k)(3) and 301(a) of the Act. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. Due to the deficiencies enumerated above, the EPA is simultaneously finalizing a limited disapproval of the rule as authorized under sections 110(k)(3) and 301(a).

As a result, the EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) will be imposed six months after the offset sanction. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

Note that the submitted rule has been adopted by CARB, and the EPA's final limited disapproval does not prevent CARB from enforcing it. The limited disapproval also does not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities as described in Section I of this preamble and set forth in the amendments to 40 CFR part 52 below. Therefore, these materials have been approved by EPA for inclusion in the SIP, 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 this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.[4] The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

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: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of

[4] 62 FR 27968 (May 22, 1997).

achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220a is amended by adding at the end of table 1 to paragraph (c) an undesignated center heading and entries ''95665'' through ''95677,'' ''Appendix A,'' ''Appendix B,'' and ''Appendix C'' to read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 10 (Climate Change); Article 4 (Regulations to Achieve Greenhouse Gas Emission Reductions); Subarticle 13 (Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities).				
95665	Purpose and Scope	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95666	Applicability	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95667	Definitions	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95668	Standards	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95669	Leak Detection and Repair	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95670	Critical Components	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95671	Vapor Collection Systems and Vapor Control Devices.	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95672	Record Keeping Requirements	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95673	Reporting Requirements	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95674	Implementation	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95675	Enforcement	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95676	No Preemption of More Stringent Air District or Federal Requirements.	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
95677	Severability	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Appendix A	Record Keeping and Reporting Forms	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
Appendix B	Calculation for Determining Vented Natural Gas Volume from Liquids Unloading of Natural Gas Wells.	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.
Appendix C	Test Procedure for Determining Annual Flash Emission Rate of Gaseous Compounds from Crude Oil, Condensate, and Produced Water.	3/23/2017	[INSERT **Federal Register** CITATION], 9/30/2022.	Submitted on December 11, 2018 as an attachment to a letter dated December 4, 2018.

[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

* * * * *

■ 3. Section 52.237 is amended by adding paragraphs (b)(1)(ii) and (b)(3) through (6) to read as follows:

§ 52.237 Part D disapproval.

* * * * *

(b) * * *

(1) * * *

(ii) RACT Determinations for the source category Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) for the 2008 and 2015 ozone NAAQS, as contained in the submittal titled ''California Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities,'' dated December 4, 2018, as adopted March 23, 2017 and submitted on December 11, 2018.

* * * * *

(3) San Joaquin Valley Air Pollution Control District.

(i) RACT Determinations for the source category Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) for the 2008 and 2015 ozone NAAQS, as contained in the submittal titled ''California Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities,'' dated December 4, 2018, as adopted March 23, 2017 and submitted on December 11, 2018.

(ii) [Reserved]

(4) South Coast Air Quality Management District.

(i) RACT Determinations for the source category Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) for the 2008 and 2015 ozone NAAQS, as contained in the submittal titled ''California Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities,'' dated December 4, 2018, as adopted March 23, 2017 and submitted on December 11, 2018.

(ii) [Reserved]

(5) Ventura County Air Pollution Control District.

(i) RACT Determinations for the source category Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) for the 2008 and 2015 ozone NAAQS, as contained in the submittal titled ''California Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities,'' dated December 4, 2018, as adopted March 23, 2017 and submitted on December 11, 2018.

(ii) [Reserved]

(6) Yolo-Solano Air Quality Management District.

(i) RACT Determinations for the source category Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) for the 2008 and 2015 ozone NAAQS, as contained in the submittal titled ''California Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities,'' dated December 4, 2018, as adopted March 23, 2017 and submitted on December 11, 2018.

(ii) [Reserved]

[FR Doc. 2022–20870 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0092; FRL–10017–02–R4]

Air Plan Approval; Kentucky; Emissions Inventory Requirements for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet) on December 22, 2021, to address the base year emissions inventory requirements for the 2015 8-hour ozone national ambient air quality standard (NAAQS) for Kentucky counties in the Cincinnati, Ohio-Kentucky 2015 8-hour ozone NAAQS nonattainment area (hereinafter referred to as the Cincinnati, OH-KY Area), and for Kentucky counties in the Louisville, Kentucky-Indiana 2015 8-hour NAAQS nonattainment area (hereinafter referred to as the Louisville, KY-IN Area). Specifically, EPA is finalizing approval of Kentucky's SIP revision addressing the emissions inventory requirements for the 2015 8-hour ozone nonattainment areas for the portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt, Jefferson, and Oldham Counties in the Louisville, KY-IN Area. These requirements apply to all ozone nonattainment areas. This action is pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective October 31, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0092. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation

Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 parts per million (ppm) to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).[1] Effective August 3, 2018, EPA designated the seven-county Cincinnati, OH-KY Area as a Marginal ozone nonattainment for the 2015 8-hour ozone NAAQS.[2] *See* 83 FR 25776 (June 4, 2018). In the same action, EPA also designated the five-county Louisville, KY-IN Area as a Marginal ozone nonattainment for the 2015 8-hour ozone NAAQS.[3] The Cincinnati, OH-KY Area and the Louisville, KY-IN Area were designated nonattainment for the 2015 8-hour ozone NAAQS using 2014–2016 ambient air quality data. On December 22, 2021, Kentucky submitted a SIP revision addressing the base year emissions inventory requirements related to the 2015 8-hour ozone NAAQS for the Cincinnati, OH-KY Area and the Louisville, KY-IN Area.[4] CAA section 182(a)(1) requires the submission of a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a ''base year inventory.''

On July 26, 2022, EPA published a notice of proposed rulemaking (NPRM) proposing to approve the December 22, 2021, SIP revision regarding the base year emissions inventory submittal for the Cincinnati, OH-KY Area and the Louisville, KY-IN Area for the 2015 8-hour ozone NAAQS. *See* 87 FR 44310. More information regarding EPA's analysis of Kentucky's December 22, 2021, SIP revision and how Kentucky addresses the above-mentioned requirements is provided in EPA's July 26, 2022, NPRM. Comments on EPA's July 26, 2022, NPRM were due on August 25, 2022. No comments were received on EPA's July 26, 2022, NPRM.

II. Final Action

EPA is approving the aforementioned SIP revision submitted by the Commonwealth of Kentucky addressing the base year emissions inventory requirements for the 2015 8-hour Ozone NAAQS for the Cincinnati, OH-KY Area and the Louisville, KY-IN Area. EPA has determined that the Cincinnati, OH-KY Area and the Louisville, KY-IN Area base year emissions inventory requirements SIP revision meets the requirements of sections 110 and 182 of the CAA with respect to the 2015 ozone NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and

[1] The 2015 Ozone NAAQS was promulgated on October 1, 2015, published on October 26, 2015, and effective December 28, 2015.

[2] The Cincinnati, OH-KY Area consists of the following counties: Boone (partial), Campbell (partial), and Kenton (partial) in Kentucky and the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio. EPA took action on the 2015 8-hour ozone NAAQS nonattainment area emissions inventory requirements for Butler, Clermont, Hamilton, and Warren Counties in Ohio in a separate action. *See* 86 FR 12270 (March 3, 2021).

[3] The Louisville, KY-IN Area consists of Bullitt, Jefferson, and Oldham Counties in Kentucky and Clark and Floyd Counties in Indiana. EPA took action on the 2015 8-hour ozone NAAQS nonattainment area emissions inventory requirements for Clark and Floyd Counties in Indiana in a separate action. *See* 87 FR 39750 (July 5, 2022).

[4] On October 15, 2020, the Cabinet submitted a certification that included other required elements for ozone nonattainment areas pursuant to CAA section 182(a)(2)(C), Nonattainment New Source Review, and CAA section 182(a)(3)(B), Emissions statements. On August 12, 2020, KDAQ submitted a certification on behalf of the Louisville Metro Air Pollution Control District that included the required elements for ozone nonattainment areas pursuant to CAA section 182(a)(3)(B), Emissions statements. On April 5, 2022, EPA took final action on the portion of Kentucky's October 15, 2020, submission related to CAA section 182(a)(2)(C), Nonattainment New Source Review. *See* 87 FR 19649. On March 9, 2022, EPA took final action on the District's August 12, 2020, submission related to CAA section 182(a)(3)(B), Emissions statements. *See* 87 FR 13177. On April 26, 2022, EPA took final action on the portion of Kentucky's October 15, 2020, submission related to CAA section 182(a)(3)(B), Emissions statements. *See* 87 FR 24429.

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 29, 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(s) or action(s). This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 23, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 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 S—Kentucky

■ 2. In § 52.920(e), amend the table by adding entries for ''Emissions Inventory for the 2015 8-hour Ozone NAAQS for Northern Kentucky'' and ''Emissions Inventory for the 2015 8-hour Ozone NAAQS for Louisville'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	*	*	*	*
Emissions Inventory for the 2015 8-hour Ozone NAAQS for Northern Kentucky.	Boone, Campbell, and Kenton Counties (partial) in Kentucky portion of Cincinnati, OH-KY Area.	10/15/2021	9/30/2022, [Insert citation of publication].	
Emissions Inventory for the 2015 8-hour Ozone NAAQS for Louisville.	Jefferson County in its entirety, and Bullitt and Oldham Counties (partial) in Kentucky portion of Louisville, KY-IN Area.	10/15/2021	9/30/2022, [Insert citation of publication].	

[FR Doc. 2022–21236 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R04–OAR–2021–0363; FRL–10016–02–R4]

Air Plan and Operating Permit Program Approval; TN; Electronic Notice (e-Notice) Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of changes to the Tennessee State Implementation Plan (SIP) and the Tennessee title V operating permit program (title V) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Division of Air Pollution Control on March 23, 2021, and supplemented on July 1, 2022. These changes address the public notice rule provisions for the New Source Review (NSR) and title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (e-notice) and removing the mandatory requirement to provide public notice of a draft air permit in a printed newspaper. EPA is approving these changes as they are consistent with the CAA and implementing federal regulations.

DATES: This rule is effective October 31, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0363. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via telephone at (404) 562–8994 and via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized changes to the public notice provisions for the NSR, title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule changes removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and title V rules, such as Tennessee's EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice, however, nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use ''a consistent noticing method'' for all permit notices under the specific permitting program. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit for the duration of the public comment period.

Through a notice of proposed rulemaking (NPRM), published on July 25, 2022, EPA proposed to approve changes to Tennessee's Rule 1200–03–09–.01, *Construction Permits;* and Rule 1200–03–09–.02, *Operating Permits,* of Chapter 1200–03–09, *Construction and Operating Permits,* as submitted by TDEC on March 23, 2021. *See* 87 FR 44076. These changes establish a revised method of publication of public notices for public hearings and public comment periods and change how documents related to permit proceedings will be available for public inspection. Additional details on Tennessee's March 23, 2021, SIP revision, as well as EPA's analysis of the changes, can be found in the July 25, 2022, NPRM. Comments on the July 25, 2022, NPRM were due on or before August 25, 2022. No adverse comments were received on the July 25, 2022, NPRM, so EPA is now finalizing the approval of the changes as proposed.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, and the July 25, 2022, NPRM, EPA is finalizing the incorporation by reference of Rule 1200–03–09–.01, *Construction Permits,* state effective January 21, 2021, into the Tennessee SIP.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 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 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 EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

III. Final Action

As described in the July 25, 2022, NPRM, EPA is approving the changes to Chapter 1200–03–09, *Construction and Operating Permits;* Rule 1200–03–09–.01, *Construction Permits* of the Tennessee SIP; and Rule 1200–03–09–.02, *Operating Permits,* of the Tennessee title V program, as submitted on March 23, 2021, and supplemented on July 1, 2022.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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 29, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not

[1] EPA is not incorporating the January 21, 2021, state effective version of certain provisions of 1200–03–09–.01 identified below in the amended Explanation column of the SIP table at 40 CFR 52.2220(c).

[2] *See* 62 FR 27968 (May 22, 1997).

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, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 23, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 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 RR—Tennessee

■ 2. In § 52.2220(c), amend Table 1 by revising the entry for ''Section 1200–3–9–.01'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* *
Section 1200–3–9–.01	Construction Permits.	1/21/2021	9/30/2022, [Insert citation of publication].	Except for 1200–03–09–.01(1)(a), (1)(d), (1)(f), (4)(b)24(i)(XVII), (4)(b)29, (4)(b)47(i)(IV), (4)(j)3, (4)(k), (5)(b)1(x)(I)(VII), and (5)(b)2(iii)(II), which have a state effective date of 4/24/2013; 1200–3–9–.01(1)(j), which is not incorporated into the SIP; and the $PM_{2.5}$ SILs (found in 1200–3–9–.01(5)(b)1(xix)) and the SMC (found in 1200–3–9–.01(4)(d)6(i)(III)) provisions, as promulgated in the October 20, 2010, $PM_{2.5}$ Increments-SILs–SMC Rule.
*	*	*	*	* *

* * * * *

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. Amend appendix A to part 70 by adding paragraph (a)(3) under the heading for ''Tennessee'' to read as follows:

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

* * * * *

Tennessee

(a) * * *

(3) Revisions to Rule 1200–03–09–.02, *Operating Permits,* of the Tennessee title V program, submitted on March 23, 2021, and supplemented on July 1, 2022, with a state effective date of January 21, 2021, to allow for electronic notice of operating permits, are approved on September 30, 2022.

* * * * *

[FR Doc. 2022–21235 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0520; FRL–10174–01–OCSPP]

Propamocarb; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propamocarb in or on onion, bulb, crop subgroup 3–07A; leek; and kale. Bayer Crop Science LP requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 30, 2022. Objections and requests for hearings must be received on or before November 29, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0520, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0520 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 29, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of Administrative Law Judges encourages parties to file electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0520, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 21, 2021 (86 FR 72200) (FRL–8792–06–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8891) by Bayer Crop Science LP, 800 N Lindbergh Blvd., St Louis, MO 263167. The petition requested that 40 CFR 180.499 be amended by establishing tolerances for residues of the fungicide propamocarb, in or on onion, bulb, crop subgroup 3–07A at 2 parts per million (ppm); leek at 30 ppm; and kale at 20 ppm. That document referenced a summary of the petition prepared by Bayer Crop Science LP, the registrant, which is available in the docket, *https://www.regulations.gov.* This supersedes the paragraph published in the **Federal Register** on September 22, 2021 (86 FR 52624) (FRL–8792–03–OCSPP). There were no comments received in response to either notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

A. Statutory Background

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections of the rule that would repeat what has been previously published in tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular pesticide chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings and republishing the same sections is unnecessary and duplicative. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a number of tolerance rulemakings for propamocarb, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to propamocarb and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

B. Toxicological Profile

For a summary of the Toxicological Profile of propamocarb, see Unit III.A. of the December 5, 2019, rulemaking (84 FR 66616) (FRL–10000–33).

C. Toxicological Points of Departure/Levels of Concern

For a summary of the Toxicological Points of Departure/Levels of Concern used for the risk assessment, see Unit III.B. of the February 7, 2017, rulemaking (82 FR 9519) (FRL–9957–68).

D. Exposure Assessment

Much of the exposure assessment remains the same, although the dietary exposure and risk assessments for propamocarb were updated. These updates are discussed in this section; for a description of the rest of EPA's approach to and assumptions for the exposure assessment, see Unit III.C. of the December 5, 2019, rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposures to residues of propamocarb on imported commodities of onion, bulb, crop subgroup 3–07A, leek and kale. The assessment used the same assumptions as the December 5, 2019, rule concerning tolerance-level residues, default, and empirical processing factors and 100% crop treated (PCT) for all commodities in both the acute and chronic dietary exposure assessments.

Drinking water, non-occupational, and cumulative exposures. Drinking water and non-occupational exposures are not impacted by the tolerances for imported commodities, and thus have not changed since the last assessment. For a summary of the dietary exposures from drinking water, see Unit III.C.2. of the December 5, 2019, rulemaking. Propamocarb is registered for use on golf course turf resulting in potential residential post-application dermal exposure. Because the Agency has not identified a dermal endpoint, a quantitative residential dermal exposure assessment was not necessary and was not conducted. EPA's conclusions concerning cumulative risk remain unchanged from Unit III.C.4. of the December 5, 2019, rulemaking.

Safety factor for infants and children. EPA continues to conclude that there is reliable data showing that the safety of infants and children would be adequately protected if the Food Quality Protection Act (FQPA) Safety Factor (SF) were reduced from 10X to 1X for all exposure scenarios. The reasons for that decision are articulated in Unit III.D in the December 5, 2019, rulemaking.

Aggregate risks and Determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 42% of the aPAD for all infants, the most highly exposed subpopulation. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 54% of the cPAD for females 13 to 49 years old, the most highly exposed subpopulation.

Because no short-term or intermediate term adverse effect was identified, propamocarb is not expected to pose a short-term or intermediate-term risk.

Additionally, based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, propamocarb is not expected to pose a cancer risk to humans. Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to propamocarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the December 5, 2019, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for propamocarb in or on onion, bulb, crop subgroup 3–07A at 2 ppm; leek at 30 ppm; and kale at 20 ppm. The U.S. tolerances are harmonized with the relevant Codex MRLs.

V. Conclusion

Therefore, tolerances are established for residues of propamocarb in or on onion, bulb, crop subgroup 3–07A at 2 ppm; leek at 30 ppm; and kale at 20 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In

addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.499, amend Table 1 to Paragraph (a) by adding in alphabetical order the entries ''Kale'', ''Leek'', and ''Onion, bulb, crop subgroup 3–07A'' and footnote 1 to read as follows:

§ 180.499 Propamocarb; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (A)

Commodity	Parts per million
* * * * *	
Kale[1]	20
* * * * *	
Leek[1]	30
Onion, bulb, crop subgroup 3–07A[1]	2

TABLE 1 TO PARAGRAPH (A)—Continued

Commodity	Parts per million
* * * * *	

[1] There are no U.S. registrations for these commodities as of September 30, 2022.

* * * * *

[FR Doc. 2022–21186 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 18–89; DA 22–967; FR ID 106418]

Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of Their Status Update Filing Obligation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) reminds Recipients in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission (Commission or FCC) every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires. Because Recipients' applications were approved on July 15, 2022, all initial status updates are due on October 13, 2022.

DATES: The final rule is effective on September 30, 2022. All initial status updates are due on October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Callie Coker, Wireline Competition Bureau, at 202–418–2793, *Callie.Coker@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's document in WC Docket No. 18–89; DA 22–967, released on September 16, 2022. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/supply-chain-reimbursement-program-status-update-deadline-reminder.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. By this document, the Bureau reminds Recipients in the Reimbursement Program of their obligation to file status updates with the Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires. Because Recipients' applications were approved on July 15, 2022, all initial status updates are due on October 13, 2022. As required by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks Act), the status updates must inform the Commission about the work of the Recipient to permanently remove, replace, and dispose of the covered communications equipment or services, which for the purposes of the Reimbursement Program means all communications equipment or services produced or provided by Huawei Technologies Company or ZTE Corporation and obtained on or before June 30, 2020 (covered communications equipment or services.

2. *Background.* As directed in the Secure Networks Act, the Commission established the Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk. In the *2020 Supply Chain Order,* 86 FR 2904 (January 13, 2021), the Commission established and adopted rules for the Reimbursement Program, revised these rules in the *2021 Supply Chain Order,* 86 FR 46995, August 23, 2021, and subsequently provided additional guidance on the application, reimbursement, and disposal process. On July 15, 2022, the Bureau issued decisions approving and denying applications submitted for Reimbursement Program support. Recipients were announced in a Public Notice released by the Bureau on July 18, 2022.

3. The Secure Networks Act requires that ''[n]ot less frequently than once every 90 days beginning on the date on which the Commission approves an application for a reimbursement under the [Reimbursement] Program, the recipient of the reimbursement shall submit to the Commission a status update on the work of the recipient to permanently remove, replace, and dispose of the covered communications equipment or services.'' The Secure Networks Act also provides that ''[n]ot

earlier than 30 days after the date on which the Commission receives a status update,'' the Commission ''shall make such status update public on the website of the Commission.'' In the *2020 Supply Chain Order,* the Commission required Recipients to file the first status updates within 90 days of receiving their funding allocations.

4. *Status Updates Obligation.* In accordance with the Secure Networks Act and Commission rules, each Recipient must regularly submit status updates beginning on October 13, 2022, and then every 90 days thereafter until the Recipient has notified the Commission of the completion of the permanent removal, replacement, and disposal of the covered communications equipment or service pursuant to a final certification. The Commission has interpreted the Secure Networks Act as permitting the Commission to require the first status update filing 90 days after the approval of applications for reimbursement, and also that the updates be filed at least every 90 days. In the *2020 Supply Chain Order,* the Commission noted that status updates ''will help the Commission monitor the overall pace of the removal, replacement, and disposal [(RRD)] process and whether recipients are acting consistently with the timelines provided to the Commission or whether unexpected challenges are causing delay.'' Furthermore, due to the importance of status updates in the Commission's role to monitor Recipients' implementation of their RRD timelines, we clarify that while Recipients may submit status updates more frequently than every 90 days, they *must* file status updates every 90 days to satisfy their obligation. As such, we make a procedural revision to § 1.50004(k) to clarify that Recipients must file a status update with the Commission 90 days after the date on which the Bureau approves the Recipient's application, and every 90 days thereafter until the expiration of the obligation to file. This revision is permissible without notice and comment because the timeframe in which a Recipient must file its periodic reports under § 1.50004(k) of the Commission's rules is a procedural rule. This rule modification will ensure that the status updates provide the Bureau with the information it needs to perform the assessments contemplated by the Secure Networks Act and the Commission's orders and rules. For instance, if a Recipient filed its first status update on October 13, 2022, and filed its second on October 27, 2022, the second report would provide little insight into how much progress the Recipient has made on the permanent removal, replacement, and disposal of the covered communications equipment and services in its network since the first 90-day reporting period.

5. Recipients are required to report on their ''work to permanently remove, replace, and dispose of the covered communications equipment or services'' in their communications networks, including the efforts undertaken and challenges encountered in performing that work. The status updates must also include whether the Recipient has: (1) fully complied with, or is in the process of complying with, all requirements of the Reimbursement Program; (2) fully complied with, or is in the process of complying with, the commitments made in the Recipient's application; (3) permanently removed from its communications network, replaced, and disposed of, or is in the process of permanently removing, replacing, and disposing of, all covered communications equipment or services that were in the Recipient's network as of the date of the submission of the Recipient's application; and (4) fully complied with, or is in the process of complying with, the timeline submitted by the Recipient in their application. We remind Recipients that timelines submitted to the Commission outlining the Recipient's RRD process must comport with the Recipient's deadline to complete the permanent removal, replacement, and disposal of covered communications equipment and services, which is one year from its initial distribution of a reimbursement. Recipients shall also report in detail on the availability of replacement equipment in the marketplace so the Commission can assess whether a general, six-month extension permitted by the statute is appropriate. Lastly, each status update must include a certification that affirms the information in the update is accurate.

6. The Bureau issued decisions approving and denying applications submitted for Reimbursement Program support on July 15, 2022. As such, Recipients must submit their first status updates on October 13, 2022, and thereafter every 90 days until the expiration of the obligation to file. The obligation to file status updates expires after the Recipient has notified the Commission of the completion of the permanent removal, replacement, and disposal of the covered communications equipment or service pursuant to a final certification. Recipients will submit status updates through the online portal, *https://fccprod.servicenowservices.com/scrp* (SCRP Online Portal) by completing FCC Form 5640 Part K: Status Updates.

7. *Public Posting and Requests for Confidentiality.* Consistent with the Secure Networks Act, the Bureau will make the Recipients' status updates public by publishing them on the Commission's website no earlier than 30 days after the 90-day filing deadline. A link to the public status updates will be provided on the Commission's Reimbursement Program web page, *https://www.fcc.gov/supplychain.* For administrative ease, we clarify that if a Recipient opts to file multiple status updates within a particular 90-day period (*e.g.,* a status update filed at the 30-day mark prior to filing the mandatory status update at the 90-day mark), we will post all status updates filed for a given 90-day period to the Commission's website no earlier than 30 days after the close of that period. We also correct a discrepancy between § 1.50004(k)(2) of the Commission's rules and section 4(d)(8)(B) of the Secure Networks Act regarding the timing by which the Commission must post the status updates to its website. To comply with the Secure Networks Act, we clarify that the Bureau will publicly post the status update filings on the Commission's website no earlier than 30 days after the close of the 90-day period covered by the status update. This revision is permissible without notice and comment because § 1.50004(k)(2) is a procedural rule. Further, we find that notice and comment is not necessary under the ''good cause'' exception of the Administrative Procedure Act because the revision modifies the rule to be consistent with the statutory requirement.

8. Consistent with this requirement, we remind Recipients that status updates submitted to the Commission are *public.* We believe that most Recipients will be able to comply with the content requirements for status updates without including details that the Commission has determined are presumptively confidential. For instance, we believe that Recipients may comply with the content requirements of status updates without disclosing vendor price quotes; invoices; detailed accounting information on the covered communications equipment and services removed, replaced, and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained using Reimbursement Program funds; the address, latitude/longitude of equipment or service locations; sensitive information in removal or replacement plans; specific equipment or service types; or the specific details

of removal, replacement, and disposal timeliness. Recipients that need to include confidential information to accurately and fully report on the status of their removal, replacement, and disposal work, any challenges encountered in performing that work, or other status report content requirements must request confidential treatment of those details pursuant to § 0.459 of the Commission's rules. In addition to the content requirements of § 0.459 of the Commission's rules, Recipients should include the SCRP application numbers applicable to the status update and the Recipient's FCC Registration number in their requests for confidential treatment. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18–89 in the Commission's Electronic Comments Filing System (ECFS), *https://www.fcc.gov/ecfs.* Recipients should file any such requests for confidential treatment concurrently with submission of the corresponding status update on the SCRP Online Portal. Recipients must attach to their filings a version of their status updates that redacts the specific information for which they are seeking confidential treatment. Recipients may download a PDF copy of their completed status updates from the SCRP Online Portal to redact and submit with requests for confidential treatment. We remind Recipients that requests for confidential treatment and associated redactions that are overbroad or otherwise inconsistent with the Commission's rules will be rejected. The Bureau will post the redacted version of a status update for which confidential treatment has been sought on the Commission's website.

9. The final regulations at the end of this document reflect the two procedural rule changes for the Reimbursement Program adopted herein. The updated rules will become effective upon publication in the **Federal Register**.

10. *Additional Information and Resources.* Recipients with questions may contact the Fund Administrator Help Desk by email at *SCRPFundAdmin@fcc.gov* or by calling (202) 418–7540 from 9:00 a.m. ET to 5:00 p.m. ET, Monday through Friday, except for Federal holidays. General information and Commission documents regarding the Reimbursement Program are available on the Reimbursement Program web page, *https://www.fcc.gov/supplychain.*

11. The Commission will not send a copy of this document to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

List of Subjects in 47 CFR Part 1

Communications, Communications common carriers, Communications equipment, Telecommunications, Telephone.

(47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted)

Federal Communications Commission.

Pamela Arluk,

Chief, Competition Policy Division, Wireline Competition Bureau.

Final Regulations

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.50004 by revising paragraphs (k) introductory text and (k)(2) to read as follows:

§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program.

* * * * *

(k) *Status updates.* Reimbursement Program recipients must file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification.

* * * * *

(2) The Wireline Competition Bureau will publicly post on the Commission's website the status update filings no earlier than 30 days after submission.

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[FR Doc. 2022–21197 Filed 9–29–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 21–346; PS Docket No. 15–80; ET Docket No. 04–35; FCC 22–50; FR ID 103483]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) takes steps to improve the reliability and resiliency of commercial wireless networks by codifying key provisions of the 2016 Wireless Resiliency Cooperative Framework (Framework). The Commission mandates key provisions of the Framework for all facilities-based wireless providers, expands the conditions that trigger its activation, adopts testing and reporting requirements, and codifies these modifications in a new ''Mandatory Disaster Response Initiative'' (MDRI).

DATES: The final rule is effective October 31, 2022.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Erika Olsen, Acting Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2868 or via email at *Erika.Olsen@fcc.gov* or Logan Bennett, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790 or via email at *Logan.Bennett@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (RO), FCC 22–50, adopted June 27, 2022, and released July 6, 2022. The full text of this document is available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-22-50A1.pdf.* When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554.

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

Synopsis

1. This document requires that all facilities-based mobile wireless providers, including each such signatory to the Framework, comply with the MDRI. As explained below, we find that the incremental costs imposed on facilities-based mobile wireless providers by these new requirements

will be minimal in many cases and, even when significant, will be far outweighed by the nationwide benefits.

A. Mandating the Framework

2. The *Resilient Networks* notice of proposed rulemaking (*Resilient Networks NPRM*) (86 FR 61103, November 5, 2021) sought comment on whether providers should be required to implement the Framework's provisions and, if so, which providers should be subject to the requirements. We require that all facilities-based mobile wireless providers comply with the MDRI, which, among other elements, codifies the Framework's existing provisions. We defer for later consideration whether some similar construct to the Mandatory Disaster Response Initiative (MDRI) should be extended to entities outside of facilities-based mobile wireless providers in the manner described in the *Resilient Networks NPRM.* Many commenters address the merits and drawbacks of mandating the Framework's provisions for entities beyond the wireless industry, but this item addresses requirements for facilities-based mobile wireless providers only. We also defer for later consideration the proposals in the *Resilient Networks NPRM* related to promoting situational awareness during disasters and addressing power outages.

3. We find it appropriate to apply this requirement to all facilities-based mobile wireless providers. We recognize the merits of the current Framework and agree with the commenters who argue that its provisions would be more effective if they were expanded to include entities beyond the Framework's current signatories. We observe that the existing Framework, which was developed specifically for use in facilities-based mobile wireless networks, would be more effective and valuable if extended to all providers operating those types of networks.

4. We make these requirements mandatory for all facilities-based mobile wireless providers. No commenter took issue with the Commission's authority to require facilities-based mobile wireless providers to implement the Framework. A number of commenters agree that the Framework's requirements should be mandatory for current signatories and other facilities-based mobile wireless providers. Our approach in this document is consistent with Verizon's view that the Framework ''could apply to all wireless providers,'' AT&T's observation that the Framework could be applied to non-Framework signatories who are capable of roaming, and Public Knowledge's view that the Framework should be extended to at least the entire wireless industry. The California Public Utilities Commission (CPUC) opines that a mandatory approach would make reporting more effective and consistent, incentivize action from those providers that currently do not undertake Framework-like steps in the aftermath of disasters, create more accountability, and close a disparity in service for customers based on whether their provider follows Framework-like measures or not. Public Knowledge believes that by mandating some of the Framework's requirements, including those related to entering into roaming agreements with other providers, the Commission would lower transactional costs faced by small- and medium-size (*e.g.,* regional) providers, making their adoption of such requirements more viable. We agree with these comments and find that mandating the Framework's requirements for a broader segment of the wireless industry, as provided by the MDRI we adopt in this document, will enhance and improve disaster and recovery efforts on the ground in preparation for, during, and in the aftermath of disaster events, including by increasing predictability and streamlining coordination in recovery efforts among providers. We find this to be true even for providers that already implement Framework-like steps. The efforts of all facilities-based mobile wireless service providers will be standardized based on a common set of required actions, thus better informing further Commission actions, enhancing resiliency, and better serving the public—particularly in times of need.

5. We reject the views of commenters who opine that codifying the Framework's requirements (*i.e.,* in the MDRI) would meaningfully limit the variety of solutions providers may implement or investments they may otherwise make in their network restoration and recovery efforts, *e.g.,* due to fears that the efforts would make them non-compliant with these rules. These rules provide baseline actions and assurances that facilities-based mobile wireless providers will undertake to ensure effective coordination and planning to maintain and restore network connectivity around disasters. Nothing in this rule prevents or disincentivizes a provider from implementing additional measures that exceed the requirements of the MDRI. The record does not identify specific scenarios where taking additional steps beyond those required by the MDRI would make a provider non-compliant with the rules adopted in this document. Nevertheless, in the case that a provider desires to implement practices that would improve network resiliency but that, in some way, run counter to the rules we adopt in this document, a provider may explain these considerations in detail pursuant to the Commission's usual rule waiver procedures under 47 CFR 1.3.

6. In making the MDRI mandatory for all facilities-based mobile wireless providers, regardless of their size, we reject the views of the Competitive Carriers Association (CCA) and NTCA—The Rural Broadband Association (NTCA) that smaller providers should be excepted from these rules because they need to prioritize work on their own networks or lack the resources required for compliance in the midst of emergencies. We find that, as a practical matter, such concerns can be mitigated. Each of the Framework's provisions involves significant preparation and coordination steps to be taken well in advance of, rather than in the midst of, an emergency. For example, establishing mutual aid agreements, entering into appropriate contractual agreements related to roaming, enhancing municipal preparedness, increasing consumer readiness and preparing and improving public awareness are steps that can be taken in advance of a disaster. Making these advance preparations would reduce the resources needed to comply with these requirements during an emergency. Moreover, as NTCA notes, small wireless providers already generally abide by the underlying principles of the Framework. Requiring small providers to take certain actions to ensure that their networks remain operational during emergencies will have the effect of streamlining and standardizing those efforts, thus making coordination with other entities, including other providers, more efficient than would be possible absent uniform rules. Indeed, signatories to the Framework now have a commendable eight-year track record demonstrating how the Framework operates and its benefits before, during, and after disaster events, which offers lessons that smaller providers can follow. Additionally, the provisions of the MDRI are framed in terms of reasonableness and technical feasibility, which further mitigates these concerns.

7. We note that these rules will require that providers negotiate roaming agreements, including related testing arrangements, and mutual aid provisions. We require that all such negotiations be conducted in good faith and note that any disputes will be addressed by the Commission on a case-by-case basis. We delegate authority to

the Enforcement Bureau to investigate and resolve such disputes.

8. This rule requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active. We clarify that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap. We agree with NTCA that roaming agreements should be bilateral to ensure that roaming is implemented across the nation on equitable terms and that no provider prevents its subscribers from roaming onto the networks of other providers when it would be technically feasible to do so during disasters and emergencies. We also require that each bilateral roaming agreement be executed and in place no later than the compliance date for the MDRI. This advance planning will allow, for example, time for the providers subject to the agreement to undertake initial testing and confirm that the roaming functionality works as intended and/or take remediation steps to address technical issues prior to the actual onset of a disaster or emergency event, as well as to swiftly implement roaming when the MDRI is triggered. Where a disaster can be reasonably anticipated, such as in the case of a hurricane, this will also permit advance coordination and planning among parties to the roaming under disaster arrangement (RuD). It is our expectation that these bilateral roaming requirements will increase consumer access to emergency communications services in the direst of circumstances, and to the maximum extent technically feasible, when life and property are at stake.

9. We find strong support in the record for mandating the roaming provision of the Framework in the MDRI. We agree with the Association of Public-Safety Communications Officials (APCO) that mandatory roaming is critical to ensuring that the public has access to 9–1–1 and other avenues of emergency communications, such as web-based services, that the public may rely upon for important information during an emergency, and with T-Mobile's general view that roaming should be promptly and broadly available to other providers on request absent extenuating circumstances and that such provisions should be made in anticipation of a disaster rather than only after a disaster has struck. We decline to adopt at this time T-Mobile's view that roaming should be required without permitting the host provider to perform a capacity evaluation. Requiring that RuDs be executed prior to disaster provides some assurance that issues can be identified and resolved prior to onset of the actual disaster event, reducing the chance that consumers will lose a life-saving lifeline when it is most needed. We also agree with Public Knowledge that providers located in vulnerable areas with less infrastructure are the least likely to have adequate roaming agreements in place with their neighboring providers absent an appropriate requirement.

10. We find that the roaming provision of the Framework has been sufficiently refined through eight years of implementation to provide a basis for its adoption in this document. CTIA—The Wireless Association (CTIA) observes, for example, that ''[w]ireless stakeholders have been developing new practices for enhancing the implementation and effectiveness of the Framework's RuD tool based on lessons learned during earlier disaster events.'' Further, CTIA offers as lessons learned that parties to roaming agreements should use uniform terminology throughout the RuD request process, establish provider connectivity and roaming terms before disasters occur, and conduct ''blue skies'' exercises with potential roaming partners. We agree with Verizon that roaming is workable, provided there is sufficient flexibility in the rules to account for a provider's technical and capacity issues, appropriate testing of capabilities, and safeguards to prevent opportunistic ''free riding'' roaming from providers who leverage another provider's more reliable network rather than invest in improving the reliability of their own. Accordingly, we reject AT&T's view that requiring roaming would necessarily be counterproductive or impair access to emergency services.

11. The roaming requirement adopted in this document requires facilities-based mobile wireless providers to provide for reasonable roaming under disaster arrangements (RuDs) when technically feasible, where: (i) a requesting provider's network has become inoperable and the requesting provider has taken all appropriate steps to attempt to restore its own network, and (ii) the provider receiving the request (home provider) has determined that roaming is technically feasible and will not adversely affect service to the home provider's own subscribers, provided that existing roaming arrangements and call processing methods do not already achieve these objectives and that any new arrangements are limited in duration and contingent on the requesting provider taking all possible steps to restore service on its own network as quickly as possible. We note that this industry-developed standard is a flexible one that allows providers to adapt to the particular circumstances that each disaster or exigency presents on a case-by-case basis. For example, what constitutes ''reasonable roaming,'' ''technically feasib[ility]'' and ''adverse[] affect'' will typically depend on facts and realities that cannot be determined universally in advance of a situation that gives rise to a particular MDRI activation. We find it useful, however, to provide clarification and basic guidance that would help providers understand what activities do meet this standard, where appropriate.

12. We clarify that ''reasonable roaming'' is roaming that does not disturb, but includes compliance with, the Commission's existing requirements that voice roaming arrangements be just, reasonable, and non-discriminatory, and that data roaming arrangements be commercially reasonable. We further clarify that ''technically feasible'' roaming for purposes of the Commission's disaster roaming rules requires a host provider to permit a requesting provider's customers to roam on the host provider's network on all compatible generations of network technology that it offers to its own customers. We note that requiring that a host provider support roaming regardless of network generation will contribute meaningfully to the Commission's objective of increasing consumer access to emergency communications services in the direst of circumstances, when life and property are at stake. Moreover, we find this would provide some measure of technological neutrality, as well account for the often-rapid evolution of wireless technology.

13. We also clarify that ''reasonable roaming'' would include providing a means of denying a roaming request in writing to the requesting provider, preferably with the specific reasons why roaming is infeasible. We believe that this approach would allow the requesting provider to evaluate the substance of the reasons so that it can make a renewed request at an appropriate time later, if warranted, and will create accountability on the part of requesting providers to ensure that denials are only issued when the circumstances truly warrant. Moreover, this approach, while optional, could help to provide insight into modifications that would facilitate a future roaming agreement or create a record in the event a dispute arises.

14. By way of example, we further clarify that an RuD that specifies that a provider may make a network health assessment within four hours post-disaster and activate its roaming functionality within three hours of completing the health assessment would generally be considered reasonable. In this respect, we agree with AT&T on the practicality of these time frames as best practices and note that appropriate time frames may depend on a specific scenarios and circumstances involved.

15. We find that the Commission could effectively ensure accountability on the part of providers and their compliance with this roaming provision, and could do so at minimal cost to providers, if the Commission had the ability to request copies of a provider's bilateral roaming agreements. We thus require that a provider retain RuDs for a period of at least one year after their expiration and supply copies of such agreements to the Commission promptly upon Commission request. If appropriate, such agreements may be submitted with a request for confidential treatment under § 0.459 of the Commission's rules.

16. This rule requires that each facilities-based mobile wireless provider enter into mutual aid arrangements with all other facilities-based mobile wireless providers from which it may request, or receive a request for aid during emergencies. Providers must have mutual aid arrangements in place within 30 days of the compliance date of the MDRI. This rule also requires providers to commit to engaging in necessary consultation where feasible during and after disasters, provided that the provider supplying the aid has reasonably first managed its own network needs. We find that requiring providers to coordinate and collaborate (*e.g.,* to determine ways in which excess equipment from one provider can be shared or exchanged with the other) has been successful during past disasters and serves the public interest during times of emergency. We find that, without this provision in place, providers are less likely to fully engage in such actions, particularly among providers that do not regularly collaborate on other matters (*e.g.,* between a large nationwide provider and smaller, rural provider). In arriving at this rule, we note and commend some of the nation's largest providers who already engage in this coordination on some level among themselves, and we believe that the public interest would greatly benefit from such commitments being extended to all facilities-based mobile wireless providers.

17. The MDRI mutual aid requirement is a codification of the flexible standard already developed by industry in proposing its successful Framework. As such, AT&T's concern that this rule would require a provider to grant mutual aid regardless of its own circumstances and ATIS's concern that this provision would require a provider to work to restore a competitor's network before its own are unfounded. Rather, as indicated by the plain language of this rule, a provider's obligations apply only if it has ''reasonably first managed its own network needs.'' Similarly, because a provider supplying aid under this provision would only do so after it has managed its own needs, we find USTelecom's concerns that this provision would create disincentives for a requesting provider to invest in its own resiliency and restoration capabilities are countered by the language of the rule itself, and further mitigated by the flexibility that the rules afford providers in coming to a reasonable mutual agreement. We similarly clarify that nothing in this rule requires that providers share their limited fuel or other equipment when they do not have enough of these resources to reasonably service their own subscribers' needs first.

18. Several other provisions of the MDRI track corresponding elements of the existing Framework and require that each facilities-based mobile wireless provider take reasonable measures to: (1) work to enhance municipal preparedness and restoration, (2) increase consumer readiness and preparation, and (3) improve public awareness and stakeholder communications on service and restoration status. The Commission declines to address at this time a provision similar to the existing Framework's provision that a provider establish a provider/public safety answering point (PSAP) contact database. The Commission is currently examining these issues in its pending 911 Reliability proceeding. We find that each of these provisions would enhance public safety objectives by tracking the elements of the Framework. We find that these actions, taken individually and as a whole, would provide significant public safety benefits by reducing the costs borne by both wireless providers and public safety entities in responding to and recovering from a disaster and by creating information that can be used by public officials, including first responders, to enable more effective and efficient responses in an emergency. We find that the MDRI, as a codification of successful provisions already implemented by the nationwide and certain regional providers to date, allows the needed flexibility to respond to the individual needs of providers and the communities they serve.

19. We find it in the public interest to supply clarity and assurance that providers have complied with as many of the MDRI's provisions as practical if they implement, or continue their implementation of, corresponding elements of the Framework. Accordingly, a provider that files a letter in the dockets associated with this proceeding truthfully and accurately asserting, pursuant to § 1.16 of the Commission's rules, that it complies with the Framework's existing provisions, and has implemented internal procedures to ensure that its remains in compliance with these provisions, for (i) fostering mutual aid among wireless providers during emergencies, (ii) enhancing municipal preparedness and restoration by convening with local government public safety representatives to develop best practices, and establishing a provider/PSAP contact database, (iii) increasing consumer readiness and preparation through development and dissemination with consumer groups of a Consumer Readiness Checklist, and (iv) improving public awareness and stakeholder communications on service and restoration status, through Commission posting of data on cell site outages on an aggregated, county-by-county basis in the relevant area through its Disaster Information Reporting System (DIRS) will be presumed to have complied with the MDRI counterpart provisions at § 4.17(a)(3)(ii) through (iv). We clarify that providers that rely on this safe harbor provision are representing adherence to these elements of the Framework as it was laid out and endorsed by the Commission in October 2016.

20. Given the new requirements related to testing roaming, however, we do not extend this ''safe harbor'' mechanism to these rules requiring that providers implement bilateral roaming arrangements (§ 4.17(a)(3)(i)), test their roaming functionality (§ 4.17(b)), provide reports to the Commission (§ 4.17(c)) or retain copied of RuDs (§ 4.17(d)). Nor we do extend safe harbor to § 4.17(e), which summarizes an announcement of compliance dates for these rules. These four provisions cover important aspects of the Framework related to roaming (among other functionality), where there is some evidence that the existing Framework has not performed as strongly as

possible or else new requirements that have no counterpart in the existing Framework.

B. Implementing New Testing and Reporting Requirements

21. In the *Resilient Networks NPRM,* we sought comment on whether each provider should be required to implement annual testing of their roaming capabilities and related coordination processes. We adopt the requirement that this testing must be performed bilaterally with other providers that may foreseeably roam, or request roaming from, a given provider including, without limitation, between providers whose geographic coverage areas overlap. The first round of such testing, *i.e.,* with respect to all other foreseeable providers, must be performed no later than the compliance date for the roaming provision of the MDRI.

22. We agree with NTCA that providers should regularly test their roaming capabilities and believe that the public interest would be served if providers conducted bilateral roaming capabilities testing with other providers to ensure that roaming will work expeditiously in times of emergencies. We agree with Verizon that testing in advance of an actual disaster event is necessary for a provider to best understand its network capabilities and ensure that roaming is performed in a way that does not compromise its service to its own customers. We find that bilateral testing will ensure that providers spend time optimizing, debugging and diagnosing their networks well advance of emergencies, ensuring that these networks roam as effectively as possible when a disaster strikes, ultimately saving lives and property. We find that by requiring the testing to be bilateral, each provider will be incentivized to take affirmative steps to ensure their own network can handle demands indicative of emergency scenarios, diminishing the possibility that such a provider would act as a ''free-rider'' when disaster strikes.

23. In the *Resilient Networks NPRM,* we also sought comment on whether providers should submit reports to the Commission, in real time or in the aftermath of a disaster, detailing their implementation of the Framework's provisions and whether the reports should include information on the manner in which the provider adhered to the various provisions of the Framework. We adopt this requirement and require that providers submit a report detailing the timing, duration and effectiveness of their implementation of the MDRI's provisions within 60 days of when the Bureau, under delegated authority which we grant in this document, issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster.

24. We agree with Free Press that that it is in the public interest for providers to submit an ''after-action'' report detailing how their networks fared and whether their pre-disaster response plans adequately prepared for a disaster and with Next Century Cities that requiring providers to submit reports detailing implementation of the Framework's provisions would help the Commission gauge the effectiveness of these provisions and potential future improvements in furtherance of public safety.

25. We reject the views of Verizon and other commenters who suggest that such reports should be filed only annually. We find that such reports would be most accurate and useful if they were provided shortly after a disaster event has concluded (*i.e.,* by a date specified in a Bureau issued public notice). We find that such reports should be filed shortly after a disaster event concludes, and not in real time, to avoid consuming public safety resources during times of exigency.

C. Expanding Activation Triggers

26. In the *Resilient Networks NPRM,* the Commission recognized circumstances where mutual aid or other support obligations could have been implemented, but were not warranted or provided because the Framework's activation triggers were not met. The Commission applauded the Framework but sought to expand its reach by working with providers to revisit the conditions that trigger activation of the Framework. Commenters generally agreed that new triggers for Framework activation are appropriate. Verizon identified that ''[a]uthorizing the Chief of the Public Safety and Homeland Security Bureau to activate the Framework based on [Emergency Support Function 2] ESF–2 or DIRS'' could be the right approach.

27. We find that the public interest supports a rule that the MDRI is triggered when either ESF–2 or DIRS is activated, or when the Chief of the Public Safety and Homeland Security Bureau announces that the MDRI is activated in response to a request received from a state in conjunction with the state activating its Emergency Operations Center, activating mutual aid, or proclaiming a local state of emergency. As such, we delegate to the Chief, Public Safety and Homeland Security Bureau the authority to issue a public notice effectuating the MDRI under these circumstances, and to prescribe any mechanisms for receiving such a request.

28. We agree with those commenters who argue that the Framework's current activation criterion, which only applies when both ESF–2 and DIRS are activated, is too narrow. CTIA and Verizon agree that Framework elements could be helpful during events not currently covered by the Framework and are open to considering other activation triggers to help ensure cooperative efforts during disasters impacting communications networks. (Knowledge and CTIA point out that the current stringent activation requirements prevent consumers from receiving the benefits of the Framework like mutual aid and roaming arrangements because there are many disasters and events would not reach the dual ESF–2/DIRS trigger, such as the recent California power shutoffs and wildfires for which ESF–2 was not activated. CTIA states that they are committed to working with the Commission to consider other objective activation triggers.) Certain events like wildfires are not expressly covered by the Framework and have the potential to occur more frequently than other covered events like hurricanes. Next Century Cities (NCC) explains that DIRS is typically activated before an anticipated major emergency or following an unpredicted disaster but ESF–2 is only activated under specific circumstances when the Department of Homeland Security or FEMA has identified that a significant impact to the nation's communications infrastructure has occurred or is likely to occur. These two programs differ in activation requirements, meaning that the Framework is not always activated even during critical disaster events and the Commission is not always able to collect vital communications outage data. We agree with NCC's and Public Knowledge's recommendation that the Framework would be more effective if it were activated when either DIRS or ESF–2 is activated and if it remained active until the emergency has ceased and network disruption has been resolved. Further, we agree with Verizon's suggestion that the Chief of the Public Safety and Homeland Security Bureau should be able to activate the Framework based on ESF–2 or DIRS, or when a state experiences events such as FEMA-recognized or declared disasters, events that could affect a significant geographic area, or events that could result in outages for a

significant duration and have the potential to impact multiple providers. The activation criteria for the MDRI incorporates these views.

29. We disagree with those commenters, including the CCA and NTCA, who think a codified version of the Framework cannot incorporate remedies and procedures for a variety of differing disasters and emergencies. We agree that the current Framework offers flexibility to address various challenges brought on by differing disasters in differing locations, and we note that the MDRI will allow for the same flexibility and offer even more benefits and restorative efforts with a wider range of activation triggers. CTIA argues that the beneficial elements of the Framework outweigh the doubts and points out the Framework's success in advancing wireless resiliency over the past few years. Recognizing the merits of the Framework and building upon it in the MDRI will also better incorporate the uniqueness of individual disasters by offering additional circumstances in which the obligations would be triggered.

D. Cost-Benefit Summary

30. In the *Resilient Networks NPRM,* the Commission generally sought information on costs and benefits of requiring providers to implement provisions of the Framework, including mandating some or all of the Framework, and tentatively concluded that the benefits exceeded the costs for doing so. We affirm that tentative conclusion as to facilities-based mobile wireless providers.

31. No commenter provides a detailed quantitative analysis of costs or benefits, though some commenters provide qualitative views. For example, Public Knowledge opines that mandating the Framework, particularly the roaming provision of the Framework, would lower transaction costs for smaller providers while also providing benefits to the nation's network resiliency and emergency response. CPUC notes that the benefits of ensuring heightened network resiliency are likely to increase in the coming years as the number of weather and climate disaster events continues to increase. On the other hand, AT&T, CCA, and USTelecom, among others, argue that mandating the Framework would create harms, rather than benefits, because it would remove flexibility in providers' disaster recovery approaches and, as a result, would lead to worse public safety outcomes. CCA further argues that some providers, including small providers, may lack the resources necessary to adopt a mandatory regime. As discussed below, we find that the incremental costs to the nation's facilities-based mobile wireless providers for codifying the Framework in the MDRI rules will be minimal in many cases and, even when significant, will be far outweighed by nationwide benefits.

32. We find that Framework signatories are unlikely to incur significant one-time implementation costs to comply with the MDRI because they already implement actions aligned with the Framework's steps and, in some cases, take significant additional actions as part of their existing business practices. AT&T, for example, cites multiple examples evidencing that it and other signatories commonly invoke the Framework's provisions and notes it has extended roaming privileges to other wireless providers during numerous events in which the Framework's activation criteria were not triggered. AT&T notes that it has universally allowed roaming on its network when it has had capacity, including by non-Framework signatories, and believes the same to be true of other signatories. Verizon notes that it has already voluntarily entered into bilateral roaming agreements with AT&T, T-Mobile, and some mid-sized and smaller providers that pertain to disaster scenarios. Other wireless providers, or their industry groups, provide numerous examples of how providers are already investing significant time and resources into complying with the Framework provisions, even when they are not signatories or bound to the Framework's terms, to enhance their networks' resiliency. Given these efforts, we find it reasonable to conclude that the one-time implementation costs imposed on Framework signatories to implement uniform procedures to comply with the MDRI will be minimal. We note for clarity that any framework signatory that qualifies as a small entity under the definition is afforded additional time for compliance with these rules compared to non-small entities.

33. We find that regional and local entities will incur one-time implementation costs to transition from their existing processes to new processes to comply with the MDRI. As noted in the record, regional and local facilities-based mobile wireless providers already accrue costs to implement steps similar to those described in these rules. For example, ACA Connects notes that its members (which are small regional or local entities) have ''developed plans outlining specific actions to be performed at specific preparatory stages (*e.g.,* at 72, 48 or 24 hours in advance of an impending storm),'' including typically by ''identify[ing] service restoration priorities[,] coordinat[ing] extensively within their companies to ensure all available resources are brought to bear effectively and that customers (both residential and enterprise) are kept informed of service impacts and progress in restoring outages[,] and coordinat[ing] with first responders, power companies, and fellow communications providers in their service area.'' ACA Connects notes that its members currently ''readily coordinate and share information with local, State and Federal authorities, as well as other communications providers and power companies.'' ACA Connects further notes that this sort of information exchange ''allows for a more efficient and coordinated restoration effort'' and enables providers to ''continually update their plans based on 'lessons learned' from previous events.'' Similarly, NTCA notes that small wireless providers ''certainly abide'' by the underlying principles of the Framework—*i.e.,* even if they do not follow the Framework's specific requirements as mandated by these rules. Given these efforts, we believe that the total setup costs for regional and local providers to implement the MDRI will be limited.

34. Specifically, we estimate that the nation's regional and local facilities-based mobile wireless providers that are not current Framework signatories will incur total initial setup costs of approximately $945,000 based on our estimate of 63 such providers each spending 50 hours of time on legal services at $107/hour, 50 hours of time on software development at $87/hour, and 100 hours of time on public relations and outreach activities at $53/hour. These setup costs enable the regional and local providers to update or revise their existing administrative and technical processes to conform to processes required by these rules, including those related to roaming arrangements, fostering mutual aid, enhancing municipal preparedness, increasing consumer readiness, and improving public awareness and shareholder communications on service and restoration status.

35. Commenters have provided no evidence, as requested in the *Resilient Networks NPRM,* of any significant additional recurring costs. Nevertheless, the industry will incur an annual recurring cost, imposed by the new testing and reporting requirements. We find, however, that these costs are likely mitigated for a number of reasons. The incremental costs of testing are lessened to the extent that facilities-based

providers already engage in regular assessments of their roaming capabilities with their roaming partners. Moreover, we find that these cost increases will be substantially offset, over the long term, by the lowering of transaction costs. Under our new rules, a provider's bilateral roaming agreements with other providers will contain similar elements in key provisions and these details will no longer need to be determined on a partner-by-partner basis, thus reducing transaction costs. The setup and recurring costs also will be substantially offset by the network's increase in economic efficiency as providers start sharing more of their unused capacity and idle equipment during disasters and other emergencies. Finally, because our requirement for providers to issue reports detailing the timing, duration and effectiveness of their implementation of the MDRI first entails a Public Notice specifying the providers and geographic area affected, the recurring costs for reporting purposes will be limited to instances where the Commission sees a legitimate need to require such reports.

36. We agree with Public Knowledge that there are significant benefits in requiring providers to coordinate preparation for disasters and with Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) that the benefits of adopting a mandatory approach, as in this rule, would be widespread, including by increasing access to critical information by individuals in the deaf, hard of hearing, and deafblind communities. Further, CTIA testified at the Commission's 2021 virtual Field Hearing on improving the resiliency and recovery of communications networks during disasters that the Framework is a ''collaborat[ive] . . . jumpstart[ ] [to] response and recovery'' and allows for continuous growth through lessons learned during ''increasing severity and frequency of disasters'' allowing for the development of ''best practices [to] strengthen our networks, our response, and our performance for everyone who relies on wireless during emergencies.'' Moreover, we find that the benefits attributable to improving facilities-based mobile wireless network resiliency in the context of emergency situations is substantial and will promote the health and safety of residents during times of natural disaster or other unanticipated events that impair telecommunications infrastructure.

37. While it would be impossible to quantify the precise financial value of these health and safety benefits, we note that the value of these benefits would have to exceed the implementation cost of less than $1 million, together with the annual recurring costs imposed by the new testing and reporting requirements, to outweigh the total cost of compliance. This reasoning is an example of a ''breakeven analysis'' recommended by the Office of Information and Regulatory Affairs (OIRA) in cases where precise quantification and monetization of benefits is not possible. In light of the record reflecting large benefits to consumers and other communities, we find that the total incremental costs imposed on the nation's facilities-based mobile wireless providers by these new requirements will be minimal in many cases and, even when significant, will be far outweighed by the nationwide benefits.

E. Timelines for Compliance

38. We set a compliance date for these rules at the later of (i) 30 days after the Bureau issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with this document or (ii) nine months after the publication of this document for small facilities-based mobile wireless providers and six months after the publication of this document in the **Federal Register** for all other (*i.e.,* not small) facilities-based mobile wireless providers. We adopt the Small Business Administration's (SBA) standard, which classifies a provider in this industry as small if it has 1,500 or fewer employees. We require a provider have each bilateral roaming agreement, as described in § 4.17(a)(3)(i), executed and in place no later than its associated compliance date, have mutual aid arrangements, as described in § 4.17(a)(3)(ii), in place within 30 days of its associated compliance date, and perform a complete first round of testing, as described in § 4.17(b), no later than its associated compliance date. We note for clarity that the compliance date associated with a small facilities-based mobile wireless providers applies for the requirements of § 4.17(a)(3)(ii) when at least one party to the mutual aid arrangement is a small facilities-based mobile wireless provider. We further note that finalization of arrangements under § 4.17(a)(3)(ii) will be required 30 days after compliance with the other provisions of § 4.17. To the extent that a new facilities-based mobile wireless service provider subsequently commences service, it is required to comply with these provisions 30 days following commencement of service. As reflected at § 4.17(e), we direct the Bureau to issue a Public Notice that announces the compliance dates for all facilities-based mobile wireless providers upon obtaining OMB approval of the new information collection requirements associated with this document.

39. These rules require that facilities-based mobile wireless providers take steps to update their processes to implement our MDRI, which codifies many of the Framework's provisions. We find that providers will require only a modest amount of time to adjust their processes to comply with these rules because, as noted above, they already implement actions closely aligned with the Framework's steps and, in some cases, take significant additional actions as part of their existing practices. For instance, AT&T and a non-Framework signatory roamed on each other's networks for months after disaster Hurricane Maria. Signatories to the Wireless Network Resiliency Cooperative Framework implemented it immediately and, when hurricane season arrived six months later, the signatories demonstrated their implementation by voluntarily reporting in DIRS. In addition, we find that these changes must be made expeditiously given recent observations of network failures during disasters. As small and large providers, or their industry groups, have emphasized that they could implement the Framework immediately, or else take Framework-like measures already, we believe that this time range provides sufficient time for providers to implement any changes and make any necessary arrangements.

I. Procedural Matters

40. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Resilient Networks; Amendments to part 4 of the Commission's Rules Concerning Disruptions to Communications; New part 4 of the Commission's Rules Concerning Disruptions to Communications* notice of proposed rulemaking (*Resilient Networks NPRM*) released in October 2021. The Commission sought written public comment on the proposals in the *Resilient Networks NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

41. *Paperwork Reduction Act Analysis.* These rules may constitute new or modified information collection requirements. All such new or modified information collection requirements will be submitted to the Office of

Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that any new information collection requirements will be unduly burdensome on small businesses. Applying these new information collection requirements will promote public safety response efforts, to the benefit of all size governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing better situational information related to the Nation's network outages and infrastructure status.

A. Need for, and Objectives of, the Final Rules

42. In this document, the Commission adopts rules that require all facilities-based mobile wireless providers to comply with the Mandatory Disaster Response Initiative (MDRI), which codifies the Wireless Network Resiliency Cooperative Framework (Framework), an agreement developed by the wireless industry in 2016 to provide mutual aid in the event of a disaster, and expands the events that trigger its activation. The document also implements new requirements for testing of roaming capabilities and MDRI performance reporting to the Commission. These actions will improve the reliability, resiliency, and continuity of communications networks during emergencies. This action uniformizes the Nation's response efforts among facilities-based mobile wireless providers who, prior to these rules, implemented the Framework on a voluntary basis. The Framework commits its signatories to compliance with the following five prongs: (1) providing for reasonable roaming arrangements during disasters when technically feasible; (2) fostering mutual aid during emergencies; (3) enhancing municipal preparedness and restoration; (4) increasing consumer readiness and preparation, and (5) improving public awareness and stakeholder communications on service and restoration status. Under these rules, the Mandatory Disaster Response Initiative incorporates these elements, the new testing and reporting requirements and will be activated when any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission's Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.

43. The rules in this document also address findings of the Government Accountability Office (GAO) concerning wireless network resiliency. In 2017, the Government Accountability Office (GAO), in conjunction with its review of federal efforts to improve the resiliency of wireless networks during natural disasters and other physical incidents, released a report recommending that the Commission should improve its monitoring of industry efforts to strengthen wireless network resiliency. The GAO found that the number of wireless outages attributed to a physical incident—a natural disaster, accident, or other manmade event, such as vandalism—increased from 189 in 2009 to 1,079 in 2016. The GAO concluded that more robust measures and a better plan to monitor the Framework would help the FCC collect information on the Framework and evaluate its effectiveness, and that such steps could help the FCC decide if further action is needed. In light of prolonged outages during several emergency events in 2017 and 2018, and in parallel with the GAO recommendations, the Public Safety and Homeland Security Bureau (Bureau) conducted several inquiries and investigations to better understand and track the output and effectiveness of the Framework and other voluntary coordination efforts that promote wireless network resiliency and situational awareness during and after these hurricanes and other emergencies.

B. Summary of Significant Issues Raised by Comments in Response to the IRFA

44. There were no comments filed that specifically address the proposed rules and policies in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

45. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities Which the Rules Will Apply

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

47. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 32.5 million businesses.

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

49. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose

governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

50. The rules adopted in this document apply only to facilities-based mobile wireless providers, which include small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, in our cost estimate discussion below in section E, we estimate costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers. As described below, these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

51. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

52. We note that while facilities-based mobile wireless providers fall into this industry description, in assessing whether a business concern qualifies as ''small'' under the above SBA size standard, business (control) affiliations must be included. Another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria and its estimates of small businesses to which they apply may be over-inclusive to this extent. We are unable at this time to define or quantify the criteria that would establish whether a specific facilities-based mobile wireless provider impacted by this document is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply for this industry description is therefore possibly over-inclusive and thus may overstate the number of small entities that might be affected by our action.

53. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

54. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small, and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

55. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

56. The requirements in this document will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. The rules adopted in this document require all facilities-based mobile wireless providers to make adjustments to their restoration and recovery processes, including contractual arrangements and public outreach processes, to account for MDRI. The mutual aid, roaming, municipal preparedness and restoration, consumer readiness and preparation, and public awareness and stakeholder communications provisions adopted in the *Order* are a codification of the flexible standard already developed by the industry in proposing its voluntary Framework. The new provision that expands the events that trigger its activation and that require providers test and report on their roaming capabilities will ensure that the MDRI is implemental effectively and in accordance with the Commission's rules, and the new requirements related to testing and reporting will ensure that roaming is performed effectively with the aim of saving life and property.

57. The roaming requirement adopted by the Commission requires facilities-based mobile wireless providers to provide for reasonable roaming under disaster arrangements (RuDs) when technically feasible, where: (i) a requesting provider's network has become inoperable and the requesting provider has taken all appropriate steps to attempt to restore its own network, and (ii) the provider receiving the request (home provider) has determined that roaming is technically feasible and will not adversely affect service to the home provider's own subscribers, provided that existing roaming arrangements and call processing methods do not already achieve these objectives and that any new arrangements are limited in duration

and contingent on the requesting provider taking all possible steps to restore service on its own network as quickly as possible. In this document, we also require facilities-based mobile wireless providers to: (1) enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active, (2) have each bilateral roaming agreement executed and in place no later than the compliance date for the roaming provision of the MDRI, and (3) make copies their bilateral roaming agreements available to the Commission promptly upon Commission request.

58. Pursuant to the ''safe harbor'' provision we adopt in this document, a provider may file a letter in the dockets associated with this proceeding which truthfully and accurately asserts pursuant to § 1.16 of the Commission's rules, that the provider is in compliance with the Framework's existing provisions, and has implemented internal procedures to ensure that it remains in compliance with the provisions for: (i) fostering mutual aid among wireless providers during emergencies, (ii) enhancing municipal preparedness and restoration by convening with local government public safety representatives to develop best practices, and establishing a provider/PSAP contact database, (iii) increasing consumer readiness and preparation through development and dissemination with consumer groups of a Consumer Readiness Checklist, and (iv) improving public awareness and stakeholder communications on service and restoration status, through Commission posting of data on cell site outages on an aggregated, county-by-county basis in the relevant area through its DIRS will be presumed to have complied with the MDRI counterpart provisions at § 4.17(a)(3)(ii) through (iv). The ''safe harbor'' mechanism adopted in the rules does not apply to the requirements that providers implement bilateral roaming arrangements (§ 4.17(a)(3)(i)), test their roaming functionality (§ 4.17(b)) provide reports to the Commission (§ 4.17(c)), or retain RuDs (§ 4.17(d)). Providers that make a ''safe harbor'' filing are representing adherence to these elements of the Framework as laid out and endorsed by the Commission in October 2016.

59. Small and other regional and local facilities-based mobile wireless providers that are not current Framework signatories will incur one-time implementation costs to transition from their existing processes to new processes to comply with the MDRI. The Commission estimates that the Nation's regional and local facilities-based mobile wireless providers as a whole will incur one-time total initial setup costs of $945,000 to implement the requirements of this document and may require professionals in order to comply. We base our estimate on 63 such providers each spending 50 hours of time on legal services at $107/hour, 50 hours of time on software development at $87/hour, and 100 hours of time on public relations and outreach activities at $53/hour, to update or revise their existing administrative and technical processes to conform, to processes their record keeping and other compliance requirements to those required by this rule, including those related to roaming arrangements, fostering mutual aid, enhancing municipal preparedness, increasing consumer readiness and improving public awareness and shareholder communications on service and restoration status.

60. Facilities-based providers in the industry may also incur an annual recurring cost, imposed by the new testing and reporting requirements and determined that these costs are likely to be mitigated for a number of reasons. The incremental costs of testing are lessened to the extent that facilities-based providers already engage in regular assessments of their roaming capabilities with their roaming partners. Moreover, these cost increases will be substantially offset, over the long term, by the lowering of transaction costs. Under our new rules, a provider's bilateral roaming agreements with other providers will contain similar elements in key provisions and these details will no longer need to be determined on a partner-by-partner basis, thus reducing transaction costs. The setup and recurring costs also will be substantially offset by the network's increase in economic efficiency as providers start sharing more of their unused capacity and idle equipment during disasters and other emergencies.

61. Finally, because our requirement for providers to issue reports detailing the timing, duration and effectiveness of their implementation of the MDRI first entails a Public Notice specifying the providers and geographic area affected, we anticipate recurring costs to be limited to instances where the Commission sees a legitimate need to require such reports. We set compliances dates for these rules as the later of (1) 30 days after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or the Public Safety and Homeland Security Bureau determines that such review is not required, or (2) nine months after publication of this document in the **Federal Register** for facilities-based mobile wireless service providers with 1,500 or fewer employees and six months after publication of this document in the **Federal Register** for all other facilities-based mobile wireless service providers, except that compliance with paragraph (a)(3)(ii) of § 4.17 will not be required until 30 days after the compliance date for the other provisions of the section. The Commission has directed the Public Safety and Homeland Security Bureau to announce the compliance dates § 4.17 by subsequent Public Notice and to cause the section to be revised accordingly.

62. We conclude that the benefits of participation by small entities and other providers likely will exceed the costs for affected providers to comply with the rules adopted in this document. The benefits attributable to improving resiliency in the context of emergency situations is substantial and may have significant positive effects on the abilities of these entities to promote the health and safety of residents during times of natural disaster or other unanticipated events that impair telecommunications infrastructure.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

64. The actions taken by the Commission in this document were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. The Commission took a number of actions in this document to minimize any significant economic impact on small entities and considered several alternatives. For example, this document's requirements are only applicable to facilities-based mobile wireless providers and thus other small entity providers that may be capable of roaming are not subject to the adopted provisions. In addition, several of the adopted requirements are based on or

incorporate industry-developed standards, and utilize and are consistent with existing Commission requirements. In developing the requirement that facilities-based mobile wireless providers provide reasonable roaming under disaster arrangements (RuDs) when technically feasible, for instance, we define ''reasonable roaming'' as roaming that does not disturb, but includes compliance with, the Commission's existing requirements that voice roaming arrangements be just, reasonable, and non-discriminatory, and that data roaming arrangements be commercially reasonable. Consistency with existing industry standards and Commission requirements increase the likelihood that small entities already have processes and procedures in place to facilitate compliance with the rules we adopt in this document and may only incur increment costs which will minimize the impact for these entities.

65. Some commenters supported an alternative view that all small providers should be excepted from the rules adopted in this document because they need to prioritize work on their own networks or else generally lack the resources required for compliance in the midst of emergencies. Upon consideration of this position the Commission determined that these concerns can be mitigated because the Framework's provisions such as establishing mutual aid agreements, enhancing municipal preparedness, increasing consumer readiness and preparing and improving public awareness are preparation and coordination can and should be taken well in advance of, rather than in the midst of an emergency. Likewise, securing the appropriate contractual agreements related to roaming is an obligation that should be completed prior to an emergency event. Further and notably, some commenters indicated that small mobile wireless providers already generally abide by the underlying principles of the Framework. Given that such efforts are already in place or in progress, we believe that the total setup costs for small regional and local providers to implement the MDRI will be limited. Moreover, requiring small providers to take actions adopted in this document to ensure their networks remain operational during emergencies will have the effect of streamlining and standardizing those efforts, thereby making coordination with other entities, including other providers, more efficient than would be possible if small providers were not subject to uniform rules. Small providers are also affording an additional measure of time to comply with adopted rules, requiring compliance within nine months (rather than the six month afforded other providers).

66. Lastly, we considered whether providers should submit reports to the Commission, in real time or in the aftermath of a disaster detailing their implementation of the Framework's provisions and whether the reports should include information on the manner in which the provider adhered to the various provisions of the Framework. We declined to adopt a real-time submission reporting requirement, and instead required that providers submit a report detailing the timing, duration and effectiveness of their implementation of the MDRI's provisions within 60 days of when the Bureau, under delegated authority, issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster. In light of our decision to examine ways to standardize and streamline the reporting processes for providers in the *further notice of proposed rulemaking (FNPRM),* published elsewhere in this issue of the **Federal Register,** we did not mandate a timeline for compliance with the reporting requirements, therefore small entities will not be immediately impacted by the requirements.

II. Ordering Clauses

67. *Accordingly it is ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c, the Report and Order and Further Notice of Proposed Rulemaking in PS Docket Nos. 21–346 and 15–80 and ET Docket No. 04–35 is *hereby adopted.*

68. *It is further ordered* that the amended Commission rules as set forth in § 4.17 Are Adopted, effective 30 days after publication in the **Federal Register**. Compliance with the rules adopted in document will not be required until the later of (i) 30 days after the Public Safety and Homeland Security Bureau issues a Public Notice announcing completion of Office of Management and Budget (OMB) review of any new information collection requirements associated with this document or (ii) nine months after the publication of this document in the **Federal Register** for facilities-based mobile wireless providers with 1500 or fewer employees and six months after the publication of this document in the **Federal Register** for all other facilities-based mobile wireless providers. For the purposes of the provisions of § 4.17(a)(3)(ii), compliance will be required 30 days after the compliance date for all other provisions, and the compliance date for a small facilities facilities-based mobile wireless provider will apply when at least one party to the mutual aid arrangement is a small facilities-based mobile wireless provider. The Commission directs the Public Safety and Homeland Security Bureau to announce the compliance dates by subsequent Public Notice and to cause 47 CFR 4.17 to be revised accordingly.

69. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

70. *It is further ordered* that the Office of Managing Director, Performance Evaluation and Records Management, *shall send* a copy of the Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. Add § 4.17 to read as follows:

§ 4.17 Mandatory Disaster Response Initiative.

(a) Facilities-based mobile wireless providers are required to perform, or have established, the following procedures when:

(1) Any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster;

(2) The Commission activates the Disaster Information Reporting System (DIRS); or

(3) The Commission's Chief of the Public Safety and Homeland Security Bureau issues a Public Notice activating the Mandatory Disaster Response Initiative in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency:

(i) Provide for reasonable roaming under disaster arrangements (RuDs) when technically feasible, where:

(A) A requesting provider's network has become inoperable and the requesting provider has taken all appropriate steps to attempt to restore its own network; and

(B) The provider receiving the request (home provider) has determined that roaming is technically feasible and will not adversely affect service to the home provider's own subscribers, provided that existing roaming arrangements and call processing methods do not already achieve these objectives and that any new arrangements are limited in duration and contingent on the requesting provider taking all possible steps to restore service on its own network as quickly as possible;

(ii) Establish mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies, where such agreements address the sharing of physical assets and commit to engaging in necessary consultation where feasible during and after disasters, provided that the provider supplying the aid has reasonably first managed its own network needs;

(iii) Take reasonable measures to enhance municipal preparedness and restoration;

(iv) Take reasonable measures to increase consumer readiness and preparation; and

(v) Take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.

(b) Providers subject to the requirements of paragraph (a) of this section are required to perform annual testing of their roaming capabilities and related coordination processes, with such testing performed bilaterally with other providers that may foreseeably roam, or request roaming from, the provider during times of disaster or other exigency.

(c) Providers subject to the requirements of paragraph (a) of this section are required to submit reports to the Commission detailing the timing, duration, and effectiveness of their implementation of the Mandatory Disaster Response Initiative's provisions in this section within 60 days of when the Public Safety and Homeland Security Bureau issues a Public Notice announcing such reports must be filed for providers operating in a certain geographic area in the aftermath of a disaster.

(d) Providers subject to the requirements of paragraph (a) of this section are required retain RuDs for a period of at least one year after their expiration and supply copies of such agreements to the Commission promptly upon Commission request.

(e)(1) This section may contain information collection and/or recordkeeping requirements. Compliance with this section will not be required until this paragraph (e) is removed or contains compliance dates, which will not occur until the later of:

(i) 30 days after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or the Public Safety and Homeland Security Bureau determines that such review is not required; or

(ii) June 30, 2023 for facilities-based mobile wireless service providers with 1,500 or fewer employees and March 30, 2023 for all other facilities-based mobile wireless service providers, except that compliance with paragraph (a)(3)(ii) of this section will not be required until 30 days after the compliance date for the other provisions of this section.

(2) The Commission directs the Public Safety and Homeland Security Bureau to announce the compliance dates for this section by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

[FR Doc. 2022–19745 Filed 9–29–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 2021–27773; RTID 0648–XC417]

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2022 Winter II Quota

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2022 Winter II commercial scup quota and per-trip Federal landing limit. This action is necessary to comply with regulations implementing Framework Adjustment 3 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan that established the rollover of unused commercial scup quota from the Winter I to Winter II period. This notification is intended to inform the public of this quota and trip limit change.

DATES: Effective October 1, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184; or *Laura.Deighan@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a final rule for Framework Adjustment 3 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process to roll over unused Winter I commercial scup quota (January 1 through April 30) to be added to the Winter II period quota (October 1 through December 31) (50 CFR 648.122(d)). The framework also allows adjustment of the commercial possession limit for the Winter II period dependent on the amount of quota rolled over from the Winter I period.

For 2022, the initial Winter II quota is 3,248,849 lb (1,473,653 kg). The best available landings information through September 8, 2022, indicates that 4,219,494 lb (1,913,930 kg) remain of the 9,194,201 lb (4,170,419 kg) Winter I quota. Consistent with Framework 3, the full amount of unused 2022 Winter I quota is being transferred to Winter II, resulting in a revised 2022 Winter II quota of 7,468,343 lb (3,387,583 kg). Because the amount transferred is between 4.0 and 4.5 million lb (1,814,369 and 2,041,165 kg), the

Federal per trip possession limit will increase from 12,000 lb (5,443 kg) to 24,000 lb (10,886 kg), as outlined in the final rule that established the possession limit and quota rollover procedures for this year, published on December 23, 2021 (86 FR 72859). The new possession limit would be effective October 1 through December 31, 2022. The possession limit will revert back to 12,000 lb (5,443 kg) at the start of the next fishing year that begins January 1, 2023.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.122(d), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be contrary to the public interest. This action transfers unused quota from the Winter I Period to the Winter II Period to make it accessible to the commercial scup fishery and increase fishing opportunities. If implementation of this inseason action is delayed to solicit prior public comment, the objective of the fishery management plan to achieve the optimum yield from the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce fishing effort, and could also prevent the annual quota from being fully harvested. If this action is delayed, it would reduce the amount of time vessels have to realize the benefits of this quota increase, which would result in negative economic impacts on vessels permitted to fish in this fishery. Moreover, the rollover process being applied here is routine and formulaic and was the subject of notice and comment rulemaking, and the range of potential trip limit changes were outlined in the final 2022 scup specifications that were published December 23, 2021, which were developed through public notice and comment. The benefit of soliciting additional public comment on this formulaic adjustment would not outweigh the benefits of making this additional quota available to the fishery as quickly as possible. Based on these considerations, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: September 27, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–21295 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 189
Friday, September 30, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1242; Project Identifier MCAI–2022–00433–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, and A340–600 series airplanes. This proposed AD was prompted by a report that an A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 airplanes. This proposed AD would require repetitive detailed inspections (DET) and electrical test measurements (ETM) of the affected parts and applicable corrective action, and would prohibit the installation of affected parts under certain conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 November 14, 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 material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1242.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1242; 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@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–2022–1242; Project Identifier MCAI–2022–00433–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0057, dated March 28, 2022 (EASA AD 2022–0057) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, A330–941, A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–542, A340–642, and A340–643 airplanes. Model A330–743L,

A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight, with consequent rapid cockpit depressurization, causing damage to cockpit items/systems and significant increase of flightcrew workload. The investigations identified several contributing factors, including manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion, which led to a thermal shock/overheat, damaging more than one windshield structural ply and impairing the structural integrity of the windshield. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 airplanes. The FAA is proposing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0057 specifies procedures for repetitive DET and ETM of the affected parts and applicable corrective actions. Corrective actions include replacement. EASA AD 2022–0057 also limits the installation of affected parts under certain conditions.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0057, described previously, except as described under ''Differences Between this Proposed AD and the MCAI.''

Difference Between This Proposed AD and the MCAI

Although EASA AD 2022–0057 requires reporting inspection findings, this proposed AD would not require any reports. Collecting additional information will not add to determination of the unsafe condition or corrective actions.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0057 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0057 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0057 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0057. Service information required by EASA AD 2022–0057 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1242 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 131 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
5 work-hours × $85 per hour = $425	$0	$425	$55,675

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
20 work-hours × $85 per hour = $1,700	$11,393	$13,093

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

Authority for This Rulemaking

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

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1242; Project Identifier MCAI–2022–00433–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (9) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(8) Model A340–541 airplanes.

(9) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 series airplanes. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0057, dated March 28, 2022 (EASA AD 2022–0057).

(h) Exceptions to EASA AD 2022–0057

(1) Where EASA AD 2022–0057 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (6) of EASA AD 2022–0057 refers to a ''defect, as identified in the SB,'' for purposes of this AD, defects include manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion.

(3) The ''Remarks'' section of EASA AD 2022–0057 does not apply to this AD.

(i) No Reporting Requirement

Although paragraphs (11) and (12) of EASA AD 2022–0057 and the service information referenced therein specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph(s) (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put

back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For EASA AD 2022–0057, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1242.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(3) For service information identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this material on the EASA website *atad.easa.europa.eu.* 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 September 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–21022 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1243; Project Identifier MCAI–2022–00674–T]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) 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 Embraer S.A. Model ERJ 170 airplanes. This proposed AD was prompted by a report of uncommanded setting of the barometric reference in both primary flight displays (PFDs) due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. This proposed AD would require installing updated Primus EPIC software, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD November 14, 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 material that will be incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1243.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1243; 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: Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *hassan.m.ibrahim@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–2022–1243; Project Identifier MCAI–2022–00674–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential

under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206 231 3221; email *Hassan.M.Ibrahim@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

The ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–05–03, effective May 25, 2022 (ANAC AD 2022–05–03) (also referred to as the MCAI), to correct an unsafe condition for certain Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes.

This proposed AD was prompted by a report of uncommanded setting of the barometric reference in both PFDs due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. The possibility of erroneous indications for both pilots, combined with possible adverse meteorological conditions could result in an increase of flightcrew workload. The FAA is proposing this AD to address this condition, which could interfere with the decisions taken by the flightcrew during critical phases of flight, and possibly result in reduced controllability of the airplane. See the MCAI for additional background information.

Relationship Between This Proposed AD and AD 2020–05–22

This NPRM would not supersede AD 2020–05–22, Amendment 39–19872 (85 FR 15936, March 20, 2020) (AD 2020–05–22). Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require installing updated Primus EPIC software. ANAC AD 2022–05–03 specifies that accomplishment of that AD ''covers the accomplishment of [terminates] ANAC AD 2019–10–02'' (which corresponds to FAA AD 2020–05–22). Both AD 2020–05–22 and this proposed AD require installing updated Primus EPIC software standards, and the FAA has determined that the actions in AD 2020–05–22 must be done prior to accomplishing the actions in this proposed AD. Accomplishment of the proposed actions in this proposed AD on an airplane would then terminate all of the requirements of AD 2020–05–22 for that airplane only.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–05–03 specifies procedures for installing updated Primus EPIC software. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in ANAC AD 2022–05–03 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2022–05–03 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2022–05–03 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2022–05–03 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1243 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 668 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
8 work-hours × $85 per hour = $680	$0	$680	$454,240

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:

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2022–1243; Project Identifier MCAI–2022–00674–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 14, 2022.

(b) Affected ADs

This AD affects AD 2020–05–22, Amendment 39–19872 (85 FR 15936, March 20, 2022) (AD 2020–05–22).

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–05–03, effective May 25, 2022 (ANAC AD 2022–05–03).

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by a report of uncommanded setting of the barometric reference in both primary flight displays due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. The FAA is issuing this AD to address this condition, which could interfere with the decisions taken by the flightcrew during critical phases of flight, and possibly result in reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–05–03.

(h) Exceptions to ANAC AD 2022–05–03

(1) Where ANAC AD 2022–05–03 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2022–05–03 does not apply to this AD.

(3) Where paragraph (d) of ANAC AD 2022–05–03 specifies you must use certain service information for software installation, this AD specifies to use that service information as applicable, except as provided in paragraphs (a)(1) and (2) of ANAC AD 2022–05–03.

(i) Terminating Action for AD 2020–05–22

Accomplishing the actions required by this AD on an airplane terminates all requirements of AD 2020–05–22 for that airplane only.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

(1) For ANAC AD 2022–05–03, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1243.

(2) For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *hassan.m.ibrahim@faa.gov.*

Issued on September 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–21024 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1244; Project Identifier MCAI–2022–00872–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–12–01, which applies to certain Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent XWB–75, Trent XWB–79, Trent XWB–79B, and Trent XWB–84 model turbofan engines. AD 2020–12–01 requires initial and repetitive inspections of the low-pressure compressor (LPC) outlet guide vane (OGV) outer mount ring assembly and, depending on the results of the inspections, possible replacement of the LPC OGV outer mount ring assembly. Since the FAA issued AD 2020–12–01, it was determined that these inspections are also necessary for RRD Trent XWB–97 model turbofan engines. This proposed AD would require initial and repetitive inspections of the LPC OGV outer mount ring assembly and, depending on the results of the

inspections, replacement of the LPC OGV outer mount ring assembly, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by November 14, 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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1244; 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 EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1244; Project Identifier MCAI–2022–00872–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 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 Sungmo Cho, 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 issued AD 2020–12–01, Amendment 39–21135 (85 FR 34959, June 8, 2020) (AD 2020–12–01), for certain RRD Trent XWB–75, Trent XWB–79, Trent XWB–79B, and Trent XWB–84 model turbofan engines. AD 2020–12–01 was prompted by analysis by the manufacturer of the LPC OGV assembly and LPC OGV outer mount ring assembly. The analysis predicted that when the front engine mount is in the fail-safe condition, the most highly stressed LPC OGV outer mount ring assembly has a life that could be substantially less than one shop visit interval. AD 2020–12–01 requires initial and repetitive inspections of the LPC OGV outer mount ring assembly, and depending on the results of the inspections, possible replacement of the OGV outer mount ring assembly. The agency issued AD 2020–12–01 to prevent failure of the front engine mount support structure.

Actions Since AD 2020–12–01 Was Issued

Since the FAA issued AD 2020–12–01, EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0129, dated June 30, 2022 (the MCAI) to address an unsafe condition for all RRD Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines. The MCAI states that EASA AD 2022–0129 superseded EASA AD 2019–0234. EASA AD 2019–0234 specified that operators perform repetitive inspections (on-wing or in-shop) of the OGV outer mount ring assembly lug fillet area in accordance with RRD Alert Non-Modification Service Bulletin (NMSB) Trent XWB 72–AK188, Initial Issue, dated August 13, 2019. The manufacturer subsequently revised the NMSB and determined that the inspections of the LPC OGV outer mount ring assembly are also necessary for RRD Trent XWB–97 model turbofan engines. In addition, manufacturer analysis indicated that the on-wing inspections, previously specified in RRD NMSB Trent XWB 72–AK188, original issue, dated August 13, 2019, could be discontinued, and the interval of the in-shop inspection could coincide with a qualified shop visit, as outlined in RRD NMSB Trent XWB 72–AK188, Revision 3, dated May 9, 2022. As a result, EASA issued EASA AD 2022–0129 to discontinue the on-wing inspections, allow the in-shop inspection interval to be adjusted, and expand the applicability to include Trent XWB–97 model turbofan engines.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1244.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0129. This EASA AD specifies instructions for performing fluorescent penetrant inspections (FPIs) of the LPC OGV outer mount ring assembly.

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

Other Related Service Information

The FAA reviewed RRD Alert NMSB Trent XWB 72–AK188, Revision 3, dated May 9, 2022. This service information specifies procedures for

performing FPIs of the LPC OGV outer mount ring assembly.

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 EASA AD. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2020–12–01. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0129, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0129 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0129 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0129. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1244 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

Where EASA AD 2022–0129 requires compliance from its effective date, this AD requires using the effective date of this AD.

The ''Remarks'' section of EASA AD 2022–0129 is not incorporated by reference in this AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 60 engines installed on 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
FPI the LPC OGV outer mount ring assembly	3 work-hours × $85 per hour = $255	$0	$255	$15,300

The FAA estimates the following costs to do any necessary repairs or replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these repairs or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair LPC OGV outer mount ring assembly	.5 work-hours × $85 per hour = $42.50	$0	$42.50
Replace the LPC OGV outer mount ring assembly	8 work-hours × $85 per hour = $680	2,418,121	2,418,801
Replace the OGV outer mount ring only	8 work-hours × $85 per hour = $680	894,319	894,999

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:

■ a. Removing Airworthiness Directive 2020–12–01, Amendment 39–21135 (85 FR 34959, June 8, 2020); and

■ b. Adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd. & Co KG (Type Certificate previously held by Rolls-Royce plc) Turbofan Engines: Docket No. FAA–2022–1244; Project Identifier MCAI–2022–00872–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by November 14, 2022.

(b) Affected ADs

This AD replaces AD 2020–12–01, Amendment 39–21135 (85 FR 34959, June 8, 2020) (AD 2020–12–01).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines as identified in European Union Aviation Safety Agency (EASA) AD 2022–0129, dated June 30, 2022. (EASA AD 2022–0129).

(d) Subject

Joint Aircraft Service Component (JASC) Code 7120, Engine Mount Sector.

(e) Unsafe Condition

This AD was prompted by analysis by the manufacturer of the low-pressure compressor (LPC) outlet guide vane (OGV) assembly and LPC OGV outer mount ring assembly. The analysis predicted that when the front engine mount is in the fail-safe condition, the most highly stressed LPC OGV outer mount ring assembly has a life that could be substantially less than one shop visit interval. The FAA is issuing this AD to prevent failure of the front engine mount support structure. The unsafe condition, if not addressed, could result in engine separation, reduced control of the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2022–0129.

(h) Exceptions to EASA AD 2022–0129

(1) Where EASA AD 2022–0129 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0129 is not incorporated by reference in this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0129 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD or email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0129, dated June 30, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0129, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on September 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–21102 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206, 1208, 1217, and 1220

[Docket No. ONRR–2022–0001; DS63644000 DRT000000.CH7000 223D1113RT]

RIN 1012–AA32

Electronic Provision of Records During an Audit

AGENCY: Office of Natural Resources Revenue (ONRR), Department of the Interior.

ACTION: Proposed rule.

SUMMARY: ONRR proposes to amend its regulations to allow ONRR and other authorized Department of the Interior (''Department'') representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee's royalty reporting and payment.

DATES: *Comment period:* To be assured consideration, comments must be received at one of the addresses provided below by 11:59 p.m. EST on November 29, 2022.

ADDRESSES: You may submit comments to ONRR using the following method. Please reference the Regulation Identifier Number (''RIN'') for this action, ''RIN 1012–AA32,'' in your comment:

• *Electronically via the Federal eRulemaking Portal:* Please visit *https://www.regulations.gov.* In the Search Box, enter Docket ID ''ONRR–2022–0001'' and click ''search'' to view the publications associated with the docket folder. Locate the document with an open comment period and then click ''Comment.'' Follow the instructions to submit your public comments prior to the close of the comment period.

Instructions: All comments must include the agency name and docket number or RIN for this rulemaking. All comments, including any personal identifying information or confidential business information contained in a comment, will be posted without change to *https://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and locate the docket folder by searching the Docket ID (ONRR–2022–0001) or RIN number (RIN 1012–AA32).

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rulemaking, contact Amanda Johnson, Regulatory Specialist, at (303) 231–3171 or by email at *ONRR_RegulationsMailbox@onrr.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Proposed Rulemaking

ONRR is responsible for the efficient, timely, and accurate collection and disbursement of revenue originating from the leasing and production of natural resources and energy, including oil, gas, coal, geothermal and solid minerals, from Federal and Indian lands. *See* 30 U.S.C. 1711; Sec. Order. 3299, as amended; U.S. Department of the Interior Departmental Manual, 112 DM 34 (Dec. 9, 2020). To verify that lessees and other persons accurately report and pay royalties and other amounts due, ONRR audits royalty and other reporting and payment. 30 U.S.C. 1711(c).

Various sections of ONRR's regulations, which were adopted in accordance with the Congressional directive found in 30 U.S.C. 1711(a), provide for audits by ONRR and other Department representatives. These sections include:

(1) 30 CFR 1206.250(d), which addresses audits for Federal coal leases.

(2) 30 CFR 1206.350(b), which addresses audits for geothermal leases.

(3) 30 CFR 1206.450(d), which addresses audits for Indian coal leases.

(4) 30 CFR 1208.15, which addresses audits for royalty oil taken in kind.

(5) 30 CFR 1217.50, which addresses audits for oil and gas leases.

(6) 30 CFR 1217.300, which addresses audits for geothermal leases.

(7) 30 CFR 1220.033(e), which addresses audits for oil and gas net profit share leases.

States or Indian Tribes sometimes perform the audits authorized by these sections under delegations or cooperative agreements with ONRR. *See* 30 U.S.C. 1732 and 1735; 30 CFR parts 1227 and 1228.

Congress and the President mandate that Federal agencies use new technologies to improve Government operations. For example, the Paperwork Reduction Act of 1995, Public Law 104–13, and the Information Technology Management Reform Act of 1996, Public Law 104–106, authorize the use of new technologies to improve the productivity, efficiency, and effectiveness of Government programs. *See* 44 U.S.C. 3501(10), 44 U.S.C. 3504(a)(1)(B)(vi) and (h), 40 U.S.C. Parts 11302 and 11303. In addition, the Office of Management and Budget (''OMB'') issued a memorandum on June 28, 2019, entitled ''Transition to Electronic Records'' (M–19–21), directing Federal agencies to ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.

To meet these Federal mandates and to take advantage of rapidly improving technologies for the electronic transmission and storage of records, ONRR proposes to amend its regulations to allow ONRR and other Department representatives the option to require that records be provided for an audit by secure electronic means. Because this amendment would apply to all oil, gas, geothermal, coal, and other solid mineral royalty audits performed by ONRR or other Department representatives, ONRR proposes to:

(1) Add a new section, 30 CFR 1217.10, under the general provisions to 30 CFR part 1217—Audits and Inspections, to specify the methods by which ONRR or other Department representatives can require an auditee to provide records during an audit.

(2) Add references to part 1217 in §§ 1206.250(d), 1206.350(b), 1206.450(d), 1208.15, and 1220.033(e) to clarify that ONRR or an authorized State or Tribe may require an auditee to provide records for an audit by one or more of the methods specified in the new 30 CFR 1217.10.

Auditees keep most, if not all, records for natural resources revenue reporting and payment in electronic format and generally prefer, when under audit, to provide the records electronically. For records that an auditee maintains only in electronic form, the electronic production and transmission of these records for an audit avoids printing and other costs of submitting records in paper form. For records an auditee maintains in paper form, technologies exist to readily allow for the conversion of these records to electronic form when needed for an audit. Providing records electronically helps avoid administrative costs and expenses to the Department and auditees for preparing, submitting, processing, and preserving paper records. ONRR or other Department representatives will still sometimes need to inspect paper records or to conduct an entrance or other conference at an auditee's business location. However, the option to require that records be produced and transmitted electronically could shorten or possibly eliminate onsite audit activities in appropriate situations. It will also help ONRR and auditees to better navigate disruptive events—such as the recent COVID–19 pandemic—that may make onsite inspection of records more burdensome, impractical, or unavailable.

ONRR regulations specifically provide that information that ''constitutes trade secrets or commercial or financial information that is identified as privileged or confidential, or that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, shall not be available for inspection or made public or disclosed without the consent of the lessee, except as provided by law or regulation.'' 30 CFR 1210.207. To preserve the confidentiality of records produced electronically for use in an audit, this rule proposes to allow Department representatives the option to require that records be provided electronically only by means which are secure. A secure means of transmission involves the use of password protection, encryption, or other security measures, to prevent unauthorized access to the transmission by a third-party. The Department maintains computer systems and updates or replaces software as technology changes, which will allow auditees to securely transmit records for an audit. When requesting electronic production and transmission of records, a Department representative will specify the format in which the records are to be transmitted electronically and provide instructions for submitting the records securely. Factors that would contribute to what ONRR or a Department representative would consider acceptable would include the availability and completeness of documentation and the availability of applications that can interpret it. ONRR is seeking public comments specific to what it should consider to be acceptable formats.

This proposed rule is published pursuant to authority delegated to ONRR by the Secretary of the Interior. *See* 30 U.S.C. 189; 30 U.S.C. 1751; 43 U.S.C. 1334; 30 U.S.C. 1023; Secretarial Order 3299, sec. 5; and Secretarial Order 3306, sec. 3–4.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (''OIRA'') in OMB will review all significant rules. OIRA has determined this rulemaking is not significant. E.O. 13563 reaffirms the

principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdensome tools and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes those regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. ONRR developed this proposed rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

ONRR certifies that promulgation of this rulemaking would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* because it only requires auditees—when the Department requests—to provide records and files electronically that they would otherwise be required to provide in hard copy at their business premises.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This rulemaking:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers; individual industries; or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rulemaking does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, ONRR is not required to provide a statement pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this proposed rule does not have any significant takings implications. This proposed rule does not impose conditions or limitations on the use of any private property because the rulemaking only amends how a lessee, operator, payor, and other person must produce and transmit records upon request. This proposed rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking would not impose administrative costs on States or local governments or substantially and directly affect the relationship between the Federal and State governments. Thus, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

The proposed rule complies with the requirements of E.O. 12988. Specifically, the proposed rule:

(1) Meets the criteria of Section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity in order to minimize litigation.

(2) Meets the criteria of Section 3(b)(2), which requires that all regulations be written in clear language using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

ONRR strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and in recognition of their right to self-governance and Tribal sovereignty. ONRR evaluated the proposed rule and the criteria in E.O. 13175 and determined that the proposed rule would not have substantial direct effects on Federally recognized Indian Tribes. Thus, consultation under ONRR's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements or meet the definition of ''collection of information'' under 44 U.S.C. 3502(3). A submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. National Environmental Policy Act

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (''NEPA'') is not required because this proposed rule is categorically excluded. *See* 43 CFR 46.210(i) and the Department's Departmental Manual, Part 516, section 15.4.D. ONRR has determined that this rulemaking is not involved in any of the extraordinary circumstances under 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequence with respect to the physical environment. This rulemaking will not alter in any material way natural resource exploration, production, or transportation.

K. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211 and, therefore does not require a Statement of Energy Effects.

L. Clarity of This Regulation

ONRR is required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must:

(1) Be logically organized.

(2) Use the active voice to address readers directly.

(3) Use common, everyday words and clear language rather than jargon.

(4) Be divided into short sections and sentences.

(5) Use lists and tables wherever possible.

If you feel that ONRR has not met these requirements, send your comments to *ONRR_RegulationsMailbox@onrr.gov.* To better help ONRR revise the proposed rule, your remarks should be as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Howard Cantor,

Acting Director, Office of Natural Resources Revenue.

List of Subjects

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian

lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1208

Continental shelf, Government contracts, Mineral royalties, Public lands—minerals resources, Reporting and recordkeeping requirements, Small businesses.

30 CFR Part 1217

Coal, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1220

Accounting, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons discussed in the preamble, ONRR proposes to amend 30 CFR parts 1206, 1208, 1217, and 1220 as set forth below:

PART 1206—PRODUCT VALUATION

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

Subpart F—Federal Coal

■ 2. Amend § 1206.250 by revising paragraph (d) to read as follows:

§ 1206.250 What is the purpose and scope of this subpart?

* * * * *

(d) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized State may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

Subpart H—Geothermal Resources

■ 3. Amend § 1206.350 by revising paragraph (b) to read as follows:

§ 1206.350 What is the purpose and scope of this subpart?

* * * * *

(b) ONRR may audit and order you to adjust all royalty and fee payments. ONRR or an authorized State or Tribe may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

* * * * *

Subpart J—Indian Coal

■ 4. Amend § 1206.450 by revising paragraph (d) to read as follows:

§ 1206.450 What is the purpose and scope of this subpart?

* * * * *

(d) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized Tribe may require you to provide records for the audit pursuant to 30 CFR 1217.10.

* * * * *

PART 1208—SALE OF FEDERAL ROYALTY OIL

■ 5. The authority citation for part 1208 continues to read as follows:

Authority 5 U.S.C. 301 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

Subpart A—General Provisions

■ 6. Revise § 1208.15 to read as follows:

§ 1208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by ONRR. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts. ONRR may require you to provide records for the audit pursuant to 30 CFR 1217.10.

PART 1217—AUDITS AND INSPECTIONS

■ 7. The authority citation for part 1217 continues to read as follows:

Authority: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a–f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387, unless otherwise noted.

■ 8. Add subpart A, consisting of § 1217.10, to read as follows:

Subpart A—General Provisions

§ 1217.10 Providing records during an audit.

(a) The Office of Natural Resources Revenue (ONRR) or an authorized State or Tribe may specify the method an auditee must use to provide records for all audits conducted under this chapter, statute, or agreement. The methods may include one or more of the following:

(1) Inspect records at an auditee's place of business during normal business hours;

(2) Send records using secure electronic means. When requesting that records be provided electronically, ONRR or the authorized State or Tribe will specify the format in which the records shall be produced, directions for electronic transmission, and instructions to ensure secure transmission; or

(3) Deliver hard copy records using the U.S. Postal Service, special courier, overnight mail, or other delivery service to an address specified by ONRR or an authorized State or Tribe.

(b) [Reserved]

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASE

■ 9. The authority citation for part 1220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

■ 10. Amend § 1220.033 by revising paragraph (e) to read as follows:

§ 1220.033 Audits.

* * * * *

(e) ONRR or its authorized agent may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

[FR Doc. 2022–20495 Filed 9–29–22; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 344

[FISCAL–2022–0002]

RIN 1530–AA25

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this notice of proposed rulemaking (NPRM) to amend the regulations governing State and Local Government Series (SLGS) securities. Treasury is proposing to amend the SLGS regulations to address misuse of the SLGS program, most notably the use of program flexibilities by tax-advantaged entities, usually a state or local government, investing in SLGS securities to create impermissible cost-free options. This NPRM proposes amendments to existing regulations to help stop such activity. In addition, this NPRM proposes administrative changes to increase efficiencies in the program.

DATES: To be considered, comments must be received on or before November 29, 2022.

ADDRESSES: You may submit comments by either of the following methods:

Internet: https://www.regulations.gov (via the online comment form for this NPRM as posted within Docket ID No. FISCAL–2022–0002 at *www.regulations.gov,* the Federal e-rulemaking portal);

U.S. Mail: Mike Goodwin, Division Director, or Jared Waters, Program Manager, Bureau of the Fiscal Service, P.O. Box 396, Parkersburg, WV 26106–1328.

All submissions received must be addressed to the Bureau of the Fiscal Service and include the Docket ID Number FISCAL–2022–0002. All comments received will be posted without change to *www.regulations.gov.* The posting will include any personal information that you provide in the submission.

FOR FURTHER INFORMATION CONTACT: Mike Goodwin, Division Director, Jared Waters, Program Manager, Brian Metz, Senior Counsel, or Elizabeth Spears, Senior Counsel, at *SLGS@fiscal.treasury.gov* or (304) 480–5299.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

A. SLGS Program

SLGS securities are non-marketable Treasury securities that are available only for purchase by an Issuer, as defined in 31 CFR 344.1, of tax-advantaged securities (Issuers). The purpose of the SLGS program is to assist Issuers when investing proceeds from bond issuances in complying with yield restriction and rebate requirements applicable to tax-advantaged securities under the Internal Revenue Code. Because an Issuer's bond issuance process is characterized by several variables that may take a number of weeks to resolve, flexibility has been built into the SLGS program to allow Issuers to customize the SLGS security terms such as interest rate, maturity, and issue date. Over the years, Treasury has amended the SLGS regulations in an effort to maintain SLGS securities as an attractive investment alternative to marketable securities for Issuers, while also preventing the program from being misused by Issuers and from becoming burdensome to Treasury financing operations.

Treasury has repeatedly stated that speculation by Issuers in interest rate movements between marketable Treasury securities and/or SLGS securities is both inconsistent with the purpose of the SLGS program and is prohibited by the SLGS regulations. Despite Treasury's prohibition on such speculation, impermissible transactions have been observed within the SLGS program. Treasury attributes the impermissible transactions to the exploitation of certain flexibilities in the program. The proposed amendments to the regulations are to reinforce to Issuers the prohibition on these transactions and to make it less likely that SLGS investors can use the flexibilities to impermissibly create cost-free options based on interest rate movements. This NPRM identifies in Section E the observed cost-free options that are prohibited and proposes amendments to reduce Issuers' flexibility in structuring the terms of SLGS securities to create such cost-free options. Treasury is also proposing other changes that are designed to improve the administration of the SLGS program.

B. Flexibilities Added to the SLGS Program in 1996

In 1996, Treasury revised the regulations governing SLGS securities to make the program a more flexible and competitive investment vehicle for Issuers in a manner that was intended to be cost effective for them. 61 FR 55690 (October 28, 1996). The 1996 final rule eliminated several requirements such as the Issuer's certifications to purchase SLGS securities. In addition, the regulations were amended to permit an Issuer to subscribe for SLGS securities and subsequently cancel the subscription, without a monetary penalty, under certain circumstances

C. Cost-Free Options Addressed in 1997

In 1997, Treasury amended the regulations to clarify that certain transactions in which Issuers previously used subscriptions for SLGS securities to provide a cost-free interest rate hedge or option were prohibited. 62 FR 46444 (September 3, 1997). The 1997 final rule added §§ 344.2(f)(1) and (f)(2), stating that it is impermissible to subscribe for SLGS securities for deposit in a defeasance escrow or fund if: (1) the amount of SLGS securities subscribed for, plus the securities already in the escrow or fund, plus the amount the Issuer has acquired or has a right to acquire for deposit in the escrow or fund, exceeds the total amount of securities needed to fund such escrow or fund, and (2) the securities in the escrow or fund are subject to an agreement conditioned on changes in the interest rate on marketable Treasury securities.

D. Cost-Free Options Addressed in 2004

Treasury has often noted that the prices established for SLGS securities do not include the cost of an option. Although Treasury considered whether to allow optionality on SLGS securities if Treasury were compensated, Treasury concluded in a 2004 NPRM that there was no practical way to charge for the value of an option. 69 FR 58756 (September 30, 2004).

E. Cost-Free Options Addressed in 2005

In a 2005 final rule, Treasury amended the regulations to prohibit practices that were variations on the use of SLGS securities to create some form of a cost-free option. These practices included: (1) the redemption before maturity or sale of securities to reinvest in a higher yielding SLGS or marketable security, and (2) the cancellation of SLGS subscriptions upon rising interest rates and re-subscribing for SLGS securities at a higher yield. 70 FR 37904 (June 30, 2005). In an attempt to stop recurring misuse of the SLGS program, the preamble reaffirmed that it is ''inappropriate to use the SLGS securities program as an option'' and that such practice is ''contrary to the purpose of the program.''

Under current regulations, Issuers are not allowed to create a cost-free option. 31 CFR 344.2(f) provides: ''*What are some practices involving SLGS securities that are not permitted?* (1) *In General.* For SLGS securities subscribed for on or after August 15, 2005, it is impermissible: (i) To use the SLGS program to create a cost-free option. . . .''

II. Treasury's Proposals To Address Creation of Impermissible Cost-Free Options

During escrow restructurings, Issuers often redeem SLGS securities before maturity (early redemption) and reinvest the proceeds in SLGS or marketable securities at a higher yield to

eliminate ''negative arbitrage'' under the Internal Revenue Code. Negative arbitrage occurs when bond proceeds are invested by an Issuer at a yield that is less than the yield on the bond issue, often as a result of market conditions where the maximum SLGS rates available are lower than what would be permissible under arbitrage provisions of the Internal Revenue Code (26 U.S.C. 148). Such restructuring transactions to eliminate negative arbitrage generally are allowed under the current SLGS regulations, so long as a cost-free option is not created. However, changing the terms of or early redemption of SLGS securities to take advantage of infrequent pricing of SLGS securities is prohibited under the current regulations even when undertaken to eliminate negative arbitrage. Section 244.2(f)(1)(i) of the current regulations makes it impermissible ''to use the SLGS program to create a cost-free option.'' The rationale for this prohibition was previously explained in two prior **Federal Register** publications, in which Treasury specifically stated that cost-free options are impermissible, even if used to eliminate negative arbitrage. 69 FR 58756 (September 30, 2004) and 70 FR 37904 (June 30, 2005). Furthermore, section 244.2(f)(2) of the current regulations includes examples of negative arbitrage situations that are prohibited.

To further clarify the boundaries of the cost-free option prohibition, Treasury proposes modest reductions in the current flexibilities available under the SLGS regulations to eliminate the following three types of practices that create cost-free options in violation of the SLGS regulations:

(1) Purchasing a long-term SLGS security and redeeming the security before maturity to capture redemption premium;

(2) Establishing or changing the maturity and associated interest rate on SLGS securities already subscribed for to take advantage of interest rate movements, either to capture redemption premiums or to minimize losses or

(3) Establishing or changing the SLGS subscription amount to maximize redemption premiums or minimize potential losses.

Any of these practices, alone or in combination, creates a cost-free option. Treasury has repeatedly stated that manipulating the administrative flexibility designed in the SLGS regulations to create a cost-free option is an inappropriate use of the program and inconsistent with its purpose even when undertaken to eliminate negative arbitrage. Treasury incurs a direct cost from such manipulation because it is not compensated for the value of the cost-free option, which may generate large gains in the hands of the SLGS purchasers. In addition, SLGS transactions motivated by cost-free options result in volatility in Treasury's cash balances and difficulty in forecasting cash balances, which increases Treasury's borrowing and administrative costs, as previously identified in 2004 and in 2005. 69 FR 58756 (September 30, 2004) and 70 FR 37904 (June 30, 2005). The three practices identified above create features that are not available in marketable Treasury securities and result in additional costs to the Federal taxpayer.

For these reasons, this NPRM proposes the amendments described below to the SLGS regulations to eliminate these practices. Treasury believes that the proposed amendments retain sufficient flexibility for Issuers to be able to select maturities and interest payment dates, thereby continuing to make SLGS securities an attractive investment vehicle for Issuers. The proposed rule amendments will apply only to SLGS subscriptions started on or after the effective date of the final rule. Treasury anticipates that the effective date will be six months after the final rule's publication in the **Federal Register**.

A. Purchasing and Early Redemption of a Long-Term SLGS Security

The first type of cost-free option identified in this NPRM is ''purchasing a long-term SLGS security and redeeming the security before maturity in order to capture redemption premium.'' To eliminate this cost-free option, Treasury proposes imposing a requirement that the Issuer match the maturity of the SLGS security with an underlying governmental purpose and hold Time Deposit securities, as defined by 31 CFR 344.4, for a minimum amount of time before requesting an early redemption. The meaning of the phrase ''governmental purpose'' is intended to be consistent with its meaning pursuant to the Income Tax Regulations under section 148 of the Internal Revenue Code (26 U.S.C. 148). Thus, an underlying governmental purpose generally refers to the Issuer's expected use of the invested funds; for example, financing a construction project, repaying a prior issue of bonds, or funding a debt service reserve.

1. *No Maturity Longer Than Necessary.* In a 2004 NPRM, Treasury proposed a provision that would make it impermissible for an Issuer to purchase a SLGS security with a maturity longer than was reasonably necessary to accomplish a governmental purpose of the Issuer. The provision was intended to address a practice where the Issuer, acting on movements of interest rates, would redeem the SLGS security before maturity to capture a premium. 69 FR 58756 (September 30, 2004). Based on public comments received, Treasury decided not to include the provision in the 2005 final rule. 70 FR 37904 (June 30, 2005).

However, due to more recently observed early redemption requests and changes to SLGS subscriptions that appear to have been made without a legitimate governmental purpose, Treasury is revisiting the previous proposal. Treasury believes that the costs to Treasury of early redemptions and changes to SLGS subscriptions have the potential to outweigh any administrative burden imposed on either Treasury or the Issuer. To help ensure clarity, Treasury has added specific examples explaining the proposed amendment.

Treasury proposes two provisions that will require the Issuer to match the maturity of the SLGS security with an underlying governmental purpose in order to preclude the Issuer from purchasing a long-term SLGS security and redeeming it prior to maturity in order to capture redemption premium. First, Treasury proposes adding a new ''duration'' certification in § 344.2(e)(3), requiring the Issuer to certify that the length of the maturity of a SLGS security subscribed for is no longer than reasonably necessary for the underlying governmental purpose of the investment. Because Demand Deposit securities, defined at 31 CFR 344.7, are one-day certificates of indebtedness, they will not be subject to the duration certification.

Second, Treasury proposes amending the non-exhaustive list of impermissible transactions in § 344.2(f)(1) by adding a new functional description in subsection (iv) that will make it an impermissible practice to purchase or redeem prior to maturity a SLGS security with a maturity that is longer than is reasonably necessary to accomplish the Issuer's governmental purpose. This functional description is meant to encompass the policy behind the amendments Treasury is proposing in this NPRM while acknowledging that impermissible activity could occur in a variety of ways, including ways not described in the non-exhaustive list. To illustrate how the duration certification will apply to refunding escrow funds, bond debt service reserve funds, and project construction funds, new examples of impermissible transactions

will be added to § 344.2(f)(2)(vii). Other examples will provide guidance on how the certification will apply to purchases and early redemptions of SLGS securities. Even with the addition of the new examples of impermissible practices, Treasury considers the list of examples to be non-exhaustive. There may be other transactions where manipulative practices create a cost-free option using the flexibilities afforded to Issuers in the SLGS program. All such practices are prohibited. Conforming technical amendments will be made throughout the regulation.

2. *Minimum Holding Period and Notification for Early Redemption of Time Deposit Securities.* Under the current regulations, the Issuer may request early redemption of a Time Deposit security as early as the day after Treasury issues the SLGS security. Proposed § 344.6(a)(3) requires a 14-day minimum holding period after the security has been issued before the Issuer may request early redemption of a Time Deposit note or bond. Increasing the minimum holding period from 1 day to 14 days will increase the Issuer's interest rate risk and help to address the type of cost-free option described in this NPRM as ''purchasing a long-term SLGS security and redeeming the security before maturity in order to capture redemption premium.''

The SLGS rate table on the date a subscription is ''started'' establishes the maximum interest rate applied to a SLGS security based on the term of the security. The SLGS rate table in effect on the date of the early redemption request is used in determining if the SLGS security will be redeemed at a discount or premium. A premium might be earned under the current regulations if the Issuer impermissibly creates a cost-free option by either: (a) starting a subscription and redeeming the security prior to maturity in response to a fall in interest rates occurring between the subscription and issuance dates, or (b) changing the term of a SLGS security in a subscription and redeeming the security prior to maturity in response to a fall in interest rates occurring between the subscription and issuance dates. For instance, if the Issuer subscribes for a shorter-term SLGS security, changes the subscription to a longer-term security, and submits an early redemption request on the day after the issue date in response to interest rate movements, an impermissible cost-free option has been created, unless Treasury grants the Issuer a waiver in accordance with § 344.2(n). Increasing the minimum holding period before an Issuer may request early redemption will deter the creation of this type of impermissible cost-free option by increasing the interest rate risk to a more meaningful level than exists under current regulations. It is Treasury's view that even more than *de minimis* risk to the Issuer does not change the fact that this is still a cost-free option and, either with or without risk, this is an impermissible practice.

Treasury does not believe that the proposed new holding period will impose undue hardship on Issuers that have a need for cash proceeds sooner than the maturity date that was chosen when the subscription was started. If new or intervening circumstances arise before issuance of the SLGS securities, the Issuer could take steps to change the subscription by adjusting the maturity to a shorter-term SLGS security. Additionally, if circumstances change after issuance of the SLGS securities, the Issuer may seek a waiver of the minimum holding period from Treasury as detailed in the regulations. The proposed new holding period would not apply to Time Deposit certificates of indebtedness or Demand Deposit securities, as these are short-term securities.

B. Establishing or Changing the Maturity and Interest Rate on SLGS Securities

The second type of cost-free option identified in this NPRM is referred to as ''establishing or changing the maturity and associated interest rate on SLGS securities already subscribed for to take advantage of interest rate movements, either to capture redemption premiums or to minimize losses.'' To eliminate this cost-free option, Treasury proposes that the Issuer be required to specify the maturity of Time Deposit securities when a subscription is started and be limited in adjustments that can be made to the maturity of Time Deposit securities.

1. Specifying the Maturity of Time Deposit Securities

Current regulations permit Issuers to subscribe for SLGS up to 60 days in advance of issuance and until 3 p.m. Eastern Time on the day of issuance to specify the maturity for Time Deposit securities. This flexibility makes it possible for the Issuer to impermissibly create the cost-free option described in this NPRM as ''establishing or changing the maturity and associated interest rate on SLGS securities already subscribed for to take advantage of interest rate movements, either to capture redemption premiums or to minimize losses.''

Treasury's research reveals that approximately 99 percent of SLGS subscriptions are started with a stated maturity date. Only a small percentage of subscriptions have had changes made by Issuers to the maturity dates of the securities following the start of a subscription. Given that the overwhelming majority of Issuers have identified the maturity date at the start of the SLGS subscription process, Treasury proposes that all Issuers must provide a maturity date at the start of a subscription, rather than by the time of completion of the subscription. Treasury proposes that when starting a Time Deposit security subscription under § 344.5(b)(5) and completing a subscription under § 344.5(e)(2), the Issuer must separately itemize the maturity date(s) by individual Time Deposit security. Issuers will have the ability to adjust the maturities, within certain parameters, if necessary.

2. Limiting Maturity Adjustments on Time Deposit Securities

Additionally, Treasury proposes to limit Issuer adjustments to the maturity of a Time Deposit security before issuance. The current SLGS regulations permit the Issuer to make unrestricted changes to the maturity of a Time Deposit security and choose any term from 30 days to 40 years (31 CFR 344.4(a)). This flexibility is an attractive feature of the SLGS program. However, when this flexibility results in the Issuer ''establishing or changing the maturity and associated interest rate on SLGS securities already subscribed for to take advantage of interest rate movements, either to capture redemption premiums or to minimize losses,'' an impermissible cost-free option is created.

Proposed § 344.5(d)(4), governing how to change a subscription, and § 344.5(e)(7), governing when a subscription is completed, state that the Issuer cannot change the maturity date on a Time Deposit security by more than 30 days for certificates of indebtedness, 6 months for notes, and 1 year for bonds. The proposed amendments retain flexibility in setting maturity of SLGS securities, while removing the ability to alter maturities beyond the time required to accomplish a governmental purpose.

C. Establishing or Changing the SLGS Subscription Amount

The third type of cost-free option identified in this NPRM is referred to as ''establishing or changing the SLGS subscription amount in order to maximize redemption premiums or minimize potential losses.'' Treasury proposes to limit principal amount changes to Time Deposit securities at

the individual security level to address this cost-free option.

1. Changing Principal Amounts on Time Deposit Securities

Before 2005, the Issuer could change the aggregate principal amount specified in the initial subscription by up to $10 million or 10 percent, whichever was greater. In a 2004 NPRM, Treasury proposed a size amendment provision to permit a change in the aggregate principal amount by 10 percent above or below the amount originally specified in the subscription. 69 FR 58756 (September 30, 2004). The provision was adopted in the 2005 final rule. 70 FR 37904 (June 30, 2005).

The current regulation provides that the aggregate principal amount originally specified in the SLGS subscription cannot be changed by more than 10 percent. Because a single subscription may be used to purchase multiple Time Deposit securities with different principal and maturity terms, the current size provision at the aggregate subscription level is inadequate to address Treasury's concerns about the creation of cost-free options at the individual security level. Treasury proposes to limit the amount of principal that each Time Deposit security in a subscription can be changed. Proposed § 344.5(d)(2) applies the 10 percent limit at the individual SLGS security level instead of at the case level, which may be composed of multiple SLGS securities.

Notwithstanding the above, even if a principal adjustment within 10 percent of the original subscription amount of a particular Time Deposit security complies with proposed § 344.5(d)(2), that adjustment would violate the current prohibition in § 344.2(f)(1)(i) if the change is motivated by interest rate movements. In that case, the Issuer would be creating a cost-free option by ''establishing or changing the SLGS subscription amount in order to maximize redemption premiums or minimize potential losses.''

2. Changing Principal Amounts on Demand Deposit Securities

Treasury does not propose to amend § 344.8(d) pertaining to Demand Deposit securities. Demand Deposit securities will remain subject to the current rule that the aggregate principal amount may not be changed by more than 10 percent above or below the amount originally specified in the subscription.

III. Administrative Changes

On October 7, 2012, the Secretary of the Treasury issued Treasury Order 136–01, establishing within the Department of the Treasury, the Bureau of the Fiscal Service (Fiscal Service). The new bureau consolidated the bureaus formerly known as the Financial Management Service (FMS) and the Bureau of the Public Debt (BPD). 78 FR 31629 (May 24, 2013).

On October 2, 2013, Treasury published a final rule entitled ''Regulatory Reorganization; Administrative Changes to Regulations Due to the Consolidation of the Financial Management Service and the Bureau of the Public Debt Into the Bureau of the Fiscal Service.'' This final rule renamed subchapter A, transferred parts 306 through 391 of subchapter B to subchapter A, and removed and reserved subchapter B in 31 CFR chapter II. This had the effect of moving the SLGS regulations from subchapter B to subchapter A; removing all references to ''Bureau of the Public Debt'' and adding, in their place, ''Bureau of the Fiscal Service''; removing all references to ''BPD'' and ''Public Debt'' and adding, in their place, ''Fiscal Service''; and, removing all references to ''*www.publicdebt.treas.gov*'' and adding, in each place, ''*www.fiscal.treasury.gov*'', but did not make any corresponding changes to the current requirements of the SLGS regulations. 78 FR 60695 (October 2, 2013).

This NPRM makes other minor administrative or technical changes. See, *e.g.,* proposed §§ 344.0(a), 344.1, 344.2(d), (e)(2)(i), (e)(4), (f)(2)(iv), (f)(2)(v), (g), 344.3(e), 344.4(b)(1), 344.5(a)–(b), (d)–(f), 344.6(a)(3), (g), 344.7(b)(1)–(2), 344.8(a)–(b), (e), and 344.9(a). Some of these changes are noted below.

A. Purpose of the SLGS Program

Previously § 344.0(a) provided that SLGS securities may be issued to assist Issuers in complying with the yield restriction and rebate requirements applicable to tax-exempt securities under the Internal Revenue Code (26 U.S.C. 148). Treasury issued a final rule in 2005 deleting the language relating to amounts that ''assist in complying with applicable provisions of the Internal Revenue Code relating to the tax exemption'' stating that this language was somewhat vague and proved too difficult to administer. 70 FR 37904, 37909, June 30, 2005. This deletion has had the unintended consequence of confusing some Issuers about the purpose of the SLGS program. Treasury proposes to amend § 344.0(a) by reinserting language that the purpose of the SLGS program is ''to assist in complying with applicable provisions of the Internal Revenue Code.''

B. Definitions Updates.

The 2005 final rule amended the regulations to require certifications under § 344.2(e)(2)(A) if Issuers purchase SLGS securities with any amount received from the sale or redemption before maturity of any marketable security, that the yield on such SLGS security does not exceed the yield at which such marketable security was sold or redeemed. The preamble of the 2005 final rule explained that ''marketable securities'' was a broader category than Treasury securities and could include ''marketable securities that have a lower credit rating than Treasury securities.'' 70 FR 37904, 37906 (June 30, 2005).

Since 2005, the SLGS Frequently Asked Questions have explained that a ''marketable security'' is ''any security other than a State or Local Government Series (SLGS) security. Examples of marketable securities include Treasury securities (other than SLGS securities), guaranteed investment contracts, and federal agency securities.'' *https://www.slgs.gov.* While this definition may appear broad, given that owners of SLGS securities are generally restricted in the types of investments they may purchase with tax-advantaged bond proceeds, this definition has served to clarify how the term ''marketable security'' is used in the context of the SLGS regulations.

Treasury proposes adding a definition of ''marketable security'' under § 344.1 that closely aligns with the example in the SLGS Frequently Asked Questions. The proposed definition states, ''Marketable security, with reference to the types of securities that issuers of tax-advantaged securities are permitted to purchase with tax-advantaged proceeds, means any security other than a SLGS security. Examples of marketable securities include Treasury securities (other than SLGS securities) and federal agency securities.'' Treasury is not incorporating ''guaranteed investment contracts'' within the proposed definition of ''marketable security.'' This change is not because Treasury intends to allow guaranteed investment contracts to be used to create cost-free options, but is meant to keep the definition of ''marketable security'' more in line with industry use. For the avoidance of doubt, Treasury affirms that the use of guaranteed investment contracts, any other nonmarketable security, or any other means to create a cost-free option, is prohibited. The definition would apply throughout the rule whenever the term ''marketable security'' is used.

Additionally, Treasury proposes adding a new definition of ''cost-free option'' under § 344.1 that states that the use of any provision(s) in the SLGS program to exploit movements in interest rates, including, but not limited to, those designed to provide marginal flexibility to Issuers in structuring their SLGS investments constitutes the creation of an impermissible cost-free option. Treasury has intentionally drafted the definition of cost-free option broadly to encompass all situations in which exploitation of the movement in interest rates is an impermissible practice.

Treasury further proposes adding a new definition of ''governmental purpose'' under § 344.1 that clarifies that using the SLGS program to create cost-free options is not a permitted governmental purpose. A permitted governmental purpose includes but is not limited to financing a construction project, repaying a prior issue of bonds, or funding a debt service reserve. The governmental purpose must be consistent with the purposes of the Income Tax Regulations under section 148 of the Internal Revenue Code.

Treasury also proposes adding a new definition of ''tax-advantaged bond'' under § 344.1 that corresponds with the definition of the types of bonds to which the relevant portions of the Internal Revenue Code and the Income Tax Regulations (generally 26 U.S.C. 148 and 26 CFR 1.148–0 through 1.148–11) apply. The Internal Revenue Code is dynamic and new types tax-advantaged bonds have been created and could be created in the future. The definition of ''tax-advantaged bond'' includes (i) a tax-exempt bond, (ii) a taxable bond that provides a federal tax credit to the investor with respect to the Issuer's borrowing costs, (iii) a taxable bond that provides a refundable federal tax credit payable directly to the Issuer for its borrowing cost, and (iv) any future similar bond that provides a federal tax benefit that reduces an Issuers' borrowing cost. (26 CFR 1.150–1(b)).

Treasury proposes amending the definition of ''business day'' under § 344.1 to clarify which days normal processing of SLGS securities transactions will occur. Section 6103 of Title 5 of the United States Code sets forth which days are considered ''legal public holidays.'' Generally, federal agencies are closed for business on legal public holidays and such holidays are non-workdays for federal employees. However, while federal agencies may be closed on such days, the Federal Reserve Bank of New York may still be open and conducting payment transactions. Because payment transactions are still possible, even though the Bureau of the Fiscal Service may be closed for most transactions, scheduled payments for SLGS securities still occur those days when the Federal Reserve Bank of New York is open. The revision to the definition of ''business day'' clarifies when normal SLGS transactions may occur and payments will be processed.

Finally, Treasury proposes amending the definition of ''eligible source of funds'' under § 344.1 to better align with the relevant portions of the Internal Revenue Code and the Income Tax Regulations. New types of tax-advantaged bonds have been and can be added to the Internal Revenue Code. Treasury is amending the definition of ''eligible source of funds'' to include proceeds of all types of tax-advantaged bonds as defined in 26 CFR 1.150–1(b), including those created after the date of any SLGS final rule.

C. Certification of Eligibility To Purchase

Given that the purpose of the SLGS program is to assist Issuers in complying with the yield restriction and rebate requirements applicable to tax-advantaged securities under the Internal Revenue Code, Treasury views it prudent to provide for what are currently rare situations when bonds lose their tax-advantaged status. In such cases, the proceeds used by the Issuer to purchase SLGS may no longer be considered an ''eligible source of funds.''

Treasury proposes a new § 344.2(e)(4) that would add an Issuer certification as to its eligibility to purchase SLGS securities. Under this new section, the Issuer would certify that it will notify Treasury if the funds used to purchase SLGS securities were no longer considered ''an eligible source of funds.'' The notification requirement would apply to all outstanding SLGS securities (*e.g.,* Time Deposit, Demand Deposit, and special 90-day certificates of indebtedness). Treasury would deem the notification as a request to redeem those outstanding Demand Deposit securities that are affected by the ineligibility under § 344.9, as amended. The Issuer would not be required to redeem Time Deposit securities that are outstanding at the time of the notification because Time Deposit securities are longer-term securities that would have been purchased with an eligible source of funds. Special 90-day certificates of indebtedness containing funds that are no longer considered ''an eligible source of funds'' would be redeemed either upon maturity (*i.e.,* would not be rolled into a new special 90-day certificate of indebtedness) or upon reversion to Demand Deposit securities.

D. SLGS Rate Table

Under the current regulation, § 344.4(b)(1), if the SLGS rate table is not released to the public by 10 a.m. Eastern Time on a particular business day, then the SLGS rate table for the preceding business day applies. Treasury proposes amending § 344.4(b)(1) to state that Treasury will post the SLGS rate table ''by 10 a.m. Eastern Time each business day or as soon as practicable thereafter.'' Under this proposed amendment, Treasury would have more flexibility in those instances where the SLGS rate table could not be released to the public by 10 a.m. Eastern Time. However, if no SLGS rate table has been published by 11 a.m. Eastern Time, then the SLGS rate table for the preceding business day would apply. This provides Issuers with more accurate pricing when there is a slight delay in publishing the SLGS rate table, while carrying over the previous day's rate if circumstances prevent publication of a new SLGS rate table.

E. Establishment of the Issue Date

Under the current rule in § 344.5(a) and § 344.8(a), the issue date for Time Deposit and Demand Deposit securities cannot be more than 60 calendar days after the date Treasury receives the subscription. Our data analysis reveals that less than 4 percent of SLGS subscriptions are started more than 45 days in advance of the issue date. Treasury proposes to amend these provisions to reduce the lead time for an Issuer to subscribe for SLGS securities from 60 to 45 calendar days. The subscription date controls which SLGS rate table applies to the subscription for securities. Moving the subscription date closer to the issue date would provide more accurate pricing for SLGS securities. Additionally, this proposed amendment has the added benefit of narrowing the window of time in which an impermissible cost-free option could be created. Conforming amendments would also be made to § 344.2(f)(2)(iv).

F. Subscription Process

The current regulation specifies the information the Issuer must provide to start and complete the subscription process for both Time Deposit and Demand Deposit securities. The current rule in § 344.5 and § 344.8 specifies the information that the Issuer must provide when starting the SLGS subscription process (§ 344.5(b) and § 344.8(b)), how the Issuer may change a subscription (§ 344.5(d) and § 344.8(d)), and how the

Issuer completes the subscription (§ 344.5(e) and § 344.8(e)). To implement Treasury's proposed amendments discussed in Sections II(A)(1) (duration certification regarding matching the SLGS maturity to the governmental purpose), II(B)(1) (specifying the maturity of each Time Deposit security in the subscription), II(C) (changing the principal amounts), III(C) (eligibility certification), and III(G) (including the EMMA® registration in the SLGS case, discussed below), Treasury proposes amending § 344.5 and § 344.8 to include these requirements.

Additionally, Treasury proposes amending § 344.5 and § 344.8 to more specifically identify currently required information such as the Issuer's address and banking information, while removing the requirement to specify the ''title of an official authorized to purchase SLGS securities'' as the title is no longer needed. In addition, the reference to the ''proceeds that are derived, directly or indirectly, from the redemption before maturity of SLGS securities subscribed for on or before December 27, 1976,'' would be deleted as none of these securities remain outstanding.

G. Identification of the Tax-Advantaged Bond Issue

Under the current rule in § 344.5(b)(5) and § 344.8(b)(5), the underlying tax-advantaged bond issue must be identified when the Issuer ''starts'' and ''completes'' the subscription for SLGS securities. The Issuer starts the subscription process by entering certain information in required data fields in SLGSafe, the secure internet site through which SLGS transactions are submitted. When starting a subscription, the Issuer typically enters information on the new or ''refunding bonds,'' and not the ''refunded bonds'' or the ''prior issue'' being refinanced.

This requirement has been in the current regulation since the 2005 final rule required the Issuer to enter a description of the Issuer's tax-exempt bond issue such as ''Water and Sewer Revenue Bonds Series 2004'' (70 FR 37904, 37907, June 30, 2005). Subsequently, the Municipal Securities Rulemaking Board (MSRB) launched its Electronic Municipal Market Access (EMMA®) system, and EMMA® has now become the official repository for municipal securities disclosures.

Given that EMMA® generally contains information about state and local government bonds, Treasury proposes to amend the regulation to require that if a bond issue is registered in EMMA®, the Issuer must adhere to the naming convention supplied in the ''issue description'' field on the ''Security Information'' tab in EMMA® at *https://emma.msrb.org* when describing the tax-advantaged bond in SLGSafe. If the EMMA® website revises its naming convention, the Issuer would supply the updated registration as it is presented in EMMA®, or its successor system.

The Issuer would be able to input the ''EMMA® registration'' into SLGSafe at the time the subscription is started (§ 344.5(b)(4) and § 344.8(b)(4)), but that information would not be required until such time as the subscription is completed (§ 344.5(e)(3) and § 344.8(e)(2)). This would allow additional time for the Issuer to update the description field if the bond issue has not yet been registered with EMMA® when the subscription is started. Conforming the underlying bond issuance field in SLGSafe with the EMMA®'s naming convention would assist Treasury in determining if the amounts are an ''eligible source of funds'' under § 344.1 that may be used to purchase SLGS securities.

H. Special Zero Interest Securities and Subscriptions on or Before December 27, 1976

Special zero interest securities were discontinued by Treasury on October 28, 1996. Therefore, Treasury proposes removing Subpart D of the current rule. In addition, all outstanding SLGS securities issued on or before December 27, 1976, matured by November 1, 2013. Therefore, Treasury proposes removing § 344.5(e)(4) and § 344.6(g) of the current rule.

I. Debt Limit Contingency

1. *Treasury's Discretion to Leave Demand Deposit Securities Invested or to Invest in Special 90-day Certificates of Indebtedness.* The current regulation states that at any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, Treasury must invest any unredeemed Demand Deposit securities in special 90-day certificates of indebtedness. Treasury proposes to amend § 344.7(b) to provide the Secretary with the flexibility to exercise discretion to either leave the unredeemed Demand Deposit securities invested or to invest them in special 90-day certificates of indebtedness.

2. *Terms Applying to Invested Demand Deposit Securities.* Treasury proposes to clarify § 344.7(b)(1) to provide that Demand Deposit securities during a debt limit contingency remain subject to the normal terms and conditions that apply to Demand Deposit securities.

3. *Terms Applying to Special 90-day Certificates of Indebtedness.* Treasury proposes to clarify § 344.7(b)(2) to provide that special 90-day certificates of indebtedness that are issued during a debt limit contingency remain subject to the same redemption rules as Demand Deposit securities. Treasury would roll over special 90-day certificates of indebtedness, along with accrued interest, into new special 90-day certificates of indebtedness when a debt limit contingency period lasts longer than 90 days.

4. *End of a Debt Limit Contingency.* At the end of a debt limit contingency, the Issuer currently has the option to keep the special 90-day certificates of indebtedness until maturity, redeem them before maturity, or reinvest them in Demand Deposit securities. Treasury proposes to amend § 344.7(b)(2) to provide that when regular Treasury borrowing operations resume, Treasury would redeem any special 90-day certificates of indebtedness and reinvest the proceeds, along with accrued interest, in Demand Deposit securities. As a result, the Issuer would once again hold the investment that the Issuer originally requested.

J. Notice Period for Redemption of Demand Deposit Securities

The current regulation § 344.9(a) requires notice of 1 business day for redemption of Demand Deposit securities in the amount of $10 million or less and notice of 3 business days for redemptions of more than $10 million. To aid in Treasury's cash forecasting and cash management, Treasury proposes amending § 344.9(a) to require notice of 5 business days for redemption of Demand Deposit securities and special 90-day certificates of indebtedness in the principal amount of $500 million or more. Some Issuers hold numerous securities in multiple SLGSafe cases. To determine which notice period applies, the Issuer would calculate the total amount of proceeds to be derived from redemption of Demand Deposit securities and special 90-day certificates of indebtedness at the ''owner,'' and not the ''case,'' level.

IV. Procedural Requirements

A. Executive Order 12866

This NPRM is not a significant regulatory action as defined in Executive Order 12866, dated September 30, 1993. Therefore, a regulatory assessment of anticipated

benefits, costs, and regulatory alternatives is not required.

B. Administrative Procedure Act (APA)

Because this NPRM relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule. However, although not required under the APA, Treasury is seeking public comment on this NPRM.

C. Regulatory Flexibility Act

Although this NPRM is being issued in proposed form to secure the benefit of public comment, it relates to matters of public contract and procedures for United States securities. Because a NPRM is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply. However, Treasury will consider the potential impact of this proposed rule on small entities and will evaluate any proposed alternatives that would allow Treasury to accomplish the objectives of this proposed rule without unduly burdening small entities by imposing a significant economic impact on them. Therefore, Treasury will accept comments pertaining to the potential impact and proposed alternatives during the comment period.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, do not apply to this NPRM because there are no new or revised recordkeeping or reporting requirements. The existing OMB Paperwork Reduction Act control numbers for Part 344 are 1530–0044 and 1530–0065.

V. Proposed Regulations

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, Treasury proposes to amend 31 CFR part 344 as follows:

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES.

■ 1. The authority citation for part 344 continues to read as follows:

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

■ 2. Amend § 344.0, by revising paragraph (a) and removing paragraph (b)(3).

The revisions read as follows:

§ 344.0 What does this part cover?

(a) *What is the purpose of the SLGS securities offering?* The Secretary of the Treasury (the Secretary) offers for sale non-marketable State and Local Government Series (SLGS) securities to provide issuers of tax-advantaged bonds with investments from any eligible source of funds (as defined in § 344.1) to assist issuers in complying with applicable provisions of the Internal Revenue Code.

* * * * *

■ 3. Amend § 344.1, by:
■ a. Revising the definition of ''Business day(s)'';
■ b. Adding in alphabetical order a definition for ''Cost-free option'';
■ c. Revising the definition of ''Eligible source of funds'';
■ d. Adding in alphabetical order a definition for ''Governmental purpose'';
■ e. Revising the definition of ''Issuer'';
■ f. Adding in alphabetical order definitions for ''Marketable security''; and ''Tax-advantaged bond.''

The revisions and additions read as follows:

§ 344.1 What special terms do I need to know to understand this part?

* * * * *

Business day(s) means any day other than a Saturday or Sunday that the Federal Reserve Bank of New York is open for business.

Cost-free option means the use of any provision(s) in the SLGS program to exploit movements in interest rates, including, but not limited to, those designed to provide marginal flexibility to issuers in structuring their SLGS investments.

* * * * *

Eligible source of funds means:

(1) Any amounts that are gross proceeds of an issue of tax-advantaged bonds or are reasonably expected to become gross proceeds of such an issue of tax-advantaged bonds;

(2) Any amounts that formerly were gross proceeds of a tax-advantaged bond issue, but no longer are treated as gross proceeds of such issue as a result of the operation of the universal cap on the maximum amount treated as gross proceeds under 26 CFR 1.148–6(b)(2);

(3) Amounts held or to be held together with gross proceeds of one or more tax-advantaged bond issues in a refunding escrow, defeasance escrow, parity debt service reserve fund, or commingled fund (as defined in 26 CFR 1.148–1(b));

(4) Proceeds of a bond issue that is not an issue of tax-advantaged bonds but that refunds, or is refunded by, an issue of tax-advantaged bonds; or

(5) Any other amounts that are subject to yield limitations under the rules applicable to tax-advantaged bonds under the Internal Revenue Code.

Governmental purpose, under this part, means the issuer's expected use of the invested funds, including but not limited to, financing a construction project, repaying a prior issue of bonds, or funding a debt service reserve. Such use must be consistent with the purposes of the Income Tax Regulations under section 148 of the Internal Revenue Code. Generating gain on the proceeds of a bond issue through the use of a cost-free option in purchasing and redeeming SLGS is not a permitted governmental purpose.

Issuer refers to the government body or other entity that issues tax-advantaged bonds, or to a conduit borrower.

Marketable security, with reference to the types of securities that issuers are permitted to purchase with an eligible source of funds, means any security other than a SLGS security. Examples of marketable securities include Treasury securities (other than SLGS securities) and federal agency securities.

* * * * *

Tax-advantaged bond means tax-advantaged bond as defined in 26 CFR 1.150–1(b).

* * * * *

■ 4. Amend § 344.2 by:
■ a. Revising paragraph (d) and paragraph (e)(2)(i) introductory text;
■ b. Adding paragraphs (e)(3) and (e)(4);
■ c. Revising paragraph (f)(1), the second sentence of paragraph (f)(2)(iv), and the first sentence of paragraph (f)(2)(v);
■ d. Adding paragraph (f)(2)(vii);and
■ e. Revising the last sentence of paragraph (g).

The revisions and additions read as follows:

§ 344.2 What general provisions apply to SLGS securities?

* * * * *

(d) *Can SLGS securities be transferred?* No. SLGS securities issued as any one type, *i.e.,* Time Deposit or Demand Deposit, cannot be transferred for other securities of that type or any other type. Transfer of securities by sale, exchange, assignment, pledge, or otherwise is not permitted.

(e) * * *

(2) * * *

(i) *Purchase of SLGS securities.* Upon submitting a subscription, or performing

any other transaction for a SLGS security, a subscriber must certify that:

* * * * *

(3) *Duration certification.* For each subscription to purchase a Time Deposit SLGS security, the subscriber must certify that the term of the SLGS security subscribed for is no longer than reasonably necessary for the underlying governmental purpose of the investment.

(4) *Eligibility certification.* For each subscription to purchase a SLGS security, the subscriber must certify that if, at any point while SLGS securities are outstanding, the issuer becomes ineligible to purchase SLGS securities or the funds used to purchase SLGS securities are no longer an eligible source of funds, the issuer or agent thereof must, as soon as practicable, notify Treasury of such ineligibility. Such notification will be deemed to be a request for redemption of those outstanding Demand Deposit securities that are affected by the ineligibility.

(f) * * *

(1)*Impermissible Transactions:*

(i) To use the SLGS program to create a cost-free option (while the following examples may specifically use marketable securities for illustration, creating a cost-free option via any means is prohibited);

(ii) To purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security exceeds the yield at which such marketable security is sold or redeemed;

(iii) To invest any amount received from the redemption before maturity of a Time Deposit security (other than a Zero Percent Time Deposit security) at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such Time Deposit security; or

(iv) To purchase a SLGS security with a maturity that is longer than is reasonably necessary to accomplish the issuer's governmental purpose for its purchase of the SLGS security or to purchase a SLGS security with an intention to redeem such SLGS security earlier than is reasonably necessary to accomplish the issuer's governmental purpose for its purchase of the SLGS security.

(2) * * *

(iv) * * * To reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities for purchase in 45 days. * * *

(v) * * * On February 6, 2006, an issuer purchases a Time Deposit security using an eligible source of funds from a debt service reserve fund. * * *

* * * * *

(vii) *Purchase of SLGS security with maturity longer than reasonably necessary.* An issuer may purchase SLGS securities to facilitate compliance with arbitrage yield restrictions for investments of various types of proceeds of tax-advantaged bonds, including investments in refunding escrow funds, bond debt service reserve funds, or project construction funds, respectively. The determination of whether a maturity for a SLGS security is longer than is reasonably necessary depends on the issuer's governmental purpose for the issuance. Thus, the maturities of SLGS securities invested in a refunding escrow fund are reasonably necessary if they are no longer than those necessary to accomplish the defeasance of the underlying refunded bonds until the applicable redemption date or retirement date of the refunded bonds. Maturities of SLGS securities invested in a project construction fund are reasonably necessary if they are no longer than the reasonably expected construction period for the financed project, and early redemptions of such securities are reasonably necessary if they are reasonably related to construction draws for the financed project. Maturities of SLGS securities invested in a debt service reserve fund are reasonably necessary if they are no longer than the earlier of the permitted term of investments in that reserve fund under the bond documents or the term of the secured bonds. Early redemptions of SLGS securities with reasonably necessary maturities are permissible for the above bona fide business reasons, including changes in market interest rates. By contrast, the purchase of SLGS securities with maturities that are longer than the reasonably necessary maturities described above and associated early redemptions of those SLGS securities to obtain the funds within periods that would correspond to an issuer's bona fide governmental purpose for a SLGS investment constitute impermissible practices under paragraph (f)(1)(iv). Thus, for example, if an issuer purchases SLGS securities to fund a refunding escrow to be used to defease and call refunded bonds at the first call date in five years, the issuer's purchase of SLGS securities with maturities beyond that five-year period and corresponding early redemptions of those SLGS securities within that five-year period constitute an impermissible use of the SLGS program.

(g) * * * Fiscal Service's ABA Routing Number can be found on Fiscal Service's website under the SLGS FAQs.

* * * * *

■ 5. Amend § 344.3 by revising paragraph (e) to read as follows:

§ 344.3 What provisions apply to the SLGSafe Service?

* * * * *

(e) *How do I apply for SLGSafe access?* Submit to Fiscal Service a completed SLGSafe Application for internet Access, which is found on Fiscal Service's website.

* * * * *

■ 6. Amend § 344.4 by revising paragraph (b)(1) to read as follows:

§ 344.4 What are Time Deposit securities?

* * * * *

(b) * * *

(1) *When is the SLGS rate table released?* We release the SLGS rate table to the public by 10 a.m. Eastern time each business day or as soon as practicable thereafter. If the SLGS rate table is not available by 11 a.m. Eastern time on any given business day, the SLGS rate table for the preceding business day applies.

* * * * *

■ 7. Amend § 344.5 by revising paragraphs (a), (b), (d), (e), and (f), to read as follows:

§ 344.5 What other provisions apply to subscriptions for Time Deposit securities?

(a) *When is my subscription due?* The subscriber must set the issue date for the securities in the subscription. The issue date must be a business day. The issue date cannot be more than 45 days after the date we receive the subscription. If the subscription is for $10 million or less, we must receive a subscription at least 5 days before the issue date. If the subscription is for over $10 million, we must receive the subscription at least 7 days before the issue date.

Example 1 to paragraph (a): If SLGS securities totaling $10 million or less will be issued on May 16th, we must receive the subscription no later than May 11th. If SLGS securities totaling more than $10 million will be issued on May 16th, we must receive the subscription no later than May 9th. In all cases, if SLGS securities will be issued on May 16th, we will not accept the subscription before April 1st.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) A description of the tax-advantaged bond issue;

(5) Separately itemized securities to be purchased, specifying principal amount, maturity date, interest rate, and first interest payment date (in the case of notes and bonds) for each; and

(6) The certifications required by § 344.2(e).

* * * * *

(d) *How do I change a subscription?* You can change a subscription on or before 3 p.m. Eastern time, on the issue date. Changes to a subscription are acceptable with the following exceptions:

(1) You cannot change the issue date; provided, however, you may change the issue date up to 7 days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster);

(2) You cannot change the principal amount originally specified for any security in the subscription by more than ten percent;

(3) You cannot change an interest rate to exceed the maximum interest rate in the SLGS rate table that was in effect for a security of comparable maturity on the business day that you began the subscription process; and

(4) You cannot change the maturity date originally specified for any security in the subscription by more than 30 days for certificates of indebtedness, 6 months for notes, and 1 year for bonds.

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Separately itemize securities specifying principal amount, maturity date, interest rate, and first interest payment date (in the case of notes and bonds) for each;

(3) Describe the bond issue. If the tax-advantaged bond issue referenced in paragraph (b)(4) of this section is, or will be, registered or disclosed in the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) system, describe the issue exactly as designated in the ''issue description'' field of EMMA®, or successor system;

(4) Include the issuer's address;

(5) Include information on the financial institution that will transmit the funds for the purchase of the securities and information on the financial institution that will receive security principal and interest payments;

(6) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription and not be more than ten percent above or below the originally subscribed for amount for each individual security;

(7) Not deviate from the original subscribed for maturity date specified for any security in the subscription by more than 30 days for certificates of indebtedness, 6 months for notes, and 1 year for bonds;

(8) Include the information required under paragraph (b) of this section, if not already provided; and

(9) Include the certifications required by § 344.2(e).

(f) *When must I complete the subscription?* We must receive a completed subscription on or before 3 p.m. Eastern time on the issue date.

■ 8. Amend § 344.6 by revising paragraph (a)(3); and removing paragraph (g).

The revision reads as follows:

§ 344.6 How do I redeem a Time Deposit security before maturity?

(a) * * *

(3) *Notes or bonds.* A note or bond can be redeemed, at the owner's option, no earlier than 30 days after the issue date. Any request for redemption received within 14 days of the issue date will be rejected.

* * * * *

■ 9. Amend § 344.7 by revising paragraph (b) to read as follows:

§ 344.7 What are Demand Deposit securities?

* * * * *

(b) *What happens to Demand Deposit securities during a Debt Limit Contingency?* At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, we may invest any unredeemed Demand Deposit securities in special 90-day certificates of indebtedness.

(1) Funds left invested in Demand Deposit securities remain subject to the normal terms and conditions for such securities as set forth in this part.

(2) Funds invested in 90-day certificates of indebtedness earn simple interest equal to the daily factor in effect at the time Demand Deposit security issuance is suspended, multiplied by the number of days outstanding. Ninety-day certificates of indebtedness are subject to the same request for redemption notification requirements as those for Demand Deposit securities and will be redeemed at par value plus accrued interest. If a 90-day certificate of indebtedness reaches maturity during a debt limit contingency, we will automatically roll it into a new 90-day certificate of indebtedness, along with accrued interest, that earns simple interest equal to the daily factor in effect at the time that the new 90-day certificate of indebtedness is issued, multiplied by the number of days outstanding. When regular Treasury borrowing operations resume, the 90-day certificates of indebtedness, along with accrued interest, will be reinvested in Demand Deposit securities.

■ 10. Amend § 344.8 by revising paragraphs (a), (b), and (e) to read as follows:

§ 344.8 What other provisions apply to subscriptions for Demand Deposit securities?

(a) *When is my subscription due?* The subscriber must set the issue date in the subscription. You cannot change the issue date to require issuance earlier or later than the issue date originally specified; provided, however, you may change the issue date up to 7 days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster). The issue date must be a business day. The issue date cannot be more than 45 days after the date we receive the subscription. If the subscription is for $10 million or less, we must receive the subscription at least 5 days before the issue date. If the subscription is for more than $10 million, we must receive the subscription at least 7 days before the issue date.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) A description of the tax-advantaged bond issue; and

(5) The certifications required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer.

* * * * *

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Describe the bond issue. If the tax-advantaged bond issue referenced in paragraph (b)(4) of this section is, or will be, registered or disclosed in the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) system, describe the issue exactly as designated in the ''issue description'' field of EMMA®, or successor system;

(3) Include the issuer's address;

(4) Include the information on the financial institution that will transmit the funds for the purchase of the securities;

(5) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription;

(6) Include the information required under paragraph (b) of this section, if not already provided; and

(7) Include the certifications required by § 344.2(e)(1) (agent certification), § 344.2(e)(2)(i) (yield certification), and § 344.2(e)(4) (eligibility certification).

■ 11. Amend § 344.9 by revising paragraph (a) to read as follows:

§ 344.9 How do I redeem a Demand Deposit security?

(a) *When must I notify Treasury to redeem a security?* Demand Deposit securities can be redeemed at the owner's option, if we receive a request for redemption not less than:

(1) One business day before the requested redemption date for total redemptions by an owner of $10 million or less;

(2) Three business days before the requested redemption date for total redemptions by an owner of more than $10 million but less than $500 million; and

(3) Five business days before the requested redemption date for total redemptions by an owner of $500 million or more.

* * * * *

Subpart D [Removed]

■ 12. Remove Subpart D.

By the Department of the Treasury.

David Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2022–21173 Filed 9–29–22; 8:45 am]

BILLING CODE 4810–AS–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket Nos. RM2022–7; Order No. 6275]

RIN 3211–AA32

Service Performance and Customer Satisfaction Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing rules related to service performance and customer satisfaction reporting. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2022.

ADDRESSES: For additional information, Order No. 6275 can be accessed electronically through the Commission's website at *https://www.prc.gov.* Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Relevant Statutory Requirements

Section 3652(e)(1) of title 39 of the United States Code requires the Commission to prescribe the content and form of the public reports that the Postal Service files with the Commission. 39 U.S.C. 3652(e)(1). In doing so, the Commission must attempt to provide the public with timely information that is adequate to allow it to assess the lawfulness of Postal Service rates, should attempt to avoid unnecessary or unwarranted Postal Service effort and expense, and must endeavor to protect the confidentiality of commercially sensitive information. *See id.* The Commission may initiate proceedings to improve the quality, accuracy, or completeness of Postal Service reporting whenever it determines that the service performance data have become significantly inadequate, could be significantly improved, or otherwise require revision as necessitated by the public interest. 39 U.S.C. 3652(e)(2).

Additionally, section 3692 directs the Postal Service to develop and maintain a publicly available online ''dashboard'' that provides weekly service performance data for Market Dominant products and mandates that the Commission provide reporting requirements for this Postal Service dashboard as well as ''recommendations for any modifications to the Postal Service's measurement systems necessary to measure and publish the performance information'' located on the dashboard. 39 U.S.C. 3692(b)(2), (c). The Postal Service is also authorized to provide certain nonpostal services to the public and other Governmental agencies and consequently required to periodically report the quality of service for these nonpostal services. *See* 39 U.S.C. 3703–3705.

II. Background

Pursuant to 39 U.S.C. 503, 3652, 3653, 3692 and 3705, the Commission initiated Docket No. RM2022–7 to update the service performance reporting requirements codified in 39 CFR part 3055 and make the aforementioned additions for dashboard and nonpostal product reporting. On April 26, 2022, the Commission issued Order No. 6160, proposing several modifications to the reporting requirements, providing an opportunity for interested persons to comment, and appointing a Public Representative.[1] Included among these suggested modifications were proposals to require the Postal Service to report average actual days to delivery and point impact data, information regarding the performance for each national operating plan target, and data about mail excluded from measurement. Order No. 6160 at 5–6. The Commission also solicited comments on how best to effectuate the statutes requiring the Postal Service to report on nonpostal products and implement a performance dashboard. *Id.* at 6–8.

The Commission received a wide range of comments in response to Order No. 6160, both discussing the suggested revisions and proposing additional amendments to the reporting requirements.

III. Basis and Purpose of Proposed Rules

After reviewing the commenters' suggestions and analysis, the Commission proposes the following rules.

[1] Advance Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance, April 26, 2022 (Order No. 6160).

First, the Commission proposes a provision requiring the Postal Service to report average actual ''delivery days''—*i.e.,* days in which Market Dominant products are eligible for delivery—for each Market Dominant product. The Commission finds the metric of average actual delivery days an easier metric to understand for some mailers than the percentage of on-time delivery metric. Under this proposed provision, the Postal Service must also report the following information on dispersion around the average: percent delivered within +1 day of service standard, percent delivered within +2 days of service standard, and percent delivered within +3 days of service standard. These data must be reported for each Market Dominant product at the current District, Postal Administrative Area (Area), and National levels both quarterly in the Service Performance Measurement (SPM) reports and annually in the Annual Compliance Review (ACR) reports.

Second, the Commission proposes a provision requiring the Postal Service to report point impact data for the top 10 root causes of on-time performance failures for each Market Dominant product (except those included in Special Services) that did not meet its service performance goal pursuant to § 3055.2(d). Balancing the utility of the data with the burden to the Postal Service, the Commission notes that point impact data is useful for isolating significant drivers of delay for products that do not meet their service performance goals while avoiding the additional costs of reporting on products that do. For First-Class Mail products that do not meet their service performance goals, the Postal Service must report the top 10 root causes of failure at both the Area level and National level. For the remaining Market Dominant products that do not meet service performance targets, the Postal Service must report the top 10 root causes of failure at the National level. Reporting must occur annually in the ACR.

Third, the Commission proposes that the Postal Service report data related to its Site-Specific Operating Plans (SSOPs), by Region and Division (as identified in the SSOPs) and at the National level, both quarterly and annually. The Commission originally suggested that the Postal Service report the performance for each national operating plan target; however, because the Postal Service reported that it no longer uses such targets, the Commission determined that SSOP information should be utilized instead. While these new data do not specifically address the performance of the entire postal network, they do provide performance data (*i.e.,* percent on-time performance for each SSOP measurement category, such as ''Flat Sequencing System'') subdivided into Regions and Divisions as well as at the National total.

Fourth, the Commission proposes that Postal Service report the performance of each nonpostal product in the ACR, as required by 39 U.S.C. 3705. The Commission proposes that these performance data be disaggregated by District and Area as well as for the Nation on an annual and quarterly basis.

Fifth, the Commission proposes that the Postal Service report: (a) mail excluded from measurement, disaggregated by reason(s) for exclusion; and (b) mail volumes measured and unmeasured by Full Service Intelligent Mail barcode (IMb). With respect to reporting such mail volumes disaggregated by reason for exclusion, the Commission proposes that the current quarterly report (filed as a spreadsheet attachment to the Postal Service's quarterly reports on service performance) be modified to include the number of mailpieces excluded from measurement for each exclusion category as well as the percentage of the total exclusions represented by that exclusion category. This additional reporting is warranted because the percentage calculations alone without the supporting volume data do not allow for the evaluation of performance trends over time. The Postal Service must report these data both on a quarterly basis on the same schedule as its Quarterly Reports pursuant to 39 CFR part 3055, subpart B (in other words, 40 days after the close of the quarter) and annually in the ACR. Regarding the report on mail volume measured and unmeasured by IMb, for each field in the current form (filed as a spreadsheet attachment to the Postal Service's quarterly reports on service performance), the Postal Service should also present the same data point from the same period in the previous year. In addition, the Postal Service should present for each product category: (1) the percentage of mailpieces in measurement compared to total mailpieces; (2) the percentage of mailpieces not in measurement compared to total mailpieces; (3) the percentage of Full-Service IMb mailpieces in measurement compared to total IMb Full-Service mailpieces; and (4) the percentage of Full-Service IMb mailpieces not in measurement compared to total IMb Full-Service mailpieces. These additional data points will be valuable for mailers and the Commission to evaluate measured and unmeasured mail volumes over time. The Postal Service should report these data on a quarterly basis, 60 days after the close of each quarter, and annually in the ACR. The Commission also proposes codifying the existing requirement that the Postal Service must provide descriptions of the current methodologies used to verify the accuracy, reliability, and representativeness of service performance data for each service performance measurement system 90 days after the close of each fiscal year.[2]

Sixth, pursuant to 39 U.S.C. 3692(b)(2) and (c), the Commission proposes the specific requirements for the Postal Service's online dashboard of service performance data for each Market Dominant product. The Commission proposes requiring the Postal Service to present service performance results for each ZIP Code, District, and Area, as well as at the National level, updated on a weekly basis. The dashboard should include a 5-Digit ZIP Code lookup feature that allows the user to see the service performance results for their ZIP Code and match their ZIP Codes with the corresponding District and Area. With respect to the specific service performance information available on the dashboard, it must provide the following data (at a minimum): (1) service performance (measured as a percent on-time delivery and average delivery days) by each Market Dominant mail class, product, and applicable service standard by District, Area, Nation, and 5-Digit ZIP Code; (2) service performance (measured as a percent on-time delivery and average delivery days) by Market Dominant mail class, product, and applicable service standard, by time period of the user's selection, along with the previous two fiscal years; and (3) service performance (measured as a percent on-time delivery and average delivery days) by Market Dominant mail class, product, and applicable service standard based on a selected pair of origin/destination 3-Digit or 5-Digit ZIP Code that a user would choose. The dashboard should improve transparency, promote accountability, provide actionable data, and thus lead to improved service performance. The Commission also proposes that the Postal Service report several other categories of mail on the dashboard: (1) political and election mail; (2) Reply Mail within the First-Class Single-Piece Mail category; and (3)

[2] Docket No. PI2016–1, Order Enhancing Service Performance Requirements and Closing Docket, August 26, 2016, at 41 (Order No. 3490).

nonprofit mail (specifically USPS Marketing Mail mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(6) and the regulations promulgated thereunder and Periodicals mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(4) and the regulations promulgated thereunder).

Seventh, the Commission proposes to formally codify requirements that will ensure the continuation of the existing auditing program [3] and to consolidate the existing requirements (which are dispersed in multiple orders).[4] Therefore, consistent with the existing auditing program, the Commission proposes to require that: (1) the Postal Service shall continue with its program to provide third-party audits of its service performance measurement systems; (2) for any measure deemed by the auditor to be not achieved or partially achieved, the Postal Service shall continue to include its response explaining the Postal Service's mitigation plan; (3) the Postal Service shall file each audit report (and its response) with the Commission no later than 60 days after each applicable reporting quarter; and (4) the audit reports shall continue to specifically include inbound and outbound single-piece First-Class Mail International and the Green Card option of the Return Receipt as well as the metrics used to perform the audits and analysis specific to these types of services.

Finally, the Commission proposes several typographical changes to the existing regulations, including updates to terminology and deleting unnecessary references.

List of Subjects in 39 CFR Part 3055

Administrative practice and procedure, Reporting and recordkeeping requirements.

[3] *See, e.g.,* FY 2022 Q2 Service Performance Measurement System—Cover Letter and Audit Report, Audit Response, and Measured/Unmeasured Volumes Report, May 31, 2022. The audit reports are published on the Commission's website, available at *https://www.prc.gov;* tab ''Reports/Data Service Reports'' and follow the ''USPS Reports'' hyperlink.

[4] *See* Order No. 4697 at 67; Docket No. PI2019–1, Order Granting Request and Approving Use of Internal Service Performance Measurement System, July 1, 2020, at 10–11 (Order No. 5576).

For the reasons stated in the preamble, the Commission proposes to amend 39 CFR part 3055 as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 1. The authority citation for part 3055 is revised to read as follows:

Authority: 39 U.S.C. 503; 3652; 3653; 3692(b) and (c); 3705.

Subpart A—Annual Reporting of Service Performance Achievements

■ 2. Revise § 3055.1 to read as follows:

§ 3055.1 Annual Reporting of service performance achievements.

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter (and for each competitive nonpostal service product specified in the Mail Classification Schedule in part 3040, appendix B to subpart A of part 3040 of this chapter), the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

■ 3. Amend § 3055.2 by revising paragraphs (a) and (j) and by adding paragraphs (l) through (n) to read as follows:

§ 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (n) of this section shall be included in the annual report of service performance achievements.

* * * * *

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

* * * * *

(l) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal year, provided at the District, Postal Administrative Area, and National levels. ''Actual delivery days'' shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. Such information shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(m) A description of each Site-Specific Operating Plan, including on-time service performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal year. Such information shall be at the National level and disaggregated by Division and Region.

(n) A description of the total mail measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded from measurement during the previous fiscal year. The report shall include:

(i) The exclusion reason;

(ii) The exclusion description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.,* provided in paragraph (n)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.,* the sum of all values provided in paragraph (n)(1)(iii) of this section).

(2) The report described in paragraph (n)(1) of this section shall follow the format as shown below:

TABLE 1 TO PARAGRAPH (n)(2)—EXCLUSION REASONS REPORT FOR FISCAL YEAR

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement	Exclusion reason as a percent of total exclusions

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and un-measured during the previous fiscal year. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY).

(4) The report described in paragraph (n)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (n)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL YEAR

Class/product	^^		^^		^^	
	Prior FY	SPLY	Prior FY	SPLY	Prior FY	SPLY
Total Number of Pieces (RPW–ODIS)						
Total Number of Pieces in Measurement						
Total Number of Pieces Eligible for Full-Service IMb						
Total Number of Full-Service IMb Pieces Included in Measurement						
Total Number of Full-Service IMb Pieces Excluded from Measurement						
Total Number of Pieces Not in Measurement						
% of Pieces in Measurement Compared to Total Pieces						
% of Pieces Not in Measurement Compared to Total Pieces						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces						

(5) Descriptions of the current methodologies used to verify the accuracy, reliability, and representativeness of service performance data for each service performance measurement system.

§ 3055.7 [Removed and Reserved].

■ 4. Remove and reserve § 3055.7.

■ 5. Amend § 3055.20 by revising paragraphs (a) and (b) and by adding paragraph (c) to read as follows:

§ 3055.20 First-Class Mail.

(a) For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards.

(b) For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined.

(c) For each product that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 6. Revise § 3055.21 to read as follows:

§ 3055.21 USPS Marketing Mail.

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the USPS Marketing Mail class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the

National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 7. Revise § 3055.22 to read as follows:

§ 3055.22 Periodicals.

(a) For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Periodicals class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 8. Revise § 3055.23 to read as follows:

§ 3055.23 Package Services.

(a) For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Package Services class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 9. Add § 3055.25 to read as follows:

§ 3055.25 Nonpostal products.

For each product that is a nonpostal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the on-time service performance (as a percentage rounded to one decimal place).

Subpart B—Periodic Reporting of Service Performance Achievements

■ 10. Revise § 3055.30 to read as follows:

§ 3055.30 Periodic reporting of service performance achievements.

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter (and for each competitive nonpostal service product specified in the Mail Classification Schedule in part 3040, appendix B to subpart A of part 3040 of this chapter), the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter, except where otherwise specified by the Commission).

■ 11. Amend § 3055.31 by revising paragraphs (a) and (d) and by adding paragraphs (f) through (i) to read as follows:

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (h) of this section shall be included in the quarterly report of service performance achievements.

* * * * *

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

* * * * *

(f) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal quarter, provided at the District, Postal Administrative Area, and National levels. ''Actual delivery days'' shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. Such information shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(g) A description of each Site-Specific Operating Plan, including on-time service performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal quarter. Such information shall be by Nation and disaggregated by Division and Region.

(h) A description of the total mail measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded during the previous fiscal quarter. The report shall include:

(i) The exclusion reason;

(ii) The exclusion reason description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.,* provided in paragraph (h)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.,* the sum of all values in provided in paragraph (h)(1)(iii) of this section).

(v) The report shall include information from each quarter in the applicable fiscal year.

(2) The report described in paragraph (h)(1) of this section shall follow the format as shown below:

TABLE 1 TO PARAGRAPH (h)(2)—EXCLUSION REASONS REPORT FOR FISCAL QUARTER

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement				Exclusion reason as a percent of total exclusions			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and unmeasured during the previous fiscal quarter. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY). Each report is due within 60 days of the close of each fiscal quarter.

(4) The report described in paragraph (h)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (h)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL QUARTER

Class/Product	^^		^^		^^	
	Prior FQ	SPLY	Prior FQ	SPLY	Prior FQ	SPLY
Total Number of Pieces (RPW–ODIS)						
Total Number of Pieces in Measurements						
Total Number of Pieces Eligible for Full-Service IMb						
Total Number of Full-Service IMb Pieces Included in Measurement						
Total Number of Full-Service IMb Pieces Excluded from Measurement						
Total Number of Pieces Not in Measurement						
% of Pieces in Measurement Compared to Total Pieces						
% of Pieces Not in Measurement Compared to Total Pieces						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces						

(i) A report of quarterly third-party audit results of its internal service performance measurement system for Market Dominant products. This report shall include a description of the audit measures used and the audit results specific to inbound and outbound single-piece First-Class Mail International and the Green Card option of the Return Receipt service. For any measure deemed by the auditor to be not achieved or only partially achieved, the Postal Service shall include in its report an explanation of its plan to achieve said measure in the future. Each report is due within 60 days of the close of each fiscal quarter.

■ 12. Revise § 3055.45 to read as follows:

§ 3055.45 First-Class Mail.

(a) *Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats.* For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) Outbound Single-Piece First-Class Mail International and Inbound Letter Post. For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject

to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels.

■ 13. Revise § 3055.50 to read as follows:

§ 3055.50 USPS Marketing Mail.

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the USPS Marketing Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

■ 14. Amend § 3055.55 to revise the introductory text of paragraph (a) to read as follows:

§ 3055.55 Periodicals.

(a) *In-County Periodicals.* For the In-County Periodicals product within the Periodicals class, report the:

* * * * *

■ 15. Revise § 3055.60 to read as follows:

§ 3055.60 Package Services.

(a) For each product within the Package Services class, report the-on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the Package Services class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

§ 3055.65 [Amended]

■ 16. Amend § 3055.65 by removing paragraph (b)(1) and redesignating paragraphs (b)(2) through (5) as paragraphs (b)(1) through (4).

■ 17. Add § 3055.70 to read as follows:

§ 3055.70 Nonpostal Products.

For each product that is a nonpostal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the on-time service performance (as a percentage rounded to one decimal place), provided at the District, Postal Administrative Area, and National levels.

■ 18. Add subpart D to read as follows:

Subpart D—Public Performance Dashboard

Sec.

§ 3055.100 Definitions applicable to this subpart.

(a) *Actual delivery days* refers to all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays.

(b) *Election mail* refers to items such as ballots, voter registration cards, and absentee applications that an authorized election official creates for voters.

(c) *Nonprofit mail* refers to USPS Marketing Mail mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(6) and the regulations promulgated thereunder and Periodicals mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(4) and the regulations promulgated thereunder.

(d) *Political mail* refers to any mailpiece sent for political campaign purposes by a registered candidate, a campaign committee, or a committee of a political party to promote candidates, referendums, or campaigns.

§ 3055.101 Public Performance Dashboard.

The Postal Service shall develop and maintain a publicly available website with an interactive web-tool that provides performance information for Market Dominant products. This website shall be updated on a weekly basis, no later than one month from the date of data collection. The website shall include, at a minimum, the reporting requirements specified in § 3055.102 and adhere to the formatting requirements specified in § 3055.103.

§ 3055.102 Contents of the Public Performance Dashboard.

(a) The items in paragraphs (b) through (l) of this section shall be included in the Public Performance Dashboard.

(b) Within each class of Market Dominant products, for each Market Dominant product and each service standard applicable to each Market Dominant product:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District; and

(4) The on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code.

(c) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The average time in which the product was delivered, measured by actual delivery days, for the Nation;

(2) The average time in which the product was delivered, measured by actual delivery days, for each Postal Administrative Area;

(3) The average time in which the product was delivered, measured by actual delivery days, for each District; and

(4) The average time in which the product was delivered, measured by actual delivery days, for each 5-Digit ZIP Code.

(d) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The on-time service performance (as a percentage rounded to one decimal place) for any given time period that can be selected by a dashboard user within the previous two fiscal years; and

(2) The average time in which the product was delivered, measured by actual delivery days, for any given time period that can selected by the dashboard user within the previous two fiscal years.

(e) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The on-time service performance (as a percentage rounded to one decimal

place) for any given pair of origin/destination 3-Digit or 5-Digit ZIP Codes that can be selected by a dashboard user; and

(2) The average time in which the product was delivered, measured by actual delivery days, for any given pair of origin/destination 3-Digit or 5-Digit ZIP Codes to be selected by the dashboard user.

(f) For Political mail:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;

(7) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and

(8) The average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.

(g) For Election mail:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;

(7) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and

(8) The average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.

(h) For the First-Class Mail that the Postal Service identifies as Single-Piece Reply Mail:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;

(7) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and

(8) The average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.

(i) For Nonprofit mail (within Periodicals and USPS Marketing Mail classes of mail):

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;

(7) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and

(8) The average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.

(9) The point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

(j) For each Market Dominant product and applicable service standard, the on-time service performance target currently in effect, as well as the on-time service performance target for the previous fiscal year.

(k) A summary of the methodology used to group 5-Digit ZIP Codes into the Postal Administrative Areas and Districts with links to more detailed explanations if applicable.

(l) An application that would allow a dashboard user to initiate a query in order to access, for each Market Dominant product and applicable service standard, the on-time service performance (as a percentage rounded to one decimal place) and average time in which a mailpiece is delivered by inputting the user's street address, 5-Digit ZIP Code, or post office box.

§ 3055.103 Format for data provided in the Public Performance Dashboard.

(a) The results of a user-initiated query and the data underlying the query results should be exportable via a machine-readable format, including but not limited to a comma-separated data file, an Excel spreadsheet, XML, or a JSON file, and such data should be made accessible to any person or entity utilizing tools and methods designed to facilitate access to and extraction of data in bulk, such as an Application Programming Interface (API).

(b) When there is a negative deviation from service performance standards, the dashboard should clearly indicate such deviation from expected performance and present the service performance from the prior week and the same period last year.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–20829 Filed 9–29–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0640; FRL–10117–01–R5]

Air Plan Approval; Indiana; Revisions to Particulate Matter Rules; Vertellus

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Indiana particulate matter State Implementation Plan (SIP) for the Vertellus Agriculture and Nutrition Specialties, LLC (Vertellus) facility located in Indianapolis, Marion County. Indiana submitted a request to revise its particulate matter SIP to incorporate site-specific updates to the particulate matter emission limits for Vertellus. The updates reflect revised emission rates for particulate matter resulting from process changes related to control strategies for other pollutants. The SIP submission requests also remove units no longer in operation as well as update language to reflect a switch from petroleum oil to natural gas for certain units. These site-specific SIP submissions represent a decrease in overall particulate matter emissions. Therefore, EPA is proposing to approve them as SIP-strengthening measures.

DATES: Comments must be received on or before October 31, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0640 at *https://www.regulations.gov,* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Alisa Liu, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3193, *liu.alisa@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. Background

On September 16, 2021, the Indiana Department of Environmental Management (IDEM) submitted a request to revise its particulate matter SIP. On January 4, 2022, IDEM submitted a supplemental letter and technical support document with supporting information. The requested SIP revisions would incorporate updates to Indiana's particulate matter rules for Vertellus at 326 Indiana Administrative Code (IAC), Title 326, Article 6.5, Rule 6. Marion County, ''Vertellus Agriculture & Nutrition Specialties LLC'' (326 IAC 6.5–6–31), which became effective on September 19, 2021. (Indiana Rule LSA #19–82)

Vertellus is a chemical manufacturing company that currently operates six boilers, six heaters, and six furnaces at their facility on Tibbs Avenue on the southwest side of Indianapolis. The facility is located within the Wayne Township, Marion County portion of the Indianapolis maintenance area for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). As part of its attainment demonstration for the 2010 SO_2 NAAQS, Indiana adopted new SO_2 emissions limits at 326 IAC 7–4–2.1(a)(4) that took effect on January 1, 2017. Compliance with the new SO_2 limits necessitated process changes at Vertellus that determined which units were discontinued and which fuels were burned, resulting in the need for the adjustments to the particulate matter emission limits at 326 IAC 6.5–6–31.

The particulate matter limits currently in the SIP were established as part of the attainment demonstration for the Indianapolis, Indiana 2010 SO_2 nonattainment area. By way of background, the Indianapolis, Indiana area consisting of Center, Perry and Wayne Townships in Marion County was designated nonattainment for the 2010 SO_2 NAAQS under Subpart 107 of the Clean Air Act (CAA) on July 25, 2013, when EPA made its initial designations based upon air quality monitoring data for calendar years 2009–2011. The area designation was effective October 4, 2013. 78 FR 47191 (August 5, 2013). Within 18 months of the effective date, *i.e.,* by April 4, 2015, Indiana was required under CAA sections 191(a) and 192(a) to submit a nonattainment SIP to EPA that demonstrated that the Indianapolis area would attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which was October 4, 2018. 83 FR 4087 (August 15, 2018).

On October 2, 2015, Indiana submitted an attainment plan for the Indianapolis nonattainment area as a revision to Indiana's SIP for attaining the 2010 SO_2 NAAQS. The attainment plan included an attainment demonstration and technical support document [1] prepared by IDEM that addressed six sources of SO_2 in Marion County, including Vertellus. Using dispersion modeling, Indiana demonstrated that air quality meeting the 2010 SO_2 NAAQS would be attained with revised SO_2 emission limits for the six sources, which Indiana adopted on September 2, 2015 into 326 IAC 7–4–2.1, including limits for Vertellus at 326 IAC 7–4–2.1(a)(4). The revised emission limits took effect on January 1, 2017. On March 11, 2019, EPA approved the SIP revisions that Indiana submitted on October 2, 2015 for attaining the 2010 SO_2 NAAQS for the Indianapolis area. 84 FR 10692 (March 22, 2019).

On July 10, 2017, IDEM submitted a redesignation request and maintenance plan. On April 24, 2020, EPA redesignated the Indianapolis area to attainment of the 2010 SO_2 NAAQS and approved the maintenance plan. 85 FR 30844 (May 21, 2020).

II. What has Indiana revised in 326 IAC 6.5–6–31?

On May 3, 2018, Vertellus requested IDEM revise its particulate matter emission limits at 326 IAC 6.5–6–31 for its units that were impacted by the revised SO_2 emission limits at 326 IAC 7–4–2.1(a)(4). IDEM initiated a first notice and comment period for rulemaking to revise 326 IAC 6.5–6–31 on February 13, 2019, and published the final rule on September 15, 2021. As requested by Vertellus, IDEM's revisions changed the particulate matter emission limits on several units where Vertellus made process and fuel changes to comply with the revised SO_2 emission limits. Additionally, the revisions removed limits and references to units

[1] August 2015, ''1-Hour Sulfur Dioxide Attainment Demonstration and Technical Support Document for Central, West Central, and Southwest Indiana Nonattainment Areas''. Prepared by Indiana Department of Environmental Management, Office of Air Quality. EPA–R05–OAR–2015–0700–0003.

at the facility that are no longer operating or were demolished.

The revisions at 326 IAC 6.5–6–31 also updated existing language and added new language related to the types of fuel burned in certain units. Part of Indiana's SO_2 control strategy in the Indianapolis area was to restrict the usage of petroleum oil burned at several Vertellus units, so the adopted revisions at 326 IAC 6.5–6–31 reflect a switch to 100 percent natural gas for certain units and only natural gas or landfill gas for certain other units. Compared to petroleum oil, burning natural gas at these units reduces SO_2 emissions, enables Vertellus to remain in compliance with the new SO_2 emission limits, and ensures continued attainment of the 2010 SO_2 NAAQS. The process changes that determined which units were discontinued and which fuels were burned resulted in the need for increases in particulate matter mass and rate-based emission limits for some of the Vertellus units and decreases for other units.

III. What are the environmental effects of this action?

This SIP revision will result in a reduction in allowable particulate matter annual mass emissions and have a strengthening effect on the SIP by reducing emission limits, switching fuels to natural gas, reducing the amount of landfill gas burned, and removing allowable emissions listed for units that are no longer used or were demolished.

Vertellus projected that the rule revisions will reduce particulate matter emissions by 14.1 tons per year compared to the emissions allowed under Indiana's current SIP. To address section 110(l) of the CAA, the technical support document details the decrease in allowable particulate matter emission from 38.0 to 23.9 tons per year as a result of a decrease of 14.8 tons per year total from twelve units offset by an increase of 0.7 tons per year total from 4 units.

To demonstrate that any increase in particulate emission limits allowed under revised 326 IAC 6.5–6.31 would still be protective of the NAAQS for particulate matter less than 2.5 and 10 microns in diameter ($PM_{2.5}$, PM_{10}), Indiana performed dispersion modeling using AERMOD version 18081. Based on a comparison of allowable particulate matter emissions from the current limits compared to the revised limits, IDEM's modeling showed decreased emission concentrations at each of the modeled receptors. EPA has reviewed IDEM's modeling and projected emission reductions and finds that IDEM demonstrated that the SIP revision will not have an adverse impact on particulate matter air quality or interfere with the attainment or maintenance of the SO_2 NAAQS in accordance with section 110(l) of the CAA.

IV. Public Comment and Hearings

Indiana offered two comment periods on this proposed rule. The first was from February 13, 2019, to March 15, 2019, and the second was from February 12, 2020, through March 13, 2020. No comments were received during the first or second comment period. Indiana also held public hearings on November 18, 2020, and February 10, 2021, through an online platform. No comments were made during the hearings.

V. What action is EPA taking?

EPA is proposing to approve Indiana's September 16, 2021, request to revise its particulate matter SIP because the revised rule at 326 IAC 6.5–6–31 applicable to Vertellus strengthens the SIP by reducing allowable particulate matter emissions.

VI. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Indiana rule 326 IAC 6.5–6–31, effective September 20, 2021, discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 22, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–21192 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0676; FRL–10186–01–R6]

Air Plan Approval; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision from the New Mexico Environment Department (NMED) submitted on October 13, 2016. The submittal is in response to EPA's national SIP call on June 12, 2015, concerning excess emissions during periods of Startup, Shutdown, and Malfunction (SSM). The submittal requests the removal of the provisions identified in the 2015 SIP call from the New Mexico SIP. EPA is proposing to approve the SIP revision and proposing to determine that such SIP revision corrects the deficiency identified in the June 12, 2015 SIP call.

DATES: Comments must be received on or before October 31, 2022.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0676 at *https://www.regulations.gov* or via email to *Shar.alan@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Alan Shar, (214) 665–6691, *Shar.alan@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO_2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, *Shar.alan@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

Table of Contents

I. Background

A. EPA's 2015 SIP Action

On February 22, 2013, EPA issued a **Federal Register** notice of proposed rulemaking action outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of EPA to create affirmative defense provisions.[2] EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the Act to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States, including New Mexico, were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[3] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, (78 FR 12460) Feb. 22, 2013.

[2] The term affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

[3] October 9, 2020, Memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

had no direct impact on the SIP call issued to New Mexico in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[4] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.[5] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including this SIP submittal provided in response to the 2015 SIP call.

B. New Mexico's Part 7 Excess Emissions

New Mexico Administrative Code (NMAC), Title 20 Environmental Protection, Chapter 2 Air Quality (Statewide), Part 7 Excess Emissions (20.2.7 NMAC) was approved by EPA into the New Mexico SIP on September 14, 2009 (74 FR 46910) and became federally effective on November 13, 2009.

As a part of EPA's 2015 SSM SIP Action, EPA made a finding that certain provisions in Part 7—namely, 20.2.7.111 NMAC, 20.2.7.112 NMAC, and 20.2.7.113 NMAC of the New Mexico SIP—are substantially inadequate to meet CAA requirements, and thus issued a SIP call with respect to these provisions because these provisions provide for an affirmative defense.[6] Although not part of the finding in the 2015 SIP call, removal of 20.2.7.111 NMAC, 20.2.7.112 NMAC, and 20.2.7.113 NMAC from the New Mexico SIP would render 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC no longer operative or problematic for SIP compliance purposes because they refer to or cross-reference the substantially inadequate provisions of 20.2.7 NMAC.[7]

II. Analysis of SIP Submission

In response to EPA's June 12, 2015 SIP call, NMED requested by letter dated October 13, 2016,[8] that EPA approve removal of 20.2.7.111 NMAC, 20.2.7.112 NMAC and 20.2.7.113 NMAC found by EPA's June 12, 2015 SIP call to be substantially inadequate to meet CAA requirements. The removal of these provisions from the New Mexico SIP eliminates the affirmative defense provisions identified in the June 12, 2015 SIP call. In addition, NMED requested that 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC be removed from the New Mexico SIP as well. EPA believes that removal of these seven provisions from the New Mexico SIP will not affect the adequacy of the remaining portions of the New Mexico SIP.

Although certain provisions of Part 7 (20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC) are being proposed for removal from the EPA-approved New Mexico SIP, NMED intends to retain Part 7 in its entirety as a matter of state law, outside of the SIP, as a ''state-only'' rule. It is EPA's position that the ''state-only'' measure will apply only to the state's own enforcement personnel and not to EPA or to others.[9] Since these provisions are only applicable to the State air agency, EPA's view is that the provisions need not be included within the SIP. Thus, EPA does not object to states or local air agencies that elect to revise their SIPs ''to remove these provisions to avoid any unnecessary confusion.'' [10]

The submittal also includes an analysis to demonstrate compliance with section 110(l) of the Act.[11] Elimination of the above-mentioned provisions of Part 7 from the New Mexico SIP is not expected to lead to any emissions increase. We do not believe the proposed revisions would interfere with attainment and reasonable further progress, or any applicable requirement of the CAA. Thus, we find that EPA's approval would be consistent with section 110(l). Consequently, we are proposing to approve the removal of the above-referenced provisions of Part 7 Excess Emissions from the New Mexico SIP. The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; however, in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014), the SIP applies to non-reservation Indian allotments within the State.

III. Proposed Action

EPA is proposing to approve a revision to the New Mexico SIP submitted on October 13, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. More specifically, we are proposing to approve the removal of 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. We are proposing to approve these revisions in accordance with section 110 of the Act. EPA is further proposing to determine that such SIP revisions correct the deficiencies identified in the June 12, 2015 SIP call with respect to the New Mexico SIP. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether the proposed SIP revisions are consistent with CAA requirements and whether they addresses the substantial inadequacy in the specific provisions identified in the 2015 SSM SIP Action.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and

[4] September 30, 2021, Memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[5] Section J, June 12, 2015 (80 FR 33985).

[6] See Affected States in EPA Region VI, section IX.G.4, June 12, 2015 (80 FR 33968).

[7] More specifically, removal of 20.2.7.111 NMAC, 20.2.7.112 NMAC, and 20.2.7.113 NMAC from the SIP will render 20.2.7.6(B) (concerning establishing criteria to claim an affirmative defense); 20.2.7.110(B)(15) (concerning extension of notification report deadline upon receipt of written request from the owner or operator); 20.2.7.115 NMAC (concerning review of the department's determinations under sections 111, 112, and 113); and 20.2.7.116 NMAC (concerning future enforcement action) no longer operative or problematic for SIP compliance purposes as they are interrelated and refer to or cross-reference the substantially inadequate provisions of Part 7—being proposed for removal from the SIP in response to June 12, 2015 SIP call Action—and EPA concurs with the State action and recommends that these provisions be removed from the SIP as well.

[8] Attachment A, October 13, 2016, submittal letter from NMED Cabinet Secretary to EPA Region 6 Regional Administrator.

[9] June 12, 2015 (80 FR 33958).

[10] June 12, 2015 (80 FR 33958).

[11] Pages 11–14 of the SIP submittal, Docket ID No. EPA–R06–OAR–2016–0676.

Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [12] EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public.

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within New Mexico.[13] EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within New Mexico, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is significantly higher than the national average (64.1 percent versus 31.7 percent). The percent of the state population that is Hispanic or Latino is higher than the national averages (50.1 percent versus 18.9 percent) and the percent of the population that is American Indian/Alaska Native is also higher than the national average (11.2 percent versus 1.3 percent). The percent of people living below the poverty level in New Mexico is higher than the national average (16.8 percent versus 11.4 percent). The percent of people in New Mexico over age 25 with a high school diploma is lower than the national average (86.5 percent versus 88.5 percent), and the percent with a Bachelor's degree or higher is also slightly lower than the national average (28.1 percent versus 32.9 percent).

Communities in close proximity to and/or downwind of industrial sources may be subject to disproportionate environmental impacts of excess emissions. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death. Excess emissions during periods of SSM can be considerably higher than emissions under normal steady-state operations.

As to all population groups within the State of New Mexico, we believe that this proposed action will be beneficial and may reduce impacts as explained below. As discussed earlier in this notice, this rulemaking, if finalized as proposed, would result in the removal of the provisions in the New Mexico SIP applicable to all counties in the State, except Bernalillo County, that provide sources emitting pollutants in excess of otherwise allowable amounts with the opportunity to assert an affirmative defense to violations involving excess emissions during SSM events. Removal of such impermissible affirmative defense provisions from the SIP is necessary to preserve the enforcement structure of the CAA, the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions, and the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. If finalized as proposed, this action is intended to ensure that overburdened communities and affected populations across the State and downwind areas receive the full human health and environmental protection provided by the CAA. We therefore propose to determine that this rule, if finalized, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to remove 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP, as described in the Proposed Action section above. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office.

VI. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal

[12] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[13] *https://www.census.gov/quickfacts/NM?.*

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). However, in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014), this proposed rule, if finalized as proposed, will apply to non-reservation Indian allotments within the state and, therefore, has tribal implications as specified in E.O. 13175. This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no tribe in New Mexico implements a Tribal Implementation Program under the CAA. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 26, 2022.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2022–21246 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2022–0546; FRL–10189–01–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d) state plan submitted by the State of Arkansas for sources subject to the Municipal Solid Waste (MSW) Landfills Emission Guidelines (EG). The Arkansas MSW landfills plan was submitted to fulfill the state's obligations under CAA section 111(d) to implement and enforce the requirements under the MSW Landfills EG. The EPA is proposing to approve the state plan and amend the agency regulations in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before October 31, 2022.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0546, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

Section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as New Source Performance Standards (NSPS). Section 111(d) addresses the process by which the EPA and states regulate standards of performance for existing sources. When NSPS are promulgated for new sources, section 111(d) and EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. While NSPS are directly applicable to new sources, EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA.

State plan submittal and revisions under CAA section 111(d) must be consistent with the applicable EG and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A. The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans under CAA section 111(d). Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The MSW landfills NSPS for new landfills and EG for existing landfills were first promulgated by EPA on March 12, 1996, in 40 CFR part 60, subparts WWW and Cc, respectively (61 FR 9905). On August 29, 2016, the EPA finalized revisions to the MSW landfills NSPS and EG in 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59332; 81 FR 59313). The 2016 EG revision updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources.

The current MSW landfills EG, found at 40 CFR part 60, subpart Cf, concerns the regulation of landfill gas and its

components, including methane, from MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. The deadline to submit a state plan to the EPA was May 30, 2017. On May 21, 2021, EPA finalized the MSW landfills federal plan in 40 CFR part 62, subpart OOO (86 FR 27756). The MSW landfills federal plan at 40 CFR part 62, subpart OOO, applies to states that do not have an EPA-approved state plan. The MSW landfills federal plan is currently in effect in Arkansas.

In order to fulfill obligations under CAA section 111(d), the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) submitted a state plan for the control of emissions from existing MSW landfills for the State of Arkansas on June 20, 2022, and supplemented its submittal on August 24, 2022, and August 31, 2022.[1] The Arkansas MSW landfills plan implements and enforces the applicable provisions under the MSW landfills EG at 40 CFR part 60, subpart Cf, and additionally meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The Arkansas submittal and the supplements are included in the public docket for this rulemaking (Docket No. EPA–R06–OAR–2022–0546).

II. Evaluation

The EPA has evaluated the Arkansas MSW landfills plan to determine whether the plan meets applicable requirements from the MSW landfills EG at 40 CFR part 60, subpart Cf, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The EPA's detailed rationale and discussion on the Arkansas MSW landfills plan can be found in the EPA Technical Support Document (TSD), located in the docket for this rulemaking.

The Arkansas state plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR part 60, subpart B. The state plan document (the ''Arkansas State Plan for 111(d) Designated Facilities'') includes all the necessary authority for the implementation and enforcement of the MSW landfill Emission Guidelines in the State. Specifically, the State appropriately incorporated all applicable EG requirements from 40 CFR part 60, subpart Cf, into the Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 19, Chapter 17. Both the adopted state plan document and the relevant APC&EC regulations, as well as all other relevant plan submittal materials may be found in the docket for this action. Necessary State legal and enforcement authorities required for plan approval are located elsewhere in Arkansas's statute, rules and regulations and have been reviewed and approved of by the EPA in the course of prior state implementation plan as well as section 111(d) and/or 129 state plan approvals. See 40 CFR part 52, subpart E, and 40 CFR part 62, subpart E.

The Arkansas MSW landfills plan has been evaluated in detail in the TSD. Our evaluation demonstrates that the Arkansas MSW landfills plan meets the requirements in 40 CFR part 60, subpart Cf and subpart B, and is consistent with the requirements for an approvable section 111(d) state plans for MSW landfills.

III. Proposed Action

The EPA is proposing to approve the Arkansas MSW landfill plan submitted by ADEQ in accordance with the requirements of section 111(d) of the CAA and to amend 40 CFR part 62, subpart E, to codify EPA's approval. The EPA is proposing to find that the Arkansas MSW landfill plan is at least as protective as the Federal requirements provided under the MSW landfills EG, codified at 40 CFR part 60, subpart Cf. Once approved by the EPA, the Arkansas MSW landfills plan will become federally enforceable.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [2] EPA is providing additional analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our proposed action.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[3] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[4] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[5] To help mitigate this uncertainty, we have summarized EJSCREEN data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the MSW landfills. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan

[1] The Arkansas plan submitted by ADEQ does not cover sources located in Indian country.

[2] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[3] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[4] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[5] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

(RMP) sites, and hazardous waste facilities.[6] EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education. The EPA prepared EJSCREEN reports covering buffer areas of approximately 3-mile radii around the existing MSW landfills in Arkansas. Table 1 presents a summary of results from the EPA's screening-level analysis for the areas surrounding each MSW landfill compared to the U.S. as a whole, where the landfill was located in an area where one or more of the EJ indices were greater than the 80th percentiles (the full, detailed EJSCREEN reports are provided in the docket for this rulemaking).

TABLE 1—EJSCREEN ANALYSIS SUMMARY FOR EXISTING ARKANSAS MSW LANDFILLS WITH EJ INDICES ABOVE 80%TILE

Variables	Values for buffer areas (radius) for each MSW landfill and the U.S. (percentile within U.S. where indicated)				
	Little Rock Municipal Landfill (Pulaski, 3 miles)	ModelFill Landfill (Pulaski, 3 miles)	Fulton Landfill—Cloverdale (Benton, 3 miles)	City of West Helena Landfill (Phillips, 3 miles)	U.S.
Pollution Burden Indicators:					
Particulate matter ($PM_{2.5}$), annual average.	9.79 μg/m³ (80th %ile).	9.9 μg/m³ (82nd %ile)	9.39 μg/m³ (72nd %ile).	8.68 μg/m³ (52nd %ile).	8.74 μg/m³ (—)
Ozone, summer seasonal average of daily 8-hour max.	41.4 ppb (40th %ile)	41.6 ppb (43rd %ile)	43.1 ppb (58th %ile)	40.4 ppb (34th %ile)	42.6 ppb (—)
Traffic proximity and volume score*.	120 (37th %ile)	650 (74th %ile)	210 (48th %ile)	110 (35th %ile)	710 (—)
Lead paint (percentage pre-1960 housing).	0.11% (41st %ile)	0.39% (71st %ile)	0.1% (40th %ile)	0.26% (60th %ile)	0.28% (—)
Superfund proximity score*.	0.033 (29th %ile)	0.039 (34th %ile)	0.018 (15th %ile)	0.27 (90th %ile)	0.13 (—)
RMP proximity score*.	1.1 (78th %ile)	2.7 (94th %ile)	1.5 (85th %ile)	0.37 (53rd %ile)	0.75 (—)
Hazardous waste proximity score*.	1.9 (70th %ile)	2 (70th %ile)	0.7 (49th %ile)	1.4 (64th %ile)	2.2 (—)
Demographic Indicators:					
People of color population.	74% (79th %ile)	77% (81st %ile)	31% (49th %ile)	73% (79th %ile)	40% (—)
Low-income population.	56% (86th %ile)	53% (83rd %ile)	39% (67th %ile)	63% (90th %ile)	31% (—)
Linguistically isolated population.	4% (69th %ile)	4% (66th %ile)	6% (76th %ile)	0% (45th %ile)	5% (—)
Population with less than high school education.	22% (82nd %ile)	15% (69th %ile)	20% (79th %ile)	19% (77th %ile)	12% (—)
Population under 5 years of age.	10% (87th %ile)	7% (60th %ile)	5% (44th %ile)	8% (77th %ile)	6%
Population over 64 years of age.	10% (30th %ile)	12% (40th %ile)	14% (49th %ile)	19% (69th %ile)	16% (—)

*The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

This proposed rule is proposing to approve Arkansas's MSW Landfills Plan, received on June 20, 2022, in accordance with section 111(d) of the CAA. The Arkansas MSW Landfills Plan incorporates federal requirements for MSW landfills, as specified in the MSW landfills EG at 40 CFR part 60, subpart Cf, which are also implemented under the MSW Landfills Federal Plan at 40 CFR part 62, subpart OOO. The MSW Landfills Federal Plan was implemented by EPA in Arkansas as Arkansas did not have an approved MSW landfills plan addressing applicable EG requirements. These EG requirements implemented under the MSW Landfills Federal Plan and now incorporated by Arkansas in its MSW landfills plan is designed to result in significant emissions reductions for MSW landfills, as described in the **Federal Registers** for the MSW landfill rules (80 FR 52100; 81 FR 59276). Landfill gas is a natural byproduct of the decomposition of organic material in landfills and is composed of roughly 50% methane, 50% carbon dioxide (CO_2), and less than 1% non-methane organic compounds (NMOC) by volume, which include volatile organic

[6] For additional information on environmental indicators and proximity scores in EJSCREEN, *see* ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 and Appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

compounds (VOC) and various organic hazardous air pollutants (HAP).[7] VOC emissions are precursors to both fine particulate matter ($PM_{2.5}$) and ozone formation; exposure to $PM_{2.5}$ and ozone is associated with significant public health effects, including (1) cardiovascular morbidity such as heart attacks, (2) respiratory morbidity such as asthma attacks, acute bronchitis, (3) hospital admissions and emergency room visits, and (4) premature mortality.[8] Hazardous air pollutants may cause cancer or other serious health effects, such as reproductive effects or birth defects.[9] In addition, methane is a potent greenhouse gas with a global warming potential 28–36 times greater than CO_2. Therefore, we believe that these requirements for existing MSW landfills and resulting emissions reductions have climate benefits and have contributed to reduced environmental and health impacts on all populations impacted by emissions from these sources in Arkansas, including people of color and low-income populations, and will continue to do so under Federal oversight. This proposed rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in Arkansas. If finalized as proposed, EPA's approval of the Arkansas MSW Landfills Plan will make the Plan and the corresponding MSW landfills EG requirements incorporated into the Plan federally enforceable by EPA as of the effective date of the final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This proposed rule also does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: September 26, 2022.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2022–21245 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

[7] *See* 80 FR 52099, August 27, 2015.

[8] *Id.*

[9] *See https://www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic#what.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 21–346; PS Docket No. 15–80; ET Docket No. 04–35; FCC 22–50; FR ID 103460]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In a final rule published elsewhere in this issue of the **Federal Register** (final rule), the Federal Communications Commission (FCC or Commission) adopts a new ''Mandatory Disaster Response Initiative'' (MDRI). The final rule requires providers to file reports with the Commission following the MDRI's activation, including testing of their roaming capabilities and reporting on the performance of their implementation of the MDRI to the Commission after the events. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks comment on whether reports submitted under the final rule would benefit from standardization, and what that should entail.

DATES: Comments are due on or before October 31, 2022 and reply comments are due on or before November 29, 2022.

ADDRESSES: You may submit comments, identified by PS Docket No. 21–346; PS Docket No. 15–80; and ET Docket No. 04–35, by any of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050

Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Erika Olsen, Acting Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2868, or via email at *Erika.Olsen@fcc.gov,* or Logan Bennett, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790, or via email at *Logan.Bennett@fcc.gov*.

For additional information concerning the information collection requirements contained in this document, contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 22–50, adopted June 27, 2022, and released July 6, 2022. The full text of this document is available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-22-50A1.pdf*. When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The FNRM seeks comment on potential new or revised proposed information collection requirements. If the Commission adopts any new or revised final information collection requirements when the final rules are adopted, the Commission will publish a document in the **Federal Register** inviting further comments from the public on the final information collection requirements, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due November 29, 2022. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we have prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *proposed rule*. We will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of the Proposed Rules

2. The FNPRM follows the Commission's adoption of rules codifying the Mandatory Disaster Response Initiative (MDRI), including a mandatory reporting provision establishing a baseline of actions and assurances that facilities-based mobile wireless providers will engage in effective coordination and planning to maintain and restore network connectivity around disasters.

3. The FNPRM further explores the reporting provision from the *final rule,* and proposes the development of appropriate content and formatting of reports by which the Commission can assess whether the MDRI is being used by providers to enhance the reliability, resiliency, and continuity of associated disaster-time communications. In the FNPRM, the Commission seeks comment on: Whether to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form for the purposes of a provider's compliance with § 4.17(c) of our rules; The content of reports on MDRI compliance; The basis pursuant to which facilities-based commercial mobile radio service (CMRS) providers would be allowed to seek confidential treatment for reports under the Commission's confidentiality rule, or if other protections should apply, and; An appropriate effective date for any new reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (*e.g.,* large versus small providers) subject to the requirements.

4. The FNPRM and matters upon which the Commission seeks comment are made against the backdrop of Hurricane Ida, which hit the United States as a Category 4 hurricane in August 2021 causing significant flooding and damage in several states along the southern and northeastern corridors of the United States. Hurricane Ida, as well as recent hurricane and wildfire seasons, earthquakes in Puerto Rico, and severe winter storms in Texas demonstrate that America's communications infrastructure remains susceptible to disruption during disasters. These disruptions can prevent the transmission of 911 calls, first responder communications, Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) messages, and

other potentially life-saving information. They also can have cascading detrimental effects on the economy and other critical infrastructures due to interdependencies among sectors, including the transportation, medical, and financial sectors, among others. Importantly, these disruptions may involve any or all communications networks—including wireline, wireless, cable, satellite, or broadcast facilities which requires the Commission takes affirmative and swift action to improve the reliability and resiliency of our Nation's communications networks during emergencies.

5. The reporting obligation adopted in the final rule at § 4.17(c) requires facilities-based wireless providers to submit a report detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions within 60 days of when the Bureau issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster. Initial reports from providers pursuant to § 4.17(c) will be due in response to the first triggering event, as described at § 4.17(a), that occurs on or after a provider's associated compliance date.

6. In the FNPRM the Commission seeks comment on whether it would be beneficial to create a standardized form that providers could use for future reporting under rule § 4.17(c). To this end, the Commission proposes to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form. The Commission seeks comment on this approach and any associated costs and benefits.

7. The Commission also seeks comment on the contents of such standardized reporting forms. AT&T, for example, suggests that relevant details may include whether a provider roamed, the other providers it roamed with, the time period involved and, if relevant, the time it took for a provider to perform a health assessment and activate roaming. The Commission seeks comment on all the approaches described here, including on the associated costs and benefits.

8. The Commission seeks comment also on the basis pursuant to which facilities-based mobile wireless providers could seek confidential treatment for reports under the Commission's confidentiality rules, or if such reports should be publicly filed. The Commission seeks comment on an appropriate compliance date for providers' use of any new standardized reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (*e.g.,* large versus small providers) subject to the requirements.

B. Legal Basis

9. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

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

11. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's actions may, over time, affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 32.5 million businesses.

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

13. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

14. The final rules apply only to facilities-based mobile wireless providers, which include small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However in our cost estimate discussion below, we estimate costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers. As described below, these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as

of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. The Commission notes that while facilities-based mobile wireless providers fall into this industry description, in assessing whether a business concern qualifies as ''small'' under the above SBA size standard, business (control) affiliations must be included. Another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria and its estimates of small businesses to which they apply may be over-inclusive to this extent. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific facilities-based mobile wireless provider impacted by the final rule is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply for this industry description is therefore possibly over-inclusive and thus may overstate the number of small entities that might be affected by our action.

17. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

18. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

19. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The Commission expects the potential rules addressed in the FNPRM will impose new or additional reporting, recordkeeping, and/or other compliance obligations on facilities-based CMRS providers, who would potentially be required to keep records related to bilateral roaming agreements with other providers, submit reports to the Commission summarizing the utilization and effectiveness of roaming measures during times of disasters, and submit documents detailing the regular testing of their roaming capabilities. In the FNPRM the Commission raises various matters relating to the reporting requirement obligations we should adopt, including whether to implement a standardized, streamlined reporting format, what information should be included in reports, should the information reported be treated as confidential, and when and how often should reports be filed with the Commission. The Commission also asks whether any provisions of the Framework should be included in reporting requirement obligations for facilities-based CMRS providers.

21. The FNPRM seeks comment on a number of aspects relating to our proposals and matters the Commission discusses, including the benefits and costs associated with a provider's implementation of them. The Commission seeks comment on and has requested cost and benefit information from commenters pertaining to our proposals, inquiries and conclusions in the FNPRM. The Commission expects the comments received in response the FNPRM to include information addressing costs, benefits, and other matters of concern which should help the Commission further identify and evaluate relevant issues for small entities, including compliance costs before adopting final rules.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

23. The Commission has taken specific steps to address some of the costs for facilities-based mobile wireless providers subject to the potential rules discussed in the FNPRM. The Commission seeks to give facilities-based mobile wireless providers maximum flexibility and reduce potential costs of compliance, and believe the best approach is to solicit input from facilities-based mobile wireless providers on the issues raised in the FNPRM. The Commission further believes that burdens on small and other providers would be diminished, and the value of the information collected increased, if providers were required to submit their reports in a standardized and streamlined format.

24. The Commission has proposed and seeks comment (including any associated costs and benefits), on requiring the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form for the purposes of a provider's compliance with § 4.17(c) of our rules.

25. The Commission is mindful that small and other providers subject to any new rules adopted in this proceeding may incur compliance costs. To assist in the Commission's evaluation of the economic impact on small entities, the Commission seeks comment on the costs and benefits of various proposals and alternatives in the FNPRM. Having data on the costs and economic impact of proposals and approaches will allow the Commission to better evaluate options and alternatives for minimization should there be a significant economic impact on small entities as a result of our proposals. We expect to more fully consider the economic impact on small entities following our review of comments filed in response to the FNPRM, including costs and benefits analyses, and this IRFA. The Commission's evaluation of this information will shape the final alternatives it considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches and any final rules it promulgates in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None

SYNOPSIS

II. Further Notice of Proposed Rulemaking

27. In the final rule published elsewhere in this issue of the **Federal Register**, the Commission takes steps to improve the reliability and resiliency of commercial wireless networks by codifying key provisions of the 2016 Wireless Resiliency Cooperative Framework (Framework). The Commission mandates key provisions of the Framework for all facilities-based wireless providers, expands the conditions that trigger its activation, adopts testing and reporting requirements, and codifies these modifications in a new ''Mandatory Disaster Response Initiative'' (MDRI). In this respect, when activated the MDRI requires providers to: provide for reasonable roaming under disaster arrangements (RuDs) when technically feasible and when particular operational circumstances are met; establish mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; take reasonable measures to enhance municipal preparedness and restoration; take reasonable measures to increase consumer readiness and preparation; and take reasonable measures to improve public awareness and stakeholder communications on service and restoration status. Under the final rule, MDRI will be activated when any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission's Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.

28. The reporting obligation adopted in the final rule at § 4.17(c) of requires facilities-based mobile wireless providers to submit a report detailing the timing, duration and effectiveness of their implementation of the MDRI's provisions within 60 days of when the Public Safety and Homeland Security Bureau (Bureau) issues a Public Notice announcing such reports must be filed for providers operating in a given geographic area in the aftermath of a disaster. Initial reports from providers pursuant to § 4.17(c) will be due in response to the first triggering event, as described at § 4.17(a), that occurs on or after a provider's associated compliance date.

29. In the FNPRM the Commission seeks comment on whether it would be beneficial to create a standardized form that providers could use for future reporting under rule § 4.17(c). To this end, the Commission proposes to direct the Public Safety and Homeland Security Bureau, under delegated authority, to develop a standardized reporting form. The Commission seeks comment on this approach and any associated costs and benefits.

30. The Commission also seeks comment on the contents of such standardized reporting forms. AT&T, for example, suggests that relevant details may include whether a provider roamed, the other providers it roamed with, the time period involved and, if relevant, the time it took for a provider to perform a health assessment and activate roaming. The Commission seeks comment on all the approaches described here, including on the associated costs and benefits.

31. The Commission seeks comment also on the basis pursuant to which facilities-based mobile wireless providers could seek confidential treatment for reports under the Commission's confidentiality rules, or if such reports should be publicly filed. The Commission seeks comment on an appropriate compliance date for providers' use of any new standardized reporting form(s) that may be developed, including whether the compliance date should depend on the class of provider (*e.g.,* large versus small providers) subject to the requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–19744 Filed 9–29–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 19–308; DA No. 22–925; FR ID 105840]

Pleading Cycle Established for Petition for Reconsideration Filed by Sonic Telecom, LLC

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments; correction.

SUMMARY: The Wireline Competition Bureau published a document in the **Federal Register** on September 19, 2022, establishing a pleading cycle for the Petition for Reconsideration filed by Sonic Telecom, LLC of portions of the *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services Report and Order.* There is a typographical error in the dates section of this document, incorrectly referring to the reply deadline as on or before ''September 29, 2022'' when it should read ''October 14, 2022.''

DATES: This correction is effective immediately.

FOR FURTHER INFORMATION CONTACT: Megan Danner, Competition Policy Division, Wireline Competition Bureau, at *Megan.Danner@fcc.gov,* or (202) 418–1151.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 19, 2022, in FR doc. 2022–20153, on page 57165, in the first column, correct the reply deadline to read: ''October 14, 2022.''

Federal Communications Commission.

Pamela Arluk,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2022–21195 Filed 9–29–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2020–0151; FF09E21000 FXES11110900000 223]

RIN 1018–BE33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal Distinct Population Segment of the Pacific Marten

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 25, 2021, proposed rule to designate critical habitat for the coastal distinct population segment of Pacific marten (coastal marten) (*Martes caurina*), a mammal species from coastal California and Oregon, under the Endangered Species Act of 1973, as amended (Act). This action will allow all interested parties an additional opportunity to comment on the October 25, 2021, proposed rule, as well as the opportunity to comment on the additional areas we are considering for exclusion from critical habitat designation, potential changes to Unit 1, and on new habitat modeling efforts for the coastal marten, as explained in this document. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period on the proposed rule that published October 25, 2021 (86 FR 58831) is reopened. We will accept comments received or postmarked on or before October 17, 2022.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2020–0151, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate the document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2020–0151, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Availability of supporting materials: This document and supporting materials (including the species status assessment report, comments and information received on the proposed rule, and references cited) are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0151 and at the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Tanya Sommer, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707–822–7201. 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:

Background

On October 25, 2021, we published in the **Federal Register** (86 FR 58831) a proposed rule to designate approximately 1,413,305 acres (ac) (571,965 hectares (ha)) of critical habitat in Oregon and California for the coastal marten. In the proposed designation, we identified 76,544 ac (30,976 ha) of private land owned by Green Diamond Resource Company (Green Diamond) and 26,126 ac (10,573 ha) of Yurok Tribal land that we are considering for exclusion from the critical habitat designation under section 4(b)(2) of the Act.

During the comment period on the October 25, 2021, proposed rule, we received information from the Yurok Tribe and Green Diamond that made us aware of changes in land ownership between the two entities based on recent land transfers. Below, we provide a summary of that information and discuss changes to the areas we are now considering for exclusion under section 4(b)(2) of the Act. We also provide information related to new species occurrence modeling and information on areas which may not contain the physical or biological features essential to the conservation of the coastal marten. We will be considering all this information during our designation process.

Although the critical habitat designation for the coastal marten was proposed when the regulatory definition of habitat (85 FR 81411; December 16, 2020) and the 4(b)(2) exclusion regulations (85 FR 82376; December 18, 2020) were in place and in effect, those two regulations have been rescinded (87 FR 37757; June 24, 2022 and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for the final rule designating critical habitat for the coastal marten, we will apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016).

Changes to Areas Identified for Exclusion and Additional Information Received

Tribal Lands and Green Diamond Resource Company Lands; Unit 5 Klamath Mountains

As identified above, our proposed critical habitat rule identified approximately 26,126 ac (10,573 ha) of Yurok Tribal lands and 76,544 ac (30,976 ha) of Green Diamond lands within the proposed designation of critical habitat for the coastal marten in Unit 5 in California. Based on additional information received from Green Diamond and the Yurok Tribe, we became aware of land ownership transfers between the two entities. As a result, approximately 27,564 ac (11,155 ha) of land identified for exclusion for Green Diamond have been transferred to the Yurok Tribe. We now identify approximately 48,980 ac (19,822 ha) of Green Diamond land for potential exclusion within the proposed designation. Based on the land transfers and additional exclusion requests, the Yurok Tribe has requested that approximately 93,898 ac (37,999 ha) of land be considered for exclusion based on Yurok Tribal interests. These Tribal areas are comprised of a mix of current land ownership and include approximately 68,898 ac (27,882 ha) of Yurok Tribal fee title and trust lands, lands held by Western Rivers Conservancy for the Tribe, and approximately 25,000 ac (10,117 ha) of ancestral Yurok Tribal lands currently owned by the U.S. Forest Service. Despite the mixed ownership, we are considering the Tribe's request for exclusion of the entire 93,898 ac (37,999 ha). The amount and ownership

information for the areas being considered for exclusion for the various entities is outlined in the table below.

Further, during the open comment period, we also received information regarding occurrence and habitat use by the coastal marten based on new modeling efforts (National Council for Air and Stream Improvement 2021). Although we are not now making any changes to the proposed designation based on the revised habitat modeling, we intend to review these habitat modeling efforts and determine if changes to the proposed designation are needed based on this information. Information regarding the revised habitat modeling is available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0151–0022, and we invite public comment on the habitat modeling efforts to inform our review.

In addition, the U.S. Forest Service in Oregon commented that some proposed areas in the Siuslaw National Forest may not contain the physical or biological features and therefore are not critical habitat. We are in the process of reviewing the information provided by the Forest Service and will make adjustments to the designation if appropriate between proposed and final designation. Information regarding the U.S. Forest Service's comments are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0151–0039.

TABLE OF AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit No.	Unit name	Area meeting the definition of critical habitat (in ac (ha))	Land ownership	Areas Considered for possible exclusion (in ac (ha))	Summary of rationale for proposed exclusion
5	Klamath Mountains	1,289,627 (521,894)	Green Diamond Resource Company.	48,980 ac (19,822 ha)	Existing land management, State safe harbor agreement, memorandum of understanding (MOU), and maintaining partnership.
			Yurok Tribe; Western Rivers Conservancy; U.S. Forest Service.	93,898 ac (37,999 ha)	Existing land management, MOU, and maintaining partnership.

Based on existing conservation and management actions for natural resources by the Green Diamond Resource Company and the Yurok Tribe as outlined under Consideration of Exclusions Under Section 4(b)(2) of the Act in the October 25, 2021, proposed rule (86 FR 58844–58848), as well as in additional information received during the public comment period from both the Yurok Tribe and Green Diamond (see Docket FWS–R8–ES–2020–0151–0036 and FWS–R8–ES–2020–0151–0024), we are now considering excluding approximately 48,980 ac (19,822 ha) of Green Diamond land and 93,898 ac (37,999 ha) of Yurok Tribe identified lands from the final designation.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to designate critical habitat for the coastal marten. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific data available. Our final determination will take into consideration all comments and any additional information we receive during the open comment period on the proposed rule.

Because we will consider all comments and information received during both comment periods, our final determination may differ from our October 25, 2021 (86 FR 58831) proposed rule. Based on the new information we receive (and any comments on that new information), our final critical habitat designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some additional areas if we find the benefits of exclusion outweigh the benefits of inclusion and not lead to the extinction of the species.

If you already submitted comments or information on the October 25, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support our determination, as section 4(b)(2) of the Act directs that designations of critical habitat be made ''on the basis of the best scientific data available.''

We request that you send comments and materials only by one of the methods listed in **ADDRESSES**. If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *https://www.regulations.gov* at Docket No. FWS–R8–ES–2020–0151.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Pacific Southwest Regional Office (Region 8).

Authority

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended, is the authority for this action.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–21191 Filed 9–29–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220922–0195]

RIN 0648–BJ04

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Omega Electronic Mesh Measurement Gauge Method for Measuring Net Mesh Size

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to add the Omega net mesh measurement gauge as a permissible device for net mesh measurement and correct regulatory references to gear restrictions. This action is required to allow the use of the Omega gauge as another method for measuring and enforcing net mesh size. Adoption of the Omega gauge, a handheld electronic device, is intended to improve the efficiency, safety, and cost-effectiveness of enforcement boardings at-sea.

DATES: Written comments must be received on or before October 31, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2021–0081, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and enter ''NOAA–NMFS–2021–0081'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: All comments that are timely and properly submitted 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. 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.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: (978) 281–9232; email: *Spencer.Talmage@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce is authorized to implement regulations that are necessary to carry out any fishery management plan or amendment. We have preliminarily determined that the adoption of the Omega electronic net mesh measurement gauge (Omega gauge) as an enforcement tool to measure net mesh for trawl gear will improve the safety, efficiency, and cost-effectiveness of enforcement boardings at-sea. The Omega gauge will assist in the enforcement of gear requirements for all Fishery Management Plans (FMPs) administered by the Greater Atlantic Regional Fisheries Office, but is otherwise administrative and will not result in any changes to fishing behavior or obligations to the fishing industry. We are proposing to amend the regulations in §§ 648.51(a)(2)(ii), 648.51(b)(4)(v), 648.80(f)(2), and 648.108(a)(2) to add the Omega gauge.

The Omega gauge is an automated, handheld electronic device for measuring net mesh size. To take a measurement, two metal prongs at the end of the device are inserted into a net mesh, at which point the prongs slowly separate with a standardized, pre-set force. Once the prongs can no longer separate, they stop, and produce the measurement. The Omega gauge has a measuring range of 0.4–11.81 inches (1–30 cm), and exerts a pressure of 125 Newtons (N) (12.75 kg) when used to measure mesh greater than or equal to 2.17 inches (5.51 cm) and a pressure of 50 N (5.10 kg) when used to measure mesh less than 2.17 inches (5.51 cm). The Omega gauge shows the results of completed measurements to the user via an electronic display, but also has the capability to record and store measurements internally. These records can be exported to an electronic file for later use. The mesh size produced by this device would be based on the same process as currently specified; it would be equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

The current methodology for measuring trawl net mesh size uses a wedge-shaped gauge with a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm). To measure net mesh size of less than 4.72 inches (120 mm), the wedge gauge is attached to a 5-kg weight. For nets 4.72 inches (120 mm) or larger, the gauge is attached to an 8-kg weight. The wedge is inserted into the mesh being measured under the pressure or pull of its attached weight, and the mesh size is equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

Between 2016 and 2018, the United States Coast Guard (USCG) conducted shore-side and operational comparison studies between the wedge and Omega gauges.

At a meeting of the New England Fishery Management Council's Joint Enforcement Committee and Advisory Panel in 2018, USCG representatives presented the results of their studies and demonstrated the operation of the Omega gauge. These studies showed that the Omega gauge accurately and consistently measured the net meshes. In addition, the USCG stated that the Omega gauge is faster, easier to use, and more precise than the traditional wedge gauge.

Following the recommendation of the Joint Enforcement Committee and Advisory Panel, the New England Council recommended to us that the Omega gauge be adopted for net mesh size measurement. Subsequently, the NOAA Office of Law Enforcement and Office of General Counsel reviewed the study results, operations manual, and other information and determined the Omega gauge is suitable for net mesh measurements.

On December 13, 2021, NMFS presented information to the Mid-Atlantic Fishery Management Council regarding the Omega gauge and the ongoing development of rulemaking to adopt the Omega gauge. The Mid-Atlantic Council had not been properly informed of the development of this rulemaking, and so the December presentation corrected that error. The Mid-Atlantic Council subsequently passed a motion by consensus to support the development of rulemaking to adopt the Omega gauge.

Background

We are also proposing to amend the regulations at §§ 648.80(c)(2)(i), 648.80 (c)(2)(ii) and 648.125(a)(2) to correct an incorrect cross reference. The cross reference currently directs readers to minimum fish sizes in the summer flounder fishery at § 648.104, but is instead intended to refer to gear restrictions in that fishery at § 648.108(a)(2). The regulations that are proposed to be amended discuss gear restrictions for vessels using trawls, and so the erroneous cross references that do not direct readers to the correct information causes difficulty to public understanding of gear requirements and restrictions.

Classification

The National Marine Fisheries Service (NMFS) Assistant Administrator has made a preliminary determination that this proposed rule is consistent with section 305(d) and other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination follows.

For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available (in this case, from 2016 through 2018).

Any vessel fishing in the waters of the United States may be subject to boarding by the USCG or NOAA OLE for the enforcement of fishing and other regulations. This boarding may include measurement of net mesh size by the wedge-shaped gauge. Therefore, entities holding one or more fishing permits, and allowed the use of nets that may be measured by the wedge-shaped gauge, have the potential to be directly impacted by this action. According to the commercial database, there were 1,174 entities that had at least one valid permit during 2018, the last year for which affiliation information is available. Of these, 12 were classified as large with average annual gross sales of $23.2 million and 1,162 were classified as small with average annual gross sales of $591.8 thousand. According to gear codes found in Vessel Trip Report records, during 2018, 10 of the 12 large entities took at least one trip where the gear used could be measured via use of the Omega gauge. On average, these entities took 170 trips that would be affected by the proposed action. Similarly, during 2018 there were a total of 524 regulated small entities that took at least one trip that would be affected by the proposed action where the average number of affected trips during 2018 was 57.

This proposed rule would not have a significant economic impact on a substantial number of small entities. It will not affect fishing operations, behavior, or effort. It would not change the minimum mesh size for any fishery or require any fishermen to purchase new gear. The only economic cost associated with the proposed rule would be to law enforcement agencies that opt to purchase the Omega gauge for use in enforcement activity. Additionally, because studies conducted by the USCG indicate that the Omega gauge is faster and lighter than the wedge gauge, it is expected that use of the Omega gauge will result in faster, safer, and more efficient boardings at-sea, constituting a minor benefit to the affected entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain any collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), and thus will not be submitted to OMB for approval.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 23, 2022.

Samuel D. Rauch, III,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.51, revise paragraph (a)(2)(ii) and paragraph (b)(4)(v), to read as follows:

§ 648.51 Gear and Crew Restrictions.

(a) * * *

(2) * * *

(ii) *Measurement of mesh size.* Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10–300 mm (0.4 inches–11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

* * * * *

(b) * * *

(4) * * *

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10–300 mm (0.4 inches–11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches).

The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 8 kg (17.64 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge. The mesh in the twine top must be measured along the length of the twine top, running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

* * * * *

■ 3. In § 648.80, revise paragraphs (c)(2)(i), (ii), and (f)(2), to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by § 648.108(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.108(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(f) * * *

(2) *All other nets.* With the exception of gillnets, mesh size is measured by an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10–300 mm (0.4 inches–11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

* * * * *

■ 4. In § 648.108, revise paragraph (a)(2), to read as follows:

§ 648.108 Summer flounder gear restrictions.

(a) * * *

(2) Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10–300 mm (0.4 inches–11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes, when using either the Omega gauge or the wedge-shaped gauge. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

* * * * *

■ 5. In § 648.125, revise paragraph (a)(2), to read as follows:

§ 648.125 Scup gear restrictions.

(a) * * *

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.108(a)(2).

* * * * *

[FR Doc. 2022–21135 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 189
Friday, September 30, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 31, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Mycoplasma Bovis in Bison 2022 Case Control Study.

OMB Control Number: 0579–0482.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of the U.S. Department of Agriculture (USDA) is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests, and for eradicating such diseases and pests from the United States, when feasible. Within the USDA, the Animal and Plant Health Inspection Service (APHIS Veterinary Services (VS)) is tasked with preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. In 2021, multiple premises and bison herds experienced significant losses attributed to the appearance of the Mycoplasma bovis pathogen in the herds. Despite the unique and significant burden of this pathogen on bison, little information exists on the sources of infection to naïve herds. Diagnostic testing is not currently able to identify animals infected but not shedding the bacterium and these animals can serve as a source of infection during subsequent years. To limit additional herds becoming infected in the 2022 season, APHIS conducted an emergency study on the potential sources of new infections in naïve herds. This request for renewal of the emergency information collection request for the study serves to maintain approval to apply the study to herds that may get infected but were not included in the original study.

Need and Use of the Information: The information collected will be used to identify risk factors for bison contracting the M. Bovis pathogen, and develop prevention and control recommendations for treating it.

Description of Respondents: Bison producers (herd owners or managers).

Number of Respondents: 220.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 55.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2022–21273 Filed 9–29–22; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0048]

Notice of Request for Approval of an Information Collection; Handling Swine With Potential Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection associated with the handling of swine with potential vesicular disease.

DATES: We will consider all comments that we receive on or before November 29, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0048 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. APHIS–2022–0048, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the activities associated

with handling swine with potential vesicular disease, contact Dr. Lisa Rochette, Assistant Director, Swine Health Program, Aquaculture, Swine, Equine, and Poultry Health Center, Strategy and Policy, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; office phone: (919) 855–7276; cell: (801) 879–5156; email: *lisa.t.rochette@usda.gov.* For detailed information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Handling Swine With Potential Vesicular Disease.

OMB Control Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of the U.S. Department of Agriculture (USDA) is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and for eradicating such diseases and pests from the United States when feasible. Within the USDA, this authority and mission is delegated to Veterinary Services (VS) within the Animal and Plant Health Inspection Service (APHIS).

Part of VS' mission is preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. Regarding swine, any swine having vesicular lesions are suspected of having a foreign animal disease (FAD), such as foot-and-mouth disease (FMD), until determined otherwise by VS through authorized testing at approved National Animal Health Laboratory Network laboratories with oversight and confirmatory testing, if required, by the Foreign Animal Disease Diagnostic Laboratory.

Several viral pathogens may cause vesicular lesions in swine, including FMD virus, swine vesicular disease virus, vesicular stomatitis virus, and Seneca Valley A virus. Veterinarians are unable to differentiate the etiology of these gross lesions without diagnostic testing. Therefore, vesicular lesions on swine should be reported by State, Federal, and accredited veterinarians to ensure rapid detection of FMD or any other FAD, if introduced. Reporting and rapid detection protects the health and marketability of our nation's livestock health and meat products and generates public confidence. Information collection activities associated with reporting and rapid detection include notifiable swine disease reporting, National Animal Health Reporting System, monthly State and Area Veterinarian In Charge reports, and FAD data collection and investigations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Accredited and State veterinarians, laboratory personnel, farmers and other agricultural managers, and State animal health officials.

Estimated annual number of respondents: 75.

Estimated annual number of responses per respondent: 176.

Estimated annual number of responses: 13,200.

Estimated total annual burden on respondents: 6,900 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–21233 Filed 9–29–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—Overall Sugar Marketing Allotment, Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) is issuing this notice to announce the fiscal year (FY) 2023 (2022 crop year) overall sugar marketing allotment quantity (OAQ), State cane sugar allotments, and sugar beet and sugarcane processor allocations, which apply to all domestic beet and cane sugar marketed for human consumption in the United States from October 1, 2022, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kent Lanclos, telephone, (202) 720–0114; or email, *kent.lanclos@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: The Agricultural Adjustment Act of 1938, as amended, requires USDA to establish the OAQ at a quantity not less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year. USDA is establishing the initial FY 2023 (2022 crop year) OAQ at 10,646,250 short tons, raw value (STRV), which is equal to 85 percent of 12,525,000 STRV, the estimated quantity of sugar for domestic human consumption for FY 2023 as forecast in the September 2022 World Agricultural Supply and Demand Estimates report. The Agricultural Adjustment Act of 1938, as amended, requires that 54.35 percent of the OAQ be distributed among beet processors and 45.65 percent be distributed among the sugarcane States and cane processors. The beet and cane sector allotments are distributed to individual processors according to formulas set out in law.[1] Although the Agricultural Adjustment Act of 1938, as amended directs USDA to assign 325,000 STRV of the cane sector allotment to ''offshore States,'' CCC has determined that no offshore States exist. While sugar cane was formerly produced in Puerto Rico and Hawaii, CCC has determined that both states have permanently exited sugarcane production. As a result, CCC

[1] *See* 7 U.S.C. 1359aa, *et seq.,* and 7 CFR part 1435.

has allocated the 325,000 STRV of the cane sector allotment previously reserved for offshore States to the mainland sugarcane producing States. The initial FY 2023 sugar marketing State allotments and processor allocations are listed in the table below.

FY 2023 Overall Beet and Cane Allotments and Allocations

[short tons, raw value]

Distribution	Initial FY 2023 allocation
Beet Sugar	5,786,237
Cane Sugar	4,860,013
Total OAQ	10,646,250
Beet Processors Marketing Allocations	
Amalgamated Sugar Co	1,238,877
American Crystal Sugar Co	2,128,113
Michigan Sugar Co	597,577
Minn-Dak Farmers Co-op	401,848
So. Minn Beet Sugar Co-op	780,958
Western Sugar Co	590,415
Wyoming Sugar Co. LLC	48,449
Total Beet Sugar	5,786,237
State Cane Sugar Allotments	
Florida	2,612,146
Louisiana	2,020,789
Texas	227,078
Total Cane Sugar	4,860,013
Cane Processors' Marketing Allocation	
Florida:	
Florida Crystals	1,075,489
Growers Co-op of FL	469,887
U.S. Sugar Crop	1,066,770
Total	2,612,146
Louisiana:	
Louisiana Sugar Cane Products, Inc	1,402,896
M.A. Patout & Sons	617,893
Total	2,020,789
Texas:	
Rio Grande Valley	227,078

USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis and may make program adjustments during FY 2023 if needed.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or 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 (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2022–21228 Filed 9–29–22; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations—Reporting and Recordkeeping Burden

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This collection is a revision of the currently approved information collection for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which contains the reporting and recordkeeping burdens associated with the WIC Program regulations. These revisions include existing requirements that have been in use without Office of Management and Budget (OMB) approval, identified during the drafting of proposed information collection requests associated with two rulemakings: the Revisions in the WIC Food Packages proposed rule and the WIC Online Ordering and Transactions proposed rule.

DATES: Written comments must be received on or before November 29, 2022.

ADDRESSES: Comments may be sent to: Allison Post, Chief, WIC Administration, Benefits, and Certification Branch, Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to *Allison.Post@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Allison Post at (703) 457–7708 or *Allison.Post@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations—Reporting and Recordkeeping Burden.

Form Number: N/A.

OMB Number: 0584–0043.

Expiration Date: 12/31/2023.

Type of Request: Revision of a currently approved collection.

Abstract: FNS is currently drafting two proposed rules that would change Federal regulations governing the WIC Program at 7 CFR part 246. FNS will seek comment on the proposed information collections associated with those two rules separately. In the development of those two rules, FNS identified several existing requirements that are currently in use without OMB approval. This revision of OMB Control Number 0584–0043 adds those requirements and their associated burdens into this collection to correct this oversight. These requirements will be included in future revisions to the WIC burden.

During development of the Revisions in the WIC Food Packages proposed rule, FNS identified the State agency reporting burden associated with 7 CFR 246.12(h)(1)(i) as in use without OMB approval. This provision requires the State agency to enter into a written agreement with retail vendors. State agencies must review completed applications and sign a vendor agreement where the agreement period must not exceed three years. The revision increases the approved annual reporting burden by 13,584.12 responses across all 89 State agencies, totaling 10,188.09 hours.

During the development of the WIC Online Ordering and Transactions proposed rule, FNS identified six additional existing regulatory requirements as in use without OMB approval that affect the reporting burdens for WIC State agencies, households, and WIC-authorized retail vendors. The State agency reporting burden associated with vendor applications and agreements, discussed above, was identified during the development of both WIC proposed rules.

WIC State Agency Reporting Burden: WIC regulations at § 246.12(g)(5), § 246.12(j)(2), and § 246.12(j)(4) require State agencies to visit vendors on site to conduct preauthorization visits of new vendor applicants, routine monitoring visits of five percent of vendors, and compliance investigations of five percent of vendors, respectively.[1] These requirements involve both the necessary time to conduct the visit and the round-trip travel time. In addition to the 13,584.12 responses and 10,188.09 hours associated with reviewing vendor applications and agreements discussed above, these revisions would add 3,571.20 responses and 4,943.33 hours to the approved WIC State agency reporting burden, for a total of 17,155.32 additional responses and 15,131.42 additional burden hours across all 89 State agencies.

Household Reporting Burden: Section 246.12(r) requires WIC participants to pick up food instruments and cash-value vouchers (CVVs) in person when scheduled for a nutrition or recertification appointment. Outside of these scheduled appointments, State agencies may issue benefits through alternative means including electronic benefits transfer (EBT) or mailing, but many participants must still visit the clinic to pick up their benefits. Households with multiple WIC participants would only need to travel to the clinic once to pick up all members' benefits, and State agencies may issue up to three months of food instruments and CVVs at a time.

If a State agency operates an offline EBT system or has not completed their transition to EBT, participants are generally required to reload their offline EBT card or pick up paper food instruments and CVVs in person. FNS estimates that in these State agencies, 656,135.82 households visit the clinic three times per year outside of other scheduled appointments to pick up benefits in person, requiring 1,968,407.46 visits and 984,203.73 hours. If a State agency operates an online EBT system, new participants generally pick up new EBT cards in

[1] The burden associated with conducting compliance investigations is already included in the approved burden for this collection, but the travel time has been previously omitted. Including the travel time affects the number of burden hours (686.07 hours added) but not the number of responses associated with compliance investigations.

person and all other participants receive benefits electronically. FNS estimates that in these State agencies, 1,042,098.07 households spend 521,049.03 hours picking up EBT cards in person once per year outside of other scheduled appointments. These revisions would add 3,010,505.53 responses and 1,505,252.76 total hours to the approved reporting burden for 1,698,234 households.

WIC-Authorized Vendor Reporting Burden: In addition to the State agency reporting burden associated with preauthorization visits required by § 246.12(g)(5), vendors' reporting burden must account for such visits. Approximately 1,513 vendors are newly authorized for the WIC Program each year and undergo preauthorization visits. Once authorized for the WIC Program, all 41,164 WIC-authorized vendors are required to attend annual training, per § 246.12(j)(1). FNS estimates that including the burden associated with these two existing provisions adds 42,677 responses and 83,336.72 hours to the approved vendor reporting burden for this collection.

Affected Public: Individual/Households; Business or Other for Profit; and State and Tribal Government. Respondent groups include WIC participants/households, WIC-authorized retail vendors, and WIC State agencies (including Indian Tribal Organizations and U.S. Territories).

Estimated Number of Respondents: The total estimated number of respondents is 1,739,487 for the proposed revisions to the information collection request associated with OMB Number 0584–0043. This includes: 89 State agencies; 1,698,234 WIC households, and 41,164 WIC-authorized retail vendors.

Estimated Number of Responses per Respondent: 1.77 responses.

Estimated Total Annual Responses: The total estimated number of responses is 3,072,396 for the proposed revisions to the information collection request associated with OMB Number 0584–0043.

Estimated Time per Response: 0.52 hours.

Estimated Total Annual Burden on Respondents: 1,607,837 hours.

Current OMB Inventory: 4,547,099 hours and 48,798,800 responses.

Difference (Burden Revisions Requested): +1,603,721 hours and +3,070,338 responses.[2]

Estimated Grand Total for Reporting and Recordkeeping Burden: 6,150,819 hours and 51,869,137 responses (numbers may not sum due to rounding).

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–21202 Filed 9–29–22; 8:45 am]

BILLING CODE 3410–30–P

[2] The burden revisions requested do not exactly match the number of hours and responses for the proposed revisions to the information collection listed above because the burden associated with conducting compliance investigations is already included in the approved burden for this collection; the revision only adds the estimated travel time that is required to conduct compliance investigations.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Umpqua National Forest is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. Many sites have recently been reconstructed or amenities are being added to improve services and experiences. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, OR 97471.

FOR FURTHER INFORMATION CONTACT: Umpqua Recreation Fees, 541–957–3200 or *SM.FS.umpcomments@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Hobo Forest Camp Campground is proposed at $12 per night with a $5 extra vehicle fee. Skillet Creek Group Campground is proposed for $35–$40 per night depending on group size. In addition, this proposal would implement a new fee at one recreation rental: Hemlock Butte Cabin is proposed at $15 a night per person. A $5 day-use fee per vehicle at Cedar Creek Trailhead would be added to improve services and facilities. The full suite of Interagency passes would be honored. A $2 fee is proposed for the showers at Broken Arrow and Diamond Lake campgrounds. A $10 fee is proposed to use the RV dump station at Broken Arrow and Diamond Lake campgrounds.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs that are intended to enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for campgrounds and the cabin will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–21311 Filed 9–29–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Sawtooth National Forest is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. Many sites have recently been reconstructed or amenities are being added to improve services and experiences. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Sawtooth National Forest, 102 First Street East, Fairfield, ID 83327.

FOR FURTHER INFORMATION CONTACT: Marty Gmelin, Fairfield District Ranger, 208–764–3461 or *martin.gmelin@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Five Points, Pioneer, Willow Creek Transfer Camp, and Bear Creek Transfer Campgrounds are proposed at $10 per night for a single site and $20 per night for double sites. The Pioneer Group Campground is proposed for $100 per night for up to 50 people. A $5 use fee is proposed for the Big Smoky RV Dump Station. A $5 day-use fee per vehicle is proposed for Baumgardner Hot Pool. The full suite of Interagency passes would be honored.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs that are intended to enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for some campgrounds and group sites will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–21310 Filed 9–29–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Thursday, September 15, 2022, concerning a meeting of the California Advisory Committee. The meeting link has since been updated.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, *bpeery@usccr.gov,* (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on Thursday, September 15, 2022, in FR Document Number 2022–19959, on page 56626, first column, correct the meeting link to read: *https://www.zoomgov.com/meeting/register/vJIsdu-rqzIqG9RyJehW4Ke2pdX7rFxXoI4.*

Dated: September 26, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21212 Filed 9–29–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the American Samoa Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, July 8, 2022, concerning a meeting of the American Samoa Advisory Committee. The meeting link has since been updated.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, *bpeery@usccr.gov,* (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on Friday, July 8, 2022, in FR Document Number 2022–14527, on page 40783, first and second columns, correct the meeting link to read: *https://www.zoomgov.com/meeting/register/vJIsduqhqTwoHGxw-mEIXfL0LR9nNmGxylI.*

Dated: September 26, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21210 Filed 9–29–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the American Samoa Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, July 8, 2022, concerning a meeting of the American Samoa Advisory Committee. The meeting link has since been updated.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, *bpeery@usccr.gov,* (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on Friday, July 8, 2022, in FR Document Number 2022–14527, on page 40783, first and second columns, correct the meeting link to read: *https://www.zoomgov.com/meeting/register/vJIsduqhqTwoHGxw-mEIXfL0LR9nNmGxylI.*

Dated: September 26, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21171 Filed 9–29–22; 8:45 am]

BILLING CODE P

COMMISSON ON CIVL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via the web platform Zoom, on October 20, 2022, at 11:00 a.m. Central Time. The purpose of the meeting is for the committee to hold a public briefing on voting rights topics of concern in the state.

DATES: The meetings will be held on Thursday, October 20, 2022, at 11:00 a.m. Central Time.

ADDRESSES: *https://www.zoomgov.com/j/1614198443.*

Find your local number: *https://www.zoomgov.com/u/abjPyDAxf4.*

Access code: 1614198443.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate

over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Panel Discussions
IV. Public Comment
V. Adjournment

Dated: September 26, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21213 Filed 9–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[7/30/2022 through 9/21/2022]

Firm name	Firm address	Date received by EDA	Date accepted for investigation	Product(s)
Nassau Chromium Plating Co., Inc ..	122 2nd Street, Mineola, NY 11501	6/27/2022	8/16/2022	The firm performs metal electroplating, anodizing, and polishing.
Hampton Hydraulics, LLC	712 1st Street NW, Hampton, IA 98225.	6/28/2022	9/13/2022	The firm manufactures hydraulic cylinders.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–21188 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2022]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Notification of Proposed Production Activity; Volkswagen Group of America—Chattanooga Operations, LLC (Passenger Motor Vehicles); Chattanooga, Tennessee

Volkswagen Group of America—Chattanooga Operations, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Chattanooga, Tennessee under FTZ 134. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 26, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include: USB port for infotainment system; driver assistance (device that reads the sensors on the vehicle and relays information through the radio); camera systems; and, windshields (duty rate ranges from duty-free to 2.5%). The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) and section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The

applicable, section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 9, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: September 27, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–21280 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jose Ernesto Garcia, 1502 Holbrook Road, #20, San Antonio, TX 78218; Order Denying Export Privileges

On February 3, 2020, in the U.S. District Court for the Southern District of Texas, Jose Ernesto Garcia (''Garcia'') was convicted of violating 18 U.S.C. 554(a). Specifically, Garcia was convicted of of one count of fraudulently and knowingly exporting and sending and attempting to export and send from the United States to Mexico various firearms. This export occurred without a Department of State export license or other written authorization. As a result of his conviction, the Court sentenced Garcia to 37 months in prison, three years of supervised release, a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Garcia's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Garcia to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Garcia.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Garcia's export privileges under the Regulations for a period of 10 years from the date of Garcia's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Garcia had an interest at the time of his conviction.[3]

Accordingly, it is hereby ordered:

First, from the date of this Order until February 3, 2030, Jose Ernesto Garcia, with a last known address of 1502 Holbrook Road, #20, San Antonio, TX 78218, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Garcia by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Garcia may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Garcia and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 3,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21225 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Luis Carlos Quintana-Saenz, Makahui 6712 Colonia Karique, Chihuahua, MX 31000; Order Denying Export Privileges

On August 12, 2020, in the U.S. District Court for the Western District of Texas, Luis Carlos Quintana-Saenz (''Quintana-Saenz'') was convicted of violating 18 U.S.C. 554(a). Specifically, Quintana-Saenz was convicted of knowingly and unlawfully attempting to export from the United States to Mexico approximately 3,860 rounds of ammunition of various calibers in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Quintana-Saenz to 37 months in prison, with credit for time served, two years of supervised release, and a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Quintana-Saenz's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Quintana-Saenz to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Quintana-Saenz.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Quintana-Saenz's export privileges under the Regulations for a period of nine years from the date of Quintana-Saenz's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Quintana-Saenz had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until August 12, 2029, Luis Carlos Quintana-Saenz, with a last known address of Makahui 6712 Colonia Karique, Chihuhua, MX 31000, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Quintana-Saenz by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Quintana-Saenz may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Quintana-Saenz and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 12, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21224 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Maurice Taylor, Inmate Number: 21182–043, FCI Oakdale 1, Federal Correctional Institution, P.O. Box 5000, Oakdale, LA 71463; Order Denying Export Privileges

On July 18, 2019, in the U.S. District Court for the Southern District of

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2021).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Mississippi, Maurice Taylor (''Taylor'') was convicted of violating 18 U.S.C. 371. Specifically, Taylor was convicted of conspiring to purchase and export firearms to the United Kingdom, without obtaining the required export license from the U.S. Department of State, in violation of 18 U.S.C. 371. As a result of his conviction, the Court sentenced Taylor to 60 months in prison, three years supervised release, and a $200 assessment and a $2,500 fine.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Taylor's conviction for violating 18 U.S.C. 371. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Taylor to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Taylor.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Taylor's export privileges under the Regulations for a period of 10 years from the date of Taylor's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Taylor had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until July 18, 2029, Maurice Taylor, with a last known address of: Inmate Number: 21182–043, FCI Oakdale 1, Federal Correctional Institution, P.O. Box 5000, Oakdale, LA 71463, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Taylor by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Taylor may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Taylor and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 18, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21223 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC399]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a half-day webinar meeting of its Groundfish Management Team (GMT) to initiate discussions and analyses on groundfish items on the Pacific Council's November 2022 meeting agenda. This meeting is open to the public.

DATES: The online meeting will be held on Thursday, October 20, 2022, starting at 8:30 a.m. Pacific time and ending at 12 p.m. Pacific time, or when business has been completed for the day.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will

be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's November 2022 agenda items. The GMT will discuss items related to groundfish management and administrative matters on the Pacific Council's November agenda. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 27, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–21298 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC415]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a 4-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ). The meeting will be a hybrid meeting open to the public offering both in-person and virtual options for participation.

DATES: The meeting will convene Monday, October 24 through Wednesday, October 26, 2022, from 8 a.m. to 5 p.m. and Thursday, October 27, 2022 from 8 a.m. to 4:30 p.m., CDT.

ADDRESSES:

Meeting address: The meeting will take place at the Beau Rivage Resort and Casino hotel, located at 875 Beach Boulevard, Biloxi, MS 39530.

Please note, in-person meeting attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and the City of Biloxi, if any. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, October 24, 2022; 8 a.m.–5 p.m., CDT

The meeting will begin with FULL COUNCIL's review and adoption of Proposed Council Committee assignments for October 2022 through August 2023 and Current Council Committee Assignments are posted as background information. The Council will receive a demonstration of Electronic Voting Technology.

Committee Sessions will begin approximately 8:30 a.m. with the Shrimp Committee receiving an update on Testing and Development of Options Proposed as Replacements for the Historical Cellular Electronic Logbook (cELB) Devices for the Gulf Shrimp Fishery.

The Habitat Protection and Restoration Committee will review Scientific and Statistical Committee (SSC) Recommendations on Essential Fish Habitat and Draft Essential Fish Habitat Amendment. The Sustainable Fisheries Committee will review Florida *Pompano* Landings and Requirements for Consideration of Federal Fisheries management, including SSC Recommendations from the September 2022 Socioeconomic Stock Assessment Workshop Report.

Following lunch, the Mackerel Committee will convene for review of Coastal Migratory Pelagics Landings, Public Hearing Draft Amendment 33: Modifications to the Gulf of Mexico Migratory Group King Mackerel Sector Allocation, and Draft Framework Amendment: Modifications to the Gulf of Mexico Migratory Group King Mackerel Southern Zone Gillnet Fishing Season.

The Law Enforcement Committee will review the Meeting Summary from the October 2022 Law Enforcement Technical Committee meeting.

The Reef Fish Committee will convene to review Reef Fish Landings and Individual Fishing Quota (IFQ) Landings and State-specific Private Angling and State For-hire Red Snapper Landings.

Tuesday, October 25, 2022; 8 a.m.–5 p.m., CDT

The Reef Fish Committee will reconvene to review final action item Draft Amendment 54: Modifications to the Greater Amberjack Catch Limits and Sector Allocations, and other Rebuilding Plan Modifications; and, receive a presentation on Draft Greater Amberjack Commercial and Recreational Management Measures and Reef Fish Advisory Panel recommendations.

The Committee will hold a discussion on the second meeting for the IFQ Focus Group Charge and Deliverables, review Draft Framework Action for Gray Triggerfish Commercial Trip Limit and Reef Fish Advisory Panel (AP) recommendations. The Committee will review draft options for Amendment 56: Modifications to the Gag Grouper Catch Limits, Sector Allocations, Fishing Seasons, and other Rebuilding Plan Measures; review SSC Recommendations for Review of the SEDAR 68 Operational Assessment for Gulf of Mexico Scamp; and, remaining

Reef Fish AP recommendations from the October 2022 meeting.

Immediately following the Reef Fish Committee NMFS will Host a General Questions and Answer Session.

Wednesday, October 26, 2022; 8 a.m.–5 p.m., CDT

The Data Collection Committee will review Abbreviated Framework Action to Modify For-hire Trip Declaration Requirements and Reef Fish AP recommendations; review of South Atlantic Council Workgroup Discussions on Federal Private Angling Reef Fish Permit; update from Gulf States Marine Fisheries Commission (GSMFC) on Fisheries Data Collection and Management; and an update on Commercial Electronic Reporting including Reef Fish AP recommendations.

Approximately 10:45 a.m., CDT, the Council will reconvene with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes.

The Council will receive presentations on Recommendations from the Joint Council Workgroup on section 102 of the Modern Fish Act, Deepwater Horizon Fish Restoration and Future Restoration Planning; and, an update from Bureau of Ocean Energy Management (BEOM) on Wind Energy Development in the Gulf of Mexico.

The Council will hold public testimony from 1:30 p.m. to 5 p.m., CDT on Final Action: Draft Amendment 54: Modifications to the Greater Amberjack Catch Limits and Sector Allocations, and other Rebuilding Plan Modifications; and, open testimony on other fishery issues or concerns. Public comment may begin earlier than 1:30 p.m. CDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up via the link on the Council website. Registration for virtual testimony is open at the start of the meeting, Monday, October 24th at 8 a.m., CDT and closes one hour before public testimony begins on Wednesday, October 26th at 12:30 p.m., CDT.

Thursday, October 27, 2022; 8 a.m.–4:30 p.m., CDT

The Council will receive Committee reports from *Shrimp,* Habitat Protection and Restoration, Law Enforcement, Sustainable Fisheries, Mackerel, Reef Fish and Data Collection Management Committees. The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Mississippi Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will receive a Litigation Update and discuss any Other Business items.

—*Meeting Adjourns*

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: September 27, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–21300 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC412]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) October 18–20, 2022, in Charleston, SC.

DATES: The Snapper Grouper AP will meet from 1 p.m. until 5 p.m. on October 18; from 8:30 a.m. until 5 p.m. on October 19, and 8:30 a.m. until 12 p.m. on October 20, 2022.

ADDRESSES:

Meeting address: Town & Country Inn and Suites, 2008 Savannah Hwy, Charleston, SC 29407; phone: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866)SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including the agenda, overview, briefing book materials, and an online public comment form will be posted on the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings* two weeks prior to the meeting. The meeting is open to the public and available via webinar as it occurs. The webinar registration link will be available from the Council's website. Public comment will also be taken during the meeting.

The agenda for the Snapper Grouper AP includes: an update on options considered to adjust red snapper catch levels and reduce release mortality through Snapper Grouper Regulatory Amendment 35; a review of management measures proposed for gag grouper and black grouper through Snapper Grouper Amendment 53; the draft Snapper Grouper Management Strategy Evaluation (MSE); and the Commercial Electronic Logbook Amendment.

The AP will also receive updates on the Florida Keys National Marine Sanctuary Restoration Blueprint and NOAA Fisheries proposed vessel speed regulations to boost protection of right whales.

AP members will receive updates on additional ongoing amendments to the Snapper Grouper Fishery Management Plan and other Council programs and initiatives. The AP will provide input and recommendations on agenda items for the Council's consideration and address other items as needed.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 27, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–21299 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Deadline Extension for the NOAA Brennan Matching Fund Opportunity for Ocean and Coastal Mapping

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Announcement to extend the deadline for the Brennan Matching Fund program opportunity, request for proposals, and request for interest to October 16, 2022.

SUMMARY: This notice extends the proposal submission deadline for the NOAA Rear Admiral Richard T. Brennan Ocean Mapping Matching Fund program by two weeks to October 16, 2022. Notice of the Brennan Matching Fund opportunity originally appeared in the **Federal Register** on June 10, 2022, 87 FR 35509.

DATES: Proposals, including any optional geographic information system (GIS) files of the proposed project areas, must be received via email by 5 p.m. Eastern Time (ET) on October 16, 2022. If an entity is unable to apply for this particular opportunity, but has an interest in participating in similar, future opportunities, NOAA requests a one-page statement of interest, also by October 16, 2022, to help gauge whether to offer the Brennan Matching Fund program in future years.

ADDRESSES: Proposals must be submitted via email to *iwgocm.staff@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ashley Chappell, NOAA Integrated Ocean and Coastal Mapping Coordinator, at *iwgocm.staff@noaa.gov.*

Authority: Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883e)

Benjamin K. Evans,

Director, Office of Coast Survey,National Ocean Service,National Oceanic and Atmospheric Administration.

[FR Doc. 2022–21272 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC372]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 Highly Migratory Species (HMS) Hammerhead Sharks Assessment Webinar V.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 77 HMS Hammerhead Sharks Assessment Webinar V has been scheduled for Tuesday October 18, 2022, from 10 a.m. until 2 p.m., eastern time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available at: *https://attendee.gotowebinar.com/register/4151195581147732750* or by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and Federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Assessment Webinar V are as follows: discuss any leftover data issues that were not cleared up during the data process, answer any questions that the analysts have, and discuss model development and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been

notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 27, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–21297 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Atlantic Herring Amendment 5 Data Collection

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 29, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.Thomas@noaa.gov.* Please reference OMB Control Number 0648–0674 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Carrie Nordeen, Fishery Policy Analyst, 55 Great Republic Drive, Gloucester, MA 01930 or 978–281–9272 or *Carrie.Nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved collection associated with the Atlantic herring fishery. National Marine Fisheries Service (NMFS) Greater Atlantic Region manages these fisheries in the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Herring Fishery Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 and the recordkeeping and reporting requirements at § 648.11 form the basis for this collection of information.

In 2014, NMFS implemented Amendment 5 to the Atlantic Herring FMP to improve the collection of real-time and accurate catch information for the Atlantic herring fishery; enhance the monitoring and sampling of catch at-sea; and address bycatch issues, in particular bycatch of river herrings and shads, through responsible management.

In 2020, NMFS implemented the New England Industry Funded Monitoring (IFM) Omnibus Amendment to increase monitoring in certain FMPs, above levels required by the Standardized Bycatch Reporting Methodology (SBRM), to assess the amount and type of catch and to reduce variability around catch estimates. This amendment created a structure by which industry funding would be used in conjunction with available federal funding to pay for additional monitoring to meet FMP-specific coverage targets and required IFM in the Atlantic herring fishery.

We request the continued collection of the following information to improve monitoring and the collection of catch information in the Atlantic herring fishery:

- Observer notification requirement for permitted herring vessels to facilitate SBRM and IFM coverage;
- Requirement for vessel captains to submit a Released Catch Affidavit form documenting the discarding of unsampled catch;
- A requirement that Category A and B Atlantic herring permit holders pay for vessel at-sea monitoring costs, estimated to be up to $710 per sea day, on trips selected for IFM coverage (50% coverage target);
- The option for Category A and B Atlantic herring permit holders that fish with midwater trawl gear to obtain an IFM observer allowing the vessel to fish in groundfish closed areas and pay for the vessel's at-sea monitoring costs, estimated to be up to $818 per sea day; and
- Requirements for IFM monitor service providers to submit reports to NMFS on behalf of Category A or B Atlantic herring permitted vessels or for meeting service provider responsibilities for service provider approval and to facilitate accurate catch monitoring.

II. Method of Collection

Atlantic herring vessels and their respective IFM service providers on their behalf submit information to NMFS via web portal, email, phone, fax, or mail. Instructions for vessels are located at *https://www.fisheries.no.aa.gov/bulletin/notification-reporting-and-monitoring-requirements-atlantic-herring-fishery.*

III. Data

OMB Control Number: 0648–0674.

Form Number(s): None.

Type of Review: Regular (extension of existing information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 622.

Estimated Time per Response: For participants in the Atlantic herring fishery, 5 minutes for a pre-trip notification; 1 minute for a trip cancellation notification; 5 minutes for a call to request an IFM observer to access groundfish closed areas; 1 minute for a trip cancellation notification for groundfish closed areas; 5 minutes for the submission of a released catch affidavit; and 1 minute for the submission of species pounds to the observer.

For IFM service providers, 10 minutes for submission of a monitor deployment report; 20 minutes for the submission of an ASM availability report; 30 minutes for the submission of a safety refusal; 5 minutes for the submission of raw monitor data; 2 hours for a monitor debriefing; 30 minutes for the submission of other reports; 1 hour for the submission of biological samples; 10 hours for the submission of a new service provider application; 10 hours for an applicant response to a service provider denial; 30 minutes to request monitor training; 8 hours to rebut removal from the list of approved IFM service providers; 10 minutes to process

request for an ASM; 5 minutes to notify unavailability of ASMs; 10 minutes to process request for an IFM observer in groundfish closed area; 5 minutes to notify unavailability of IFM observers; 5 minutes for the submission of monitor contact list updates; 5 minutes for the submission of monitor availability updates; 30 minutes for submission of service provider materials; and 30 minutes for the submission of service provide contracts.

Estimated Total Annual Burden Hours: 1,848.

Estimated Total Annual Cost to Public: $791,210.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq,* Section 303).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–21312 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Mandatory Shrimp Vessel and Gear Characterization Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 29, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *noaa.pra@noaa.gov.* Please reference OMB Control Number 0648–0542 in the subject line of your comments. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rebecca Smith, National Marine Fisheries Service (NMFS), Southeast Fisheries Science Center, Galveston Laboratory, 4700 Avenue U, Bldg. 306, Galveston, TX 77551 (409) 766–3783, *rebecca.smith@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The mandatory vessel and gear characterization survey is a census data collection effort of all shrimp vessel owners or operators who possess a valid Federal Gulf commercial shrimp fishing permit. NMFS began collecting these survey data in 2006 under OMB Control No. 0648–0542 per the final rule implementing Amendment 13 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 13) (71 FR 56039, September 26, 2006).

NMFS is currently collecting census-level information on fishing vessel and gear characteristics in the Gulf of Mexico (Gulf) commercial shrimp fishery (Gulf shrimp fishery), which operates in the Gulf exclusive economic zone. NMFS uses this information to conduct analyses that improve fishery management decision-making and ensure that national goals, objectives, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*), National Environmental Policy Act, Regulatory Flexibility Act, Endangered Species Act, and Executive Order 12866 are met; and quantify achievement of the performance measures in the NMFS' Operating Plans. This information is vital in assessing the economic, social, and environmental effects of fishery management decisions and regulations on individual shrimp fishing enterprises, fishing communities, and the Nation as a whole. Recordkeeping requirements for this information collection under the Magnuson-Stevens Act are codified at 50 CFR 622.51(a)(3).

The mandatory vessel and gear characterization survey is a census data collection effort of all shrimp vessel owners or operators who possess a valid federal Gulf commercial shrimp fishing permit. NMFS began collecting these survey data in 2006 under OMB Control No. 0648–0542 per the final rule implementing Amendment 13 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 13) (71 FR 56039, September 26, 2006).

The vessel and gear survey annually updates existing data and continues data collection efforts for this significant fishery. NMFS currently collects other information from Gulf commercial shrimp vessels pertaining to their fishing activities, trip dates, landings, and other information through port agents, electronic logbooks, and mandatory dealer reports. Prior to this annual survey, little data related to vessel and gear characteristics at the individual vessel level have been collected through other means.

Completion of the annual survey is required for fishermen to renew or transfer a Gulf commercial shrimp permit. NMFS' Southeast Fisheries Science Center (SEFSC) mails the annual survey to all Gulf shrimp permit holders beginning in March each year. Requiring completion of the survey shortly before permit renewal, with renewal contingent upon survey

completion,[1] ensures that all permitted fishermen will be included in the census and each fisherman will only be surveyed once per annum.

The questions contained on the vessel and gear survey form are needed to collect data as required by regulations implementing Amendment 13. All but Question 1 on the form are focused on activity in the past year. Questions 1–4 ask for year of vessel purchase, by whom the vessel was operated in the past year, number of days at sea and trips taken in the past year and in what areas and fisheries the vessel was operated. Questions 5–11 pertain to the most frequent type of gear used. Questions 12–13 pertain to the most frequently used bycatch reduction devices (BRD). Questions 14–26 pertain to the most frequently used turtle exclusion devices (TED). Question 27 asks for a list of all electronic equipment used on the vessel.

The primary purposes of collecting vessel and gear characterization data at the census level is to develop statistically valid sampling designs for the other aforementioned data collection programs. It is believed that the creation of stratified, random sampling designs for these data collection programs is necessary to ensure that the data, and the estimates of the fishery performance measures based on that data, are accurate (*e.g.,* representative of the fishery's actual performance). The various vessel and gear characteristics serve as strata in these sampling designs.

The information collected by the vessel and gear characterization survey is used by NMFS economists, social scientists, and biologists to help evaluate the performance of existing regulations (*e.g.,* BRDs, TEDs, time or area closures, etc.), and the impacts that changes to those regulations may have on individual fishermen, the shrimp fishing industry as a whole, and fishing communities. In addition, the vessel and gear characterization data are further linked to various biological, social, and economic data collected by other means.

It is anticipated that the information collected will be available to the public through technical memoranda and similar publications, or used to support publicly disseminated information, such as analyses contained within documents distributed by the Gulf of Mexico Fishery Management Council (Council). Data may be reported according to the various types of nets, TEDs, BRDs or electronic equipment that is generally used, which will allow comparisons and evaluations of alternative vessel and gear configurations by analysts and vessel owners.

[1] The Gulf shrimp fishery requires a limited-access federal permit, and there is a moratorium on new federal Gulf shrimp permits until October 26, 2026. If a person buys or transfers a permit on January 1, 2022, before this person's permit can be renewed in 2022, they would have to complete a survey form.

II. Method of Collection

NMFS mails a paper copy of the forms to respondents and provides a pre-paid business reply envelope for permit applications to submit the form. Permit applicants must complete and mail the form back to NMFS before a permit expires and before NMFS will issue or transfer a permit.

III. Data

OMB Control Number: 0648–0542.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Businesses or other for-profit organizations, individuals and households.

Estimated Number of Respondents: 1349.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 647.5 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping or reporting costs.

Respondent's Obligation: Mandatory.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–21314 Filed 9–29–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES:

Comments must be received on or before: October 30, 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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial Service

Mandatory for: US Air Force, Software Engineering Group, Warner Robins, GA
Designated Source of Supply: Good Vocations, Inc., Macon, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8533 AFLCMC WNKABB

Michael R. Jurkowski,
Acting Director, Business Operations.
[FR Doc. 2022–21301 Filed 9–29–22; 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 30, 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:

Additions

On 3/18/2022, 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 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: Base Supply Center
Mandatory for: Forbes Field Air National Guard Base, Topeka, KS
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY

Michael R. Jurkowski,
Acting Director, Business Operations.
[FR Doc. 2022–21302 Filed 9–29–22; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0158]

Mandatory Civil Rights Data Collection; Correction

AGENCY: Office for Civil Rights (OCR), Department of Education (ED).

ACTION: Correction Notice.

SUMMARY: On September 26, 2022, the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** with FR DOC# 2022–20754 (Page 58342, Column 3, Page 58343, Column 1, Column 2, Column 3) seeking public comment for an information collection entitled, ''Mandatory Civil Rights Data Collection''. Instructions provided in the Addresses section were incorrect. The purpose of this notice is to provide information on how to access the documents for review and comment. Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

DATES: Interested persons are invited to submit comments on or before October 31, 2022.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: September 27, 2022.

Stephanie Valentine,
PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.
[FR Doc. 2022–21317 Filed 9–29–22; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0122]

Agency Information Collection Activities; Comment Request; RISE Award

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before November 29, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0122. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery.

If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Frances Hopkins, (202) 987–0862.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: RISE Award.

OMB Control Number: 1860–0510.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 600.

Total Estimated Number of Annual Burden Hours: 18,000.

Abstract: The purpose of the Recognizing Inspirational School Employees (RISE) Award is to recognize and promote the commitment and excellence exhibited by classified school employees who provide exemplary service to students in pre-kindergarten through high school and to inspire innovation and excellence among all classified school employees. A classified school employee is an employee of a state or any political subdivision of a state, or an employee of a nonprofit entity, who works in any grade from pre-kindergarten through high school in any of the following occupational specialties: paraprofessional, clerical and administrative services, transportation services, food and nutrition services, custodial and maintenance services, security services, health and student services, technical services, and skilled trades. The terms used have the meaning given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801). The Department invites the governor of each state to nominate up to two classified school employees. The Secretary of Education will select a single classified school employee to receive the RISE Award for that school year by spring. The Department will communicate the selectee's story in order to inspire other innovative practices and excellence among classified school employees.

Dated: September 27, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–21316 Filed 9–29–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0121]

Agency Information Collection Activities; Comment Request; Lender's Request for Payment of Interest and Special Allowance—LaRS

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 29, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0121. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: Lender's Request for Payment of Interest and Special Allowance—LaRS.

OMB Control Number: 1845–0013.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,452.

Total Estimated Number of Annual Burden Hours: 3,539.

Abstract: The Department of Education (the Department) is submitting the Lender's Interest and Special Allowance Request & Report, ED Form 799 for extension of the current OMB approval. The information collected on the ED Form 799 is needed to pay interest and special allowance to holders of Federal Family Education Loans, for internal financial reporting, budgetary projections, and for audit and lender reviews by the Department, Servicers, External Auditors and Government Accountability Office (GAO).

The legal authority for collecting this information is Title IV, Part B of the Higher Education Act of 1965, as amended by the Higher Education Reconciliation Act of 2005 (''the HERA''), (Pub. L. 109–171). The Department is requesting the continual approval for regulatory sections 682.304 and 682.414.

Dated: September 26, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–21203 Filed 9–29–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ARP–HCY State Coordinators Survey

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

DATES: Interested persons are invited to submit comments on or before October 31, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sophia Hart, (202) 453–6642.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: ARP–HCY State Coordinators Survey.

OMB Control Number: 1810–NEW.

Type of Review: New collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 52.

Abstract: The American Rescue Plan Act of 2021 (ARP) included an unprecedented $800 million to support the specific needs of homeless children and youth via the American Rescue Plan Elementary and Secondary School Emergency Relief—Homeless Children and Youth (ARP–HCY) Fund. State educational agencies (SEAs) and local educational agencies (LEAs) must use ARP–HCY funds to identify homeless children and youth, to provide homeless children and youth with wrap-around services to address the challenges of COVID–19, and to enable homeless children and youth to attend school and fully participate in school activities. This is a one-time grant program administered as part of the American Rescue Plan. The U.S. Department of Education (the Department) is seeking to understand how funds under this one-time grant program are being used.

Specifically, the Department is seeking to learn about the distribution of ARP–HCY funds by SEAs, the characteristics of LEAs receiving funds, and the characteristics of LEAs who chose not to participate in the distribution of funds in each state. Additionally, the Department would like to gather information on how SEAs are using the funds that were set aside at the State level under this program. Information obtained in this survey will be used to inform technical assistance and support provided by the Department and the National Center for Homeless Education (NCHE), resources developed by NCHE, and further studies.

Dated: September 27, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–21323 Filed 9–29–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Commence Administrative Law Judge Hearings for Regulatory Enforcement Cases

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Department of Energy (DOE) is issuing this NOI to notify interested parties of DOE's intent

to immediately commence on-the-record hearings before Administrative Law Judges (ALJs) in civil penalty cases for violations of DOE's conservation standards and certification requirements. This NOI also provides the web address for the procedures that will govern these hearings.

DATES: This notice of intent is effective on September 30, 2022.

ADDRESSES: Interested person are encouraged to review these procedures at *www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions.*

FOR FURTHER INFORMATION CONTACT: Requests for information or clarification may be sent to: *doegc32@hq.doe.gov.* Questions about the NOI may be addressed to Lucy Lee at (202) 287–6395.

SUPPLEMENTARY INFORMATION:

I. Authority and Purpose

Title III of the Energy Policy and Conservation Act, as amended (EPCA),[1] sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act, Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) Sections 6298–6305 and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards established for covered products and covered equipment. To ensure that all covered products and equipment distributed in the United States comply with DOE's energy and water conservation standards and certification requirements, DOE promulgated enforcement regulations in 10 CFR parts 429, 430, and 431 and assesses civil penalties for violations of these regulations. Section 6303(d) of EPCA provides an opportunity for an on-the-record hearing for parties issued a civil penalty notice for violations of DOE's conservation standards and certification requirements.

In this NOI, DOE gives notice of its intent to commence on-the-record hearings before ALJs in civil penalty cases pursuant to its authority in 42 U.S.C. 6303(d)(2)(A). For more information on DOE's enforcement process, including how to request an ALJ hearing, please see 10 CFR part 429, subpart C.

II. Procedures for Administrative Adjudication of Civil Penalty Actions

The procedures applicable to DOE's administrative adjudication of civil penalty actions can be found at: *www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions.*

Signing Authority

This document of the Department of Energy was signed on September 26, 2022, by Samuel Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 26, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–21208 Filed 9–29–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2925–000]

Jicarilla Solar 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Jicarilla Solar 1 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21256 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

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[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2926–000]

Jicarilla Storage 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Jicarilla Storage 1 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21259 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9574–000]

Newell, Helen; Notice of Filing

Take notice that on September 23, 2022, Helen Newell submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5 p.m. eastern time on October 14, 2022.

Dated: September 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21288 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2924–000]

RWE Supply & Trading Americas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RWE Supply & Trading Americas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 17, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21257 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–846]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and water.

b. *Project No:* 2232–846.

c. *Date Filed:* September 12, 2022.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* Lake Hickory in the Oxford Development of the Catawba-Wateree Hydroelectric Project located in Burke County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Dennis Whitaker, Duke Energy Carolinas, LLC, 526 South Church St./EC12Q, Charlotte, North Carolina, 28202; phone (704) 382–1594.

i. *FERC Contact:* Ms. Joy Kurtz, 202–502–6760, *joy.kurtz@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 26, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2232–846. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests Commission approval to grant the City of Hickory (City) permission to use project lands and water within the project boundary on Lake Hickory for the operation of the existing Long View Water Intake Facility (Facility). The City purchased the Facility from the previous owner in 2016, and since then, has been using the Facility as an emergency back-up for its primary water intake facility, located outside of the project boundary. Therefore, the City only operates the Facility in the event that its primary intake is unavailable due to natural disaster, accidental spill, or other similar circumstances. When in operation, the maximum withdrawal rate of the Facility is 2 million gallons per day (MGD). The City is not proposing to modify the Facility in any way; therefore, there is no construction associated with the request.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214,

respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21286 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–84–000]

Crete Energy Venture, LLC; Lincoln Generating Facility, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On August 31, 2022, the Commission issued an order in Docket No. EL22–84–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Crete Energy Venture, LLC and Lincoln Generating Facility, LLC's informational filings relating to their rate schedules for Reactive Supply and Voltage Control from Generation Sources Service are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful and to establish a refund effective date.[1] *El Paso Electric Company,* 180 FERC ¶ 61,150 (2022).

The refund effective date in Docket No. EL22–84–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–84–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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.

Dated: August 31, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21198 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

[1] The section 206 investigation will extend to any affiliate of Applicant with market-based rate authorization.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–124–000.

Applicants: SR Cedar Springs, LLC, SR Clay, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of SR Cedar Springs, LLC, et al.

Filed Date: 9/23/22.

Accession Number: 20220923–5209.

Comment Date: 5 p.m. ET 10/14/22.

Docket Numbers: EC22–125–000.

Applicants: Wisconsin Power and Light Company, WPL Bear Creek Solar, LLC, WPL Wood County Solar, LLC, WPL North Rock Solar, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Wisconsin Power and Light Company, et al.

Filed Date: 9/23/22.

Accession Number: 20220923–5210.

Comment Date: 5 p.m. ET 10/14/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–226–000.

Applicants: Jicarilla Solar 1 LLC.

Description: Jicarilla Solar 1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/23/22.

Accession Number: 20220923–5197.

Comment Date: 5 p.m. ET 10/14/22.

Docket Numbers: EG22–227–000.

Applicants: Jicarilla Storage 1 LLC.

Description: Jicarilla Storage 1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/23/22.

Accession Number: 20220923–5199.

Comment Date: 5 p.m. ET 10/14/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2269–002; ER10–2447–002; ER10–2937–001; ER10–2938–001; ER10–2948–001; ER10–2962–002; ER10–2967–001; ER12–1359–001; ER13–2199–001.

Applicants: Allegany Generating Station LLC, Alliance NYGT, LLC, Seneca Power Partners, L.P., Sterling Power Partners, L.P., AG-Energy, L.P., Alliance Energy Marketing, LLC, AER NY-Gen, LLC, Power City Partners, L.P., Carthage Energy, LLC.

Description: Notice of Change in Status of Carthage Energy, LLC, et al.

Filed Date: 9/22/22.
Accession Number: 20220922–5189.
Comment Date: 5 p.m. ET 10/13/22.
Docket Numbers: ER22–2733–001.
Applicants: Black Mesa Interconnection, LLC.
Description: Tariff Amendment: Amendment to Filing of Amended and Restated Shared Facilities Agreement to be effective 10/26/2022.
Filed Date: 9/23/22.
Accession Number: 20220923–5175.
Comment Date: 5 p.m. ET 10/3/22.
Docket Numbers: ER22–2929–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 5345; Queue No. AF2–317 to be effective 8/26/2019.
Filed Date: 9/26/22.
Accession Number: 20220926–5030.
Comment Date: 5 p.m. ET 10/17/22.
Docket Numbers: ER22–2930–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 6609; Queue No. AD1–025 to be effective 8/26/2022.
Filed Date: 9/26/22.
Accession Number: 20220926–5066.
Comment Date: 5 p.m. ET 10/17/22.
Docket Numbers: ER22–2931–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement Nos. 6612 and 6613; Queue No. AC1–190 to be effective 12/31/9998.
Filed Date: 9/26/22.
Accession Number: 20220926–5096.
Comment Date: 5 p.m. ET 10/17/22.
Docket Numbers: ER22–2932–000.
Applicants: Louisville Gas and Electric Company.
Description: Tariff Amendment: Notice of Terminatino Rhudes Creek PLGIA to be effective 9/20/2022.
Filed Date: 9/26/22.
Accession Number: 20220926–5097.
Comment Date: 5 p.m. ET 10/17/22.

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 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 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21258 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1517–028]

Monroe City; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process (TLP).
b. *Project No.:* 1517–028.
c. *Dated Filed:* July 29, 2022.
d. *Submitted By:* Monroe City.
e. *Name of Project:* Upper Monroe Hydroelectric Project.
f. *Location:* The Upper Monroe Project is located on First Lefthand Fork of Monroe, Shingle, and Serviceberry Creeks in Sevier County, Utah. The project is located almost entirely on federal land within the Fishlake National Forest.
g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.
h. *Applicant Contact:* Jenna Jorgensen, Environmental Coordinator, Jones & DeMille Engineering, 1535 S 100 W, Richfield, UT 84701, (435) 896–8266, *Jenna.j@jonesanddemille.com.*
i. *FERC Contact:* Everard Baker at (202) 502–8554 or *everard.baker@ferc.gov.*
j. Monroe City filed its request to use the TLP on July 29, 2022, and provided public notice of its request on July 27, 2022. In a letter dated September 26, 2022, the Director of the Division of Hydropower Licensing approved Monroe City's request to use the Traditional Licensing Process.
k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Utah State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.
l. With this notice, we are designating Monroe City as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.
m. The applicant filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.
n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).
o. The applicant states its unequivocal intent to submit an application for a subsequent license for Project No. 1517. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2025.
p. Register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21287 Filed 9–29–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0391, FRL–10267–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Ground-Water Monitoring Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Facility Ground-Water Monitoring Requirements (EPA ICR Number 0959.17, OMB Control Number 2050–0033) 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 March 23, 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 31, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0391, online using *www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue 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: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; fax number: email address: *vyas.peggy@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.* Materials can also be viewed at the Reading Room located at the 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). The telephone number for the Docket Center is 202–566–1744.

Abstract: Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim status facilities also must comply with standards set under Section 3004.

This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit; and State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory (RCRA Sections 3004 and 3005).

Estimated number of respondents: 774.

Frequency of response: Quarterly, semi-annually, and annually.

Total estimated burden: 100,701 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $22,470,710 (per year), which includes $15,430,083 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 4,160 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the respondent universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–21239 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10249–01–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually and in-person on December 1 and 2, 2022 at the U.S. Environmental Protection Agency (EPA) Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20460. The CHPAC advises EPA on science, regulations and other issues relating to children's environmental health.

DATES: December 1, 2022, from 10 a.m. to 5:30 p.m. and December 2, 2022, from 10 a.m. to 3:30 p.m.

ADDRESSES: The meeting will take place virtually and in-person. If you want to listen to the meeting or provide comments, please email *nguyen.amelia@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Amelia Nguyen, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–4268, or *nguyen.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Amelia Nguyen at 202–564–4268 or *nguyen.amelia@epa.gov.*

Amelia Nguyen,

Biologist, Office of Children's Health Protection.

[FR Doc. 2022–21275 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10227–01–R9]

Clean Air Act Operating Permits; Arizona; Petitions To Object to Permits for the Coronado Generating Station, Desert Basin Generating Station, and Agua Fria Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed three Orders granting in part and denying in part petitions to object to three Clean Air Act (CAA) title V operating permits issued to power plants in Arizona. The Orders relate to the operating permits for Coronado Generating Station, issued by the Arizona Department of Environmental Quality (ADEQ); Desert Basin Generating Station, issued by the Pinal County Air Quality Control District (PCAQCD); and Agua Fria Generating Station issued by the Maricopa County Air Quality Department (MCAQD). The Orders respond to petitions submitted by the Sierra Club (the ''Petitioner'') requesting that the EPA object to the issuance of the operating permits for these facilities. The Orders constitute final action on the request that the Administrator object to the issuance of these CAA title V operating permits.

DATES: Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final agency action, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of September 30, 2022.

ADDRESSES: Copies of the petitions and Orders are available at *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.* For additional information, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region 9, 75 Hawthorne Street (AIR–3–1), San Francisco, California 94105. By phone at (415) 972–3811, or by email at *beckham.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state and local permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after the comment period closed.

As listed below, the EPA received and responded to three petitions from the Petitioner that were submitted pursuant to section 505(b)(2) of the CAA and 40 CFR 70.8(d) for title V operating permits issued to three electric power generating facilities in Arizona.

Coronado Generating Station. On January 10, 2022, the EPA received a petition requesting that the EPA object to the CAA title V operating permit issued by the ADEQ for the Salt River Project's Coronado Generating Station (Permit No. 89460) in Apache County, Arizona. On June 14, 2022, the EPA issued an Order responding to the petition by granting the petition in part and denying the petition in part.

Desert Basin Generating Station. On February 8, 2022, the EPA received a petition requesting that the EPA object to the CAA title V operating permit issued by the PCAQCD for the Salt River Project's Desert Basin Generating Station (Permit No. V20678.R02) in Pinal County, Arizona. On July 28, 2022, the EPA issued an Order responding to the petition by granting the petition in part and denying the petition in part.

Agua Fria Generating Station. On February 28, 2022, the EPA received a petition requesting that the EPA object to the CAA title V operating permit issued by the MCAQD for the Salt River Project's Agua Fria Generating Station (Permit No. P0007595) in Maricopa County, Arizona. On July 28, 2022, the EPA issued an Order responding to the petition by granting the petition in part and denying the petition in part.

The Orders provide additional information, including a summary of the claims raised and the EPA's detailed basis for its determination to grant or deny the claims raised by the Petitioner. Please see the **ADDRESSES** section above to access copies of the Orders.

Dated: September 26, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–21240 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0767; FRL–10266–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Solid Waste Disposal Facility Criteria (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Solid Waste Disposal Facility Criteria (EPA ICR Number 1381.13, OMB Control Number 2050–0122) 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 March 23, 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 31, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0767, online using *www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue 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: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail Code 5304T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–0537; fax number: (202) 250–8572; email address: *dufficy.craig@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.* Materials can also be viewed at the Reading Room located at the 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). The telephone number for the Docket Center is 202–566–1744.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under Part 258. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in NAICS codes 9221, 5622, 3252, 3251 and 3253 may be affected by this rule.

Form Numbers: None.

Respondents/affected entities: Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices.

Respondent's obligation to respond: The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available.

Estimated number of respondents: 3,800.

Frequency of response: On occasion.

Total estimated burden: 211,262 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $17,286,006 (per year), which includes $15,075,153 in annualized labor and $2,210,853 in annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 25,819 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. On this ICR, one-time burdens from the cumulative reporting requirements of the Research, Development & Demonstration rule under 40 CFR part 258.4.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–21238 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10233–01–OW]

Notice of Public Meeting of the Environmental Financial Advisory Board (EFAB) With Webcast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public EFAB meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces a public meeting with a webcast of the Environmental Financial Advisory Board (EFAB). The meeting will be shared in real-time via webcast and public comments may be provided in writing in advance or virtually via webcast. Please see **SUPPLEMENTARY INFORMATION** for further details. The purpose of the meeting will be for the EFAB to provide workgroup updates and work products, consider possible future advisory topics, and receive updates on EPA activities. The meeting will be conducted in a hybrid format of in-person and virtual via webcast.

DATES: The meeting will be held on October 18, 2022, from 9 a.m. to 4 p.m. Mountain Time and October 19, 2022, from 9 a.m. to 4 p.m. Mountain Time.

ADDRESSES:

In-Person: Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, CO 80237.

Webcast: Information to access the webcast will be provided upon registration in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the meeting may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to *efab@epa.gov.* General information concerning the EFAB is available at *www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public meeting with a webcast for the following purposes:

(1) Provide workgroup updates and work products;

(2) Discuss potential future EFAB charges; and

(3) Receive briefings on environmental finance topics from invited speakers from EPA.

Registration for the Meeting: To register for the meeting, please visit *www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the meeting must register by October 6, 2022, to attend in person or by October 13, 2022, to attend via webcast. Pre-registration is strongly encouraged. In the event the in-person

component of the meeting cannot be held due to relevant pandemic protocols, the meeting will be conducted fully via webcast.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at *www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes each. Persons interested in providing oral statements at the October 2022 meeting should register in advance and provide notification, as noted in the registration confirmation, by October 11, 2022, to be placed on the list of registered speakers.

Written Statements: Written statements should be received by October 11, 2022, so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–21237 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–037]

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 September 19, 2022 10 a.m. EST Through September 26, 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://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220138, Final, BLM, ID, Cedar Fields Proposed Plan Amendment/Final Environmental Impact Statement for the Monument RMP, Review Period Ends: 10/31/2022, Contact: Terrell Dobis 208–735–2075.

EIS No. 20220139, Draft Supplement, USCG, MARAD, TX, Texas Gulflink Deepwater Port License Application, Comment Period Ends: 11/14/2022, Contact: Patrick Clark 202–372–1358.

Dated: September 26, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–21278 Filed 9–29–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m., Thursday, October 13, 2022.

PLACE: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

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: The following matters will be considered:

PORTIONS OPEN TO THE PUBLIC:

- Approval of September 8, 2022, Minutes
- Bookletter-049 Revised—Adequacy of Farm Credit System Institutions' Allowance for Credit Losses for Financial Assets Measured at Amortized Cost

PORTIONS CLOSED TO THE PUBLIC:

- Office of Secondary Market Oversight Periodic Report [1]

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–21350 Filed 9–28–22; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 22–1002; FR ID 106839]

Disability Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the fourth and final meeting of the fourth term of its Disability Advisory Committee (DAC or Committee).

DATES: Thursday, November 1, 2022. The meeting will come to order at 1 p.m. Eastern Time.

ADDRESSES: The DAC meeting will be held remotely, with video and audio coverage at: *www.fcc.gov/live.*

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: This meeting is open to members of the general public. The meeting will be webcast with American Sign Language interpreters and open captioning at: *www.fcc.gov/live.* In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

via the email address *livequestions@fcc.gov.*

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to receive and consider a report and recommendation from its working group. The DAC may also receive briefings from Commission staff on issues of interest to the Committee and may discuss topics of interest to the committee, including, but not limited to, matters concerning communications transitions, telecommunications relay services, emergency access, and video programming accessibility.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2022–21313 Filed 9–29–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0046; –0118; –0191]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency Information Collection Activities: submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0046, –0118 and –0191). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on July 22, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before October 31, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Home Mortgage Disclosure (HMDA).

OMB Number: 3064–0046.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

[OMB 3064–0046]

Item	IC description (section)	Type of burden (frequency of response)	Obligation to respond	Estimated annual number of respondents	Estimated annual number of responses per respondent	Estimated time per response (hours)	Total annual estimated burden hours
Burden Calculation (OMB No. 3064–0046)							
1	Full Data—HMDA (12 CFR Part 1003.4).	Reporting (Annual)	Mandatory	350	2,434.66	0.583	496,792
2	Partial Data—HMDA (12 CFR Part 1003.4).	Reporting (Annual)	Mandatory	760	330.1	0.333	83,542
3	Retain copy of LAR for at least three years (12 CFR Part 1003.5(a)(1)(i)).	Recordkeeping (Annual).	Mandatory	1,110	1	0.5	555
4	Make the written notices required under 1003.5(2)(b) and 1003.5(c)(1) available for five and three years, respectively (12 CFR Part 1003.5(d)(1)).	Recordkeeping (Annual).	Mandatory	1,110	2	0.167	371

SUMMARY OF ANNUAL BURDEN—Continued

[OMB 3064–0046]

Item	IC description (section)	Type of burden (frequency of response)	Obligation to respond	Estimated annual number of respondents	Estimated annual number of responses per respondent	Estimated time per response (hours)	Total annual estimated burden hours
5	Record LAR data within 30 days after the end of the calendar quarter in which final action is taken (New reporters) (12 CFR Part 1003.4(f)).	Recordkeeping (One time).	Mandatory	15	1	12	180
6	Record LAR data within 30 days after the end of the calendar quarter in which final action is taken (Existing reporters) (12 CFR Part 1003.4(f)).	Recordkeeping (Quarterly).	Mandatory	1,110	4	1.5	6,660
7	Provide written notice upon request that the FFIEC disclosure statement is available on the CFPB's website (12 CFR Part 1003.5(b)(2)).	Third-party Disclosure (Annual).	Mandatory	1,110	1	0.5	555
8	Provide written notice upon request that the institution's modified LAR is available on the CFPB's website (12 CFR Part 1003.5(c)(1)).	Third-party Disclosure (On Occasion).	Mandatory	1,110	1	0.5	555
9	Make the FFIEC disclosure statement and/or modified LAR available to the public directly through the institution (12 CFR Part 1003.5(d)(2)).	Third-party Disclosure (On Occasion).	Optional	55	1	1	55
10	General notice of availability of HMDA data in lobby of home office and each office located in a MSA (12 CFR Part 1003.5(e)).	Third-party Disclosure (One time).	Mandatory	15	1	1	15
Total Estimated Annual Burden Hours:.	.....	.....	.....	.....	.....	.....	589,280

General Description of Collection: The Board of Governors of the Federal Reserve System (the Board) promulgated Regulation C, 12 CFR part 203, to implement the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801–2810. Regulation C requires depository institutions that meet its asset-size threshold to maintain data about home loan applications (the type of loan requested, the purpose of the loan, whether the loan was approved, and the type of purchaser if the loan was later sold), to update the information quarterly, and to report the information annually. Pursuant to Regulation C, insured state-nonmember banks supervised by the FDIC with assets over a certain dollar threshold must collect, record, and report data about home loan applications. The FDIC is revising this information collection to align the burden estimates with the Board, the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau. In doing so, the FDIC has added eight line items to its information collection and has revised the estimated time per response for certain items for consistency across all agencies. This has resulted in an increase of approximately 500,000 hours in the total estimated annual burden.

2. *Title:* Management Official Interlocks.
OMB Number: 3064–0118.
Form Number: None.
Affected Public: Insured state nonmember banks and state savings associations.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0118)

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Management Official Interlocks.	Reporting (Mandatory)	On Occasion	1	1	4	4
Management Official Interlocks.	Recordkeeping (Mandatory)	On Occasion	1	1	3	3
Estimated Total Annual Burden.	.....	.....	.....	.....	.....	7

Source: FDIC.

General Description of Collection: The FDIC's Management Official Interlocks regulation, 12 CFR 348, which implements the Depository Institutions Management Interlocks Act (DIMIA), 12 U.S.C. 3201–3208, generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances. Consistent with DIMIA, the FDIC's Management Official Interlocks regulation has an application requirement requiring information specified in the FDIC's procedural regulation. The rule also contains a notification requirement. There is no change in the method or substance of the collection. The overall reduction in burden hours is a result of economic fluctuations. In particular, the number of respondents has decreased while the hours per response and occupational distribution have remained the same.

3. *Title:* Interagency Guidance on Leveraged Lending.
OMB Number: 3064–0191.
Form Number: None.
Affected Public: Insured state nonmember banks and savings associations.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0191]

Information collection (ic) description	Type of burden (obligation to respond)	Frequency of response	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Total estimated annual burden (hours)
Interagency Guidance on Leveraged Lending—Implementation.	Recordkeeping (Voluntary)	On Occasion	1	1	987	987
Interagency Guidance on Leveraged Lending—Ongoing.	Recordkeeping (Voluntary)	On Occasion	4	0.25	529	529
Estimated Total Annual Burden.	.....	.....	.....	.....	.....	1,516

Source: FDIC.

General Description of Collection:: The Interagency Guidance on Leveraged Lending (Guidance) outlines for agency supervised institutions high level principles related to safe-and sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress testing expectations, pipeline portfolio management, and risk management expectations for exposures held by the institution. There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents and frequency of responses have decreased.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 27, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–21243 Filed 9–29–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Request for Arbitration Panel

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Request for Arbitration Panel, FMCS Form R–43. This information collection request was previously approved by the Office of Management Budget (OMB) and FMCS is requesting a revision of a currently approved collection. The Request for Arbitration Panel, FMCS Form R–43, allows FMCS to comply with its statutory obligation pursuant to statute to make governmental facilities available for voluntary arbitration. To carry out this policy, FMCS have issued regulations which provide for the operation and maintenance of a roster of professional arbitrators. The arbitrators are private citizens, not employees of FMCS, and are paid by the parties for hearing and deciding the issues submitted under a collective bargaining agreement and in other circumstances. The Request for Arbitration Panel (FMCS Form R–43) is used by the parties, labor and management individually or jointly, to request that FMCS furnish a list of arbitrators.

DATES: Comments must be submitted on or before October 31, 2022.

ADDRESSES: You may submit comments, identified by the Request for Arbitration Panel (FMCS Form R–43), through one of the following methods:

- *Email:* Arthur Pearlstein, *apearlstein@fmcs.gov;*
- *Mail:* Arthur Pearlstein, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, 202–606–8103, *apearlstein@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the agency form are available here. Paper copies are available by emailing Arthur Pearlstein at the email address above. Please ask for the Request for Arbitration Panel (FMCS Form R–43).

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0016.

Type of Request: Revision of a currently approved collection.

Affected Entities: Individual who request a list of arbitrators.

Frequency: In most instances, this form is completed once.

Abstract: Title II of the Labor Management Relations Act of 1947, 29 U.S.C. 171(b), provides that ''the settlement of issues between employers and employees through collective bargaining may advance by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration . . .'' 29 U.S.C. 171(b). Pursuant to the statute and 29 CFR part 1404, FMCS has long maintained a roster of qualified, private labor arbitrators to hear disputes arising under collective bargaining agreements and provide fact finding and interest arbitration. The purpose of this information collection is to facilitate the processing of the parties' request for arbitration assistance.

Burden: The number of respondents is approximately 10,000 individuals per year. The time required to complete this form is approximately ten minutes.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on July 26, 2022, allowing for a 60-day public comment period under Document 2022–15964 at 87 FR 44391. FMCS received no comments.

IV. The Official Record

The official records are electronic records.

List of Subjects

Labor—Management Relations.

Dated: September 27, 2022.

Anna Davis,

Deputy General Counsel.

[FR Doc. 2022–21281 Filed 9–29–22; 8:45 am]

BILLING CODE 6732–01–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 31, 2022.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *HomeTrust Bancshares, Inc., Asheville, North Carolina*; to acquire Quantum Capital Corp., and thereby indirectly acquire Quantum National Bank, both of Suwanee, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–21306 Filed 9–29–22; 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 October 17, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Mark Jon Vis, Worthington, Minnesota;* to acquire voting shares of First Rushmore Bancorporation, Inc., Worthington, Minnesota, and thereby indirectly acquire voting shares of First State Bank Southwest, Pipestone, Minnesota, by becoming a co-trustee of the First State Bank Southwest KSOP Plan and Trust, Worthington, Minnesota.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Linda Lewis McSween Trust fbo Paul E. McSween III, Paul E. McSween III, as trustee, the Linda Lewis McSween Trust fbo Linda McSween Satel, Linda McSween Satel, as trustee, the Linda Lewis McSween Trust fbo Juliet McSween Zacher, Juliet McSween Zacher, as trustee, and the Linda Lewis McSween Trust fbo Jennifer McSween Canavan, Jennifer McSween Canavan, as trustee, all of San Antonio, Texas*; to join the McSween Family Control Group, a group acting in concert, to retain voting shares of Jefferson Bancshares, Inc., and thereby indirectly retain voting shares of Jefferson Bank, both of San Antonio, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–21307 Filed 9–29–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) is issuing a public notification of its intent to rescind the Privacy Act System of Records Notice (SORN) on the Staff Time and Activity Reporting (STAR) System–FTC (FTC–II–13) and remove it from its existing inventory of SORNs.

DATES: This change is effective on September 30, 2022.

ADDRESSES: Interested parties may file a comment online or on paper. Write ''Privacy Act SORN Rescindment'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580. Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202–326–3355).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the FTC is rescinding the Staff Time and Activity Reporting (STAR) System–FTC (FTC–II–13) system of records notice and removing it from its system of records inventory. During a review of agency SORNs, the Commission determined that the STAR SORN was written to describe a database that has been decommissioned and no longer exists.

The STAR System combined matter data as well as time and attendance data for FTC employees. The FTC will continue to separately maintain matter-related data in its Matter Management System (FTC–I–5) about individual employee participation in such matters, and also maintain employee time and attendance data in its employee payroll system (FTC–III–1).

This rescindment will eliminate an unnecessary duplicate notice and ensure compliance with the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* Rescinding the STAR SORN will have no adverse impacts on individuals and will also promote the overall streamlining and management of FTC Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

Staff Time and Activity Reporting (STAR) System—FTC (FTC–II–13).

HISTORY:

85 FR 16349, 16352–53 (March 23, 2020).

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–21250 Filed 9–29–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day–22–0041; Docket No. ATSDR–2022–0004]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information,

invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''National Amyotrophic Lateral Sclerosis (ALS) Registry.'' The National ALS Registry collects information from persons with ALS to better describe the prevalence and potential risk factors for ALS.

DATES: ATSDR must receive written comments on or before November 29, 2022.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2022–0004 by any of the following methods:

☐ *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

☐ *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of a previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Amyotrophic Lateral Sclerosis (ALS) Registry (OMB Control No. 0923–0041, Exp. 01/31/2023)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act (PRA) clearance for a Revision information collection request (ICR) titled the ''The National Amyotrophic Lateral Sclerosis (ALS) Registry'' (OMB Control No. 0923–0041, Exp. 01/31/2023).

In 2008, Public Law 110–373 (the ALS Registry Act) amended the Public Health Service Act for ATSDR to: (1) develop a system to collect data on amyotrophic lateral sclerosis ALS and other motor neuron disorders that can be confused with ALS, misdiagnosed as ALS, or progress to ALS; and (2) establish a national registry for the collection and storage of such data to develop a population-based registry of cases. Under these two mandates, ATSDR established the National Amyotrophic Lateral Sclerosis (ALS) Registry.

The primary operational goal of the Registry is to obtain reliable information on the incidence and prevalence of ALS, and to better describe the demographic characteristics (age, race, sex, and geographic location) of persons with ALS. The secondary operational goal of the surveillance system/Registry is to collect additional information on potential risk factors for ALS, including, but not limited to, family history of ALS, smoking history, military service, residential history, lifetime occupational exposure, home pesticide use, hobbies, participation in sports, hormonal and reproductive history (women only), caffeine use, trauma, health insurance, open-ended supplemental questions, and clinical signs and symptoms.

With those goals in mind, persons with ALS first joined the Registry in 2010. Those interested in taking part answered a series of validation questions. If determined to be eligible, they created an online account to enroll in the Registry. Next, they were asked to complete up to 17 one-time voluntary survey modules, each taking up to five minutes. New registrants were also asked to complete a longitudinal disease progression survey (modified from the ALS Functional Rating Scale—Revised [ALSFRS–R]) at regular intervals over their first three years in the Registry.

A biorepository component was added in 2016. At the time of enrollment, interested registrants can request additional information about the biorepository and provide additional contact information. ATSDR selects a geographically representative sample from among the interested registrants to collect specimens. There are two types of specimen collections, in-home and postmortem. The in-home collection includes blood, urine, hair, nails, and saliva. The postmortem collection includes the brain, spinal cord, cerebral spinal fluid (CSF), bone, muscle, and skin.

Researchers can now request access to registrants' specimens, data, or both through an ATSDR research application process. Once approved for scientific merit, validity, and human subjects protections, ATSDR makes the requested data and/or specimens available to the requester.

ATSDR also collaborates with ALS service organizations to conduct outreach activities through their local chapters and districts as well as on a national level. The service organizations provide ATSDR with monthly reports on their outreach efforts in support of the Registry.

Under this Revision ICR, the respondent types still include persons with ALS, researchers, and ALS service organizations. In summary, three main revisions to the ICR are proposed.

First, based on feedback from patients, caregivers, researchers as well as the National Center for Health Statistics (NCHS) Collaborating Center for Questionnaire Design and Evaluation Research, ATSDR proposes to restructure the original five-minute

survey modules to make them more user-friendly and easier to navigate for patients. These changes are designed to increase completion rates for all surveys. Therefore, ATSDR requests to restructure the layouts of the 17 one-time ALS survey modules. The previously approved questions in the 17 modules are reorganized into the Essential Questionnaire and one of the four Follow-up Question modules: (1) Demography; (2) Lifestyle Information; (3) Environmental Factors; and (4) ALS-associated Clinical Factors. Questions determined to be critical in capturing the information about Registry participant at the time of enrollment is grouped as Essential Questionnaire. The remaining questions from one-time survey are evaluated for proper classification in the new format.

The five-minute disease progression survey requirements remain unchanged. In Year 1, new registrants are asked to complete the disease progression survey at zero (baseline), three, and six months. The disease progression survey at zero (baseline) months will be administered after completion of the Essential Questionnaire. In Year 2 and Year 3, they are asked to repeat the disease progression survey on their anniversary date and at six months. Therefore over three years, new registrants are requested to complete the survey seven times. For time burden estimation, the number of responses is rounded up to three times per year.

As a second revision, ATSDR proposes to release state level data as four-year rolling averages for ALS incidence, prevalence, and mortality. Case counts for the four-year moving average will only be released for states with more than 16 ALS cases and is consistent with United States Cancer Statistics practices where cases or deaths are small and tend to have poor reliability.

In addition to identifying cases through Registry enrollment, ATSDR currently identifies additional cases from three large national administrative databases (Medicare, Veterans Health Administration, and Veterans Benefits Administration). As a third revision, ATSDR aims to achieve more complete ALS case ascertainment by adding several new data sources, including state ALS registries, non-profit ALS organizations, national ALS multidisciplinary clinics affiliated with academic research institutions and hospital systems, and health insurance companies and neurologists.

There is a change to the total time burden requested for persons with ALS due to reformatting and restructuring the one-time survey questions. This reformatting has reduced the overall time burden per year by 188 hours from the previously approved 1,945 hours. The annual number of responses requested is 11,549, which is an increase of 3,000 over the previously approved 8,549 responses. This increase is due to the more accurate presentation of each online survey module in a separate row in the burden table. Previously, the 17 online survey modules were aggregated in a single row in the burden table. CDC requests OMB approval for an estimated 1,757 burden hours annually. Participation in this information collection is completely voluntary for persons with ALS and for researchers. ALS service organizations report their outreach information under contract with ATSDR. There are no costs to the respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons with ALS	ALS Case Validation Questions	1,670	1	2/60	56
	ALS Case Registration Form	1,500	1	10/60	250
	Essential Questionnaire	750	1	6/60	75
	Disease Progression Survey	750	3	5/60	188
	Follow-up Questions—Demography	750	1	2/60	25
	Follow-up Questions—Lifestyle Information.	750	1	32/60	400
	Follow-up Questions—Environmental Factors.	750	1	23/60	288
	Follow-up Questions—ALS-associated and Clinical Factors.	750	1	7/60	88
	ALS Biorepository Specimen Processing Form and In-Home Collection.	325	1	30/60	162
	ALS Biorepository Saliva Collection	350	1	10/60	58
Researchers	ALS Registry Research Application Form.	36	1	30/60	18
	Annual Update	24	1	15/60	6
ALS Service Organizations	Chapter/District Outreach Reporting Form.	135	12	5/60	135
	National Office Outreach Reporting Form.	2	12	20/60	8
Total					1,757

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21219 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-22–1083]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 2, 2022 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign (OMB Control No. 0920–1083, Exp. 3/31/2023)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, HHS/CDC launched the National Tobacco Prevention and Control Public Education Campaign (*Tips*). The primary objectives of *Tips* are to encourage smokers to quit smoking and to encourage nonsmokers to communicate with smokers about the dangers of smoking. *Tips* airs annually in all U.S. media markets on broadcast and national cable TV as well as other media channels including digital video, online display and banners, radio, billboards, and other formats. *Tips* ads rely on evidence-based paid media advertising that highlights the negative health consequences of smoking. *Tips'* primary target audience is adult smokers; adult nonsmokers constitute the secondary audience. *Tips* paid advertisements are aimed at providing motivation and support to smokers to quit, with information and other resources to increase smokers' chances of success in their attempts to quit smoking. A key objective for the nonsmoker audience is to encourage nonsmokers to communicate with smokers they may know (including family and friends) about the dangers of smoking and to encourage them to quit. *Tips* ads also focus on increasing audience's knowledge of smoking-related diseases, intentions to quit, and other related outcomes.

The goal of the proposed information collection is to evaluate the reach of *Tips* among intended audiences and to examine the effectiveness of these efforts in impacting specific outcomes that are targeted by *Tips,* including quit attempts and intentions to quit among smokers, nonsmokers' communications about the dangers of smoking, and knowledge of smoking-related diseases among both audiences. This will require customized surveys that will capture all unique messages and components of *Tips.* Information will be collected through Web surveys to be self-administered by adults 18 and over on computers in the respondent's home or in another convenient location. Evaluating *Tips'* impact on behavioral outcomes is necessary to determine campaign cost effectiveness and to allow program planning for the most effective campaign outcomes. Because *Tips* content changes, it is necessary to evaluate each yearly implementation of *Tips.*

The proposed information collection will include three survey collections per year (nine surveys in total) generally conducted before, during, and after *Tips* in each year. Using the same methods outlined in the currently approved information collection (OMB Control No. 0920–1083, Exp. 3/31/2023), participants will be recruited from two sources: (1) an online longitudinal cohort of adult smokers and nonsmokers, sampled randomly from postal mailing addresses in the United States (address-based sample, or ABS); and (2) the existing Ipsos KnowledgePanel, an established long-term online panel of U.S. adults. All online surveys, regardless of sample source, will be conducted via the GfK/Ipsos KnowledgePanel Web portal for self-administered surveys.

Information will be collected about smokers' and nonsmokers' awareness of and exposure to specific *Tips* advertisements; knowledge, attitudes, beliefs related to smoking and secondhand smoke; and other marketing exposure. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to nonsmokers' encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

It is important to evaluate *Tips* in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates. Survey instruments may be updated to include new or revised items on relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use.

The total response burden is estimated at 27,924 hours over three years between summer 2023 and December 2025. The total annualized burden hours during this period are estimated at 9,308. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent type	Form name	Number of respondents	Number of responses per respondent	Average burden perresponse (in hours)
General Population	Screening & Consent	16,667	1	5/60
Adult Smokers, ages 18–54, in the United States.	Smoker Survey Wave A	2,668	1	20/60
	Smoker Survey Wave B	1,667	1	20/60
	Smoker Survey Wave C	1,667	1	20/60
	Smoker Survey Wave D	1,667	1	20/60
	Smoker Survey Wave E	1,667	1	20/60
	Smoker Survey Wave F	1,667	1	20/60
	Smoker Survey Wave G	1,667	1	20/60
	Smoker Survey Wave H	1,667	1	20/60
	Smoker Survey Wave I	1,667	1	20/60
Adult Nonsmokers, ages 18–54, in the United States.	Nonsmoker Survey Wave A	1,100	1	20/60
	Nonsmoker Survey Wave B	833	1	20/60
	Nonsmoker Survey Wave C	833	1	20/60
	Nonsmoker Survey Wave D	833	1	20/60
	Nonsmoker Survey Wave E	833	1	20/60
	Nonsmoker Survey Wave F	833	1	20/60
	Nonsmoker Survey Wave G	833	1	20/60
	Nonsmoker Survey Wave H	833	1	20/60
	Nonsmoker Survey Wave I	833	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21217 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0222; Docket No. CDC–2022–0118]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER). This Generic Clearance request allows CDC to conduct cognitive testing activities, and includes a general questionnaire for development, pre-testing, and measurement-error reduction activities to be carried out in 2022–2025.

DATES: CDC must receive written comments on or before November 29, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0118 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER) (OMB Control No. 0920–0222, Exp. 09/30/2024)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data to support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER) is the focal point within NCHS for questionnaire and survey development, pre-testing, and evaluation activities for CDC surveys such as the National Survey of Family Growth (NSFG), the Research and Development Survey (RANDS) (including RANDS COVID), and other federally sponsored surveys. The CCQDER is requesting three years of OMB Clearance for this generic submission.

The CCQDER and other NCHS programs conduct cognitive interviews, focus groups, in-depth or ethnographic interviews, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation as well as more basic research on measurement errors and survey response. Various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires are used.

The most common questionnaire evaluation method is the cognitive interview. The interview structure consists of respondents first answering a draft survey question and then providing textual information to reveal the processes involved in answering the test question. Specifically, cognitive interview respondents are asked to describe how and why they answered the question as they did. Through the interviewing process, various types of question-response problems that would not normally be identified in a traditional survey interview, such as interpretive errors and recall accuracy, are uncovered. By conducting a comparative analysis of cognitive interviews, it is also possible to determine whether particular interpretive patterns occur within particular sub-groups of the population. Interviews are generally conducted in small rounds totaling 40–100 interviews; ideally, the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights.

Cognitive interviewing is inexpensive and provides useful data on questionnaire performance while minimizing respondent burden. Cognitive interviewing offers a detailed depiction of meanings and processes used by respondents to answer questions—processes that ultimately produce the survey data. As such, the method offers an insight that can transform understanding of question validity and response error. Documented findings from these studies represent tangible evidence of how the question performs. Such documentation also serves CDC data users, allowing them to be critical users in their approach and application of the data.

In addition to cognitive interviewing, a number of other qualitative and quantitative methods are used to investigate and research measurement errors and the survey response process. These methods include conducting focus groups, usability tests, in-depth or ethnographic interviews, and the administration and analysis of questions in both representative and non-representative field tests. Focus groups are conducted by the CCQDER. They are group interviews whose primary purpose is to elicit the basic sociocultural understandings and terminology that form the basis of questionnaire design. Each group typically consists of one moderator and four to 10 participants, depending on the research question. In-depth or ethnographic interviews are one-on-one interviews designed to elicit the understandings or terminology that are necessary for question design, as well as to gather detailed information that can contribute to the analysis of both qualitative and quantitative data. Usability tests are typically one-on-one interviews that are used to determine how a given survey or information collection tool functions in the field, and how the mode and layout of the instrument itself may contribute to survey response error and the survey response process.

In addition to these qualitative methods, NCHS also uses various tools to obtain quantitative data, which can be analyzed alone or analyzed alongside qualitative data to give a much fuller accounting of the survey response process. For instance, phone, internet, mail, and in-person follow-up interviews of previous NCHS survey respondents may be used to test the validity of survey questions and questionnaires and to obtain more detailed information that cannot be gathered on the original survey. Field or pilot tests may be conducted on both representative and non-representative samples, including those obtained from commercial survey and web panel vendors. Beyond looking at traditional measures of survey errors (such as item missing rates and non-response, and don't know rates), these pilot tests can be used to run experimental designs in order to capture how different questions function in a field setting. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations.

In 2022–2025 NCHS/CCQDER staff plans to continue research on methods evaluation and general questionnaire design research. We envision that over the next three years, NCHS/CCQDER will work collaboratively with survey researchers from universities and other federal agencies to define and examine several research areas, including, but not limited to: (1) differences between face-to-face, telephone, and virtual/video-over internet cognitive interviewing; (2) effectiveness of different approaches to cognitive interviewing, such as concurrent and retrospective probing; (3) reactions of both survey respondents and survey interviewers to the use of Computer Assisted Personal Interviewing (CAPI), Audio Computer-Assisted Self-Interview (ACASI), video-over internet/virtual; (4) social, cultural and linguistic factors in the question response process; and (5) recruitment and respondent participation at varying levels of incentive in an effort to establish

empirical evidence regarding remuneration and coercion. Procedures for each of these studies will be similar to those applied in the usual testing of survey questions. For example, questionnaires that are of current interest (such as RANDS and NIOSH) may be evaluated using several of the techniques described above, or different versions of a survey question will be developed, and the variants then administered to separate groups of respondents in order to study the cognitive processes that account for the differences in responses obtained across different versions.

These studies will be conducted either by CCQDER staff, DHHS staff, or NCHS contractors who are trained in cognitive interviewing techniques. The results of these studies will be applied to our specific questionnaire development activities in order to improve the methods that we use to conduct questionnaire testing, and to guide questionnaire design in general.

CDC requests OMB approval for an estimated 21,905 annualized burden hours. There is no cost to respondents other than their time to participate.

Estimated Annualized Burden Table

Types of respondents	Form name	Number of respondents	Number of responses per respondent	Average hours per response (in hours)	Total burden hours
Individuals or households	Eligibility Screeners	4,400	1	5/60	367
Individuals or households	Developmental Questionnaires	8,750	1	55/60	8,021
Individuals or households	Respondent Data Collection Sheet	8,750	1	5/60	729
Individuals or households	Focus Group Documents	225	1	1.5	338
Individuals or households	RANDS Methodological Surveys	49,800	1	15/60	12,450
Total					21,905

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21221 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0234]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The National Ambulatory Medical Care Survey (NAMCS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 18, 2022, to obtain comments from the public and affected agencies. One non-substantive public comment was received related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB Control No. 0920–0234, Exp. 07/31/2024)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Ambulatory Medical Care Survey (NAMCS) was conducted intermittently from 1973 through 1985, and annually since 1989. The survey is conducted under authority of Section 306 of the Public Health Service Act (42 U.S.C. 242k). NAMCS is part of the ambulatory care component of the National Health Care Surveys (NHCS), a family of provider-based surveys that capture health care utilization from a variety of settings, including hospital inpatient and long-term care facilities. NCHS surveys of health care providers include NAMCS, the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB Control No. 0920–0278), the National Hospital Care Survey (OMB Control No. 0920–0212), and the National Post-acute and Long-term Care Study (OMB Control No. 0920–0943).

An overarching purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States; this fulfills one of NCHS missions, to collect, analyze, and disseminate timely, relevant, and accurate health data and statistics. In addition, NAMCS provides ambulatory medical care data to study: (1) the performance of the U.S. health care system; (2) care for the rapidly aging population; (3) changes in services

such as health insurance coverage change; (4) the introduction of new medical technologies; and (5) the use of electronic health records (EHRs). Ongoing societal changes have led to considerable diversification in the organization, financing, and technological delivery of ambulatory medical care. This diversification is evidenced by the proliferation of insurance and benefit alternatives for individuals, the development of new forms of physician group practices and practice arrangements (such as office-based practices owned by hospitals), the increasing role of advanced practice providers delivering clinical care, and growth in the number of alternative sites of care. Ambulatory services are rendered in a wide variety of settings, including physician/provider offices and hospital outpatient and emergency departments. Since more than 65% of ambulatory medical care visits occur in physician offices, NAMCS provides data on the majority of ambulatory medical care services.

In addition to health care provided in physician offices and outpatient and emergency departments, health centers (HCs) play an important role in the health care community by providing care to people who might not be able to afford it otherwise. HCs are local, non-profit, community-owned health care settings, which serve approximately 29 million individuals throughout the United States. NAMCS collects and provides data on HCs via the NAMCS HC Component. In addition to the HC component NAMCS includes a Provider Interview Component and a Provider Electronic Component. The Provider Interview Component samples ambulatory care providers to collect information on their characteristics and the characteristics of their practice. The Provider Electronic Component gathers information on a sample of electronic data providers including characteristics of the provider, as well as a full year of electronic patient visit data. Lastly, the HC Component samples HCs and collects characteristics of the center as well as a full year of electronic patient visit data.

This revision seeks approval to continue previously approved survey activities for the completion of the 2022 HC Component's data and to conduct the full 2023, 2024, and 2025 data years. CDC plans to implement changes to all three components of NAMCS. HC Component and Provider Interview Component sample sizes will be adjusted. In 2022, the goal is to target 100 HCs overall, while the Provider Interview Component is paused for redesign. In 2023, the goal for NAMCS is to sample 5,000 physicians, 5,000 advanced practice providers, and up to 150 HCs overall. In 2024, we plan to sample up to 10,000 physicians, 20,000 advanced practice providers, and up to 200 HCs overall (if funds allow). Lastly, in 2025 CDC will sample up to 20,000 physicians, 40,000 advanced practice providers, and up to 250 HCs overall.

For 2023–2025, there will be an additional 3,000 physicians sampled yearly for the Provider Electronic Component. The Provider Electronic Component is modifying its Provider Facility Interview questionnaire and there are plans to implement a set-up fee in the future. Also, for the Provider Electronic Component we plan to conduct research on supplementing electronic visit data with electronic data obtained from third-party sources. Questions on the Health Center Facility Interview questionnaire will be modified, and a Set-up Fee Questionnaire will be implemented. In 2023, the Physician Induction Interview will shift to a redesigned Ambulatory Care Provider Interview. Also beginning in 2023, a Tracing Questionnaire will be utilized for the Provider Interview Component, to increase response rates. Visit data collection via abstraction will be placed on hold to evaluate improved methods for collection of these data, and the reinterview study will be discontinued. The provider incentive experiment will also no longer be taking place, as we will begin to conduct other methodological work to improve upon the survey.

CDC requests OMB approval for an estimated 37,744 burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
HC Staff	HC Facility Interview questionnaire (Survey year: 2022).	73	1	45/60
	Prepare and transmit EHR for Visit Data (quarterly) (Survey year: 2022).	33	4	60/60
	Set-up Fee Questionnaire (Survey year: 2022).	33	1	15/60
Physician or Staff	ACPI (Survey year: 2023–2025)	11,667	1	30/60
	Contact Tracing (Survey year: 2023–2025)	11,667	1	10/60
Advanced Practice Provider or Staff	ACPI (Survey year: 2023–2025)	21,667	1	30/60
	Contact Tracing (Survey year: 2023–2025)	21,667	1	10/60
Ambulatory Care Provider or Group or Conglomerate Staff.	PFI Survey year: 2023–2025)	3,000	1	45/60
	Prepare and transmit Electronic Visit Data (quarterly) (Survey year: 2023–2025).	3,000	4	60/60
HC Staff	HC Facility Interview questionnaire (Survey year: 2023–2025).	300	1	45/60
	Prepare and transmit EHR for Visit Data (quarterly) (Survey year: 2023–2025).	200	4	60/60
	Set-up Fee Questionnaire (Survey year: 2023–2025).	200	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21218 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1150]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Generic Clearance for Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys'' to the Office of Management and budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 18, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys (OMB Control Number 0920–1150, Exp. 9/30/2022)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Vector-Borne Diseases (DVBD) and other programs working on tickborne diseases (TBDs) are requesting a Revision to a previously approved generic clearance to conduct TBD prevention studies to include knowledge, attitudes, and practices (KAP) surveys regarding ticks and tickborne diseases (TBDs) among residents and businesses offering pest control services in Lyme disease endemic areas of the United States. The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions. The Revision involves a broadening of the secondary target population from owners and employees of pest control companies to stakeholders of local entities affected by TBDs (*e.g.,* leaders in local public health or local government; owners or employees of pest control companies, landscaping companies, or other at-risk occupations; non-governmental organizations serving at-risk populations; and/or clinicians serving at-risk populations).

TBDs are a substantial and growing public health problem in the United States. From 2004–2016, over 490,000 cases of TBDs were reported to CDC, including cases of anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, Rocky Mountain spotted fever, and tularemia. Lyme disease accounted for 82% of all TBDs, with over 400,000 cases reported during this time period. Recent studies estimate nearly 500,000 cases of Lyme disease are diagnosed annually in the United States. In addition, several novel tickborne pathogens have recently been found to cause human disease in the United States. Factors driving the emergence of TBDs are not well defined and current prevention methods have been insufficient to curb the increase in cases. Data is lacking on how often certain prevention measures are used by individuals at risk, as well as what the barriers to using certain prevention measure are.

The primary target population for these data collections are individuals and their household members who are at risk for TBDs associated with *I.scapularis* ticks and who may be exposed to these ticks residentially, recreationally, and/or occupationally. The secondary target population includes stakeholders of local entities affected by TBDs (*e.g.,* leaders in local public health or local government; owners or employees of pest control companies, landscaping companies, or other at-risk occupations; non-governmental organizations serving at-risk populations; and/or clinicians serving at-risk populations) in areas where *I. scapularis* ticks transmit diseases to humans. Specifically, these target populations include those residing or working in the 15 highest incidence states for Lyme disease (CT, DE, ME, MD, MA, MN, NH, NJ, NY, PA, RI, VT, VA, WI and WV). We anticipate conducting one to two surveys per year, for a maximum of six surveys conducted over a three-year period. Depending on the survey, we aim to enroll 500–10,000 participants per study. It is expected that we will need to target recruitment to about twice as many people as we intend to enroll. Surveys may be conducted daily, weekly, monthly, or bi-monthly per participant for a defined period (whether by phone or web survey), depending on the survey or study. The surveys will range in duration from approximately 5–30 minutes. Each participant may be surveyed 1–64 times in one year; this variance is due to differences in the type of information collected for a given survey. Specific burden estimates for each study and each information collection instrument will be provided with each individual project submitted for OMB review. Insights gained from KAP surveys will aid in prioritizing which prevention methods should be evaluated in future randomized, controlled trials and ultimately help target promotion of proven prevention

methods that could yield substantial reductions in TBD incidence.

CDC requests OMB approval for an estimated 98,830 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General public, individuals or households	Screening instrument	20,000	1	15/60
	Consent Form	10,000	1	20/60
	Introductory Surveys	10,000	1	30/60
	Monthly Surveys	10,000	12	15/60
	Final Surveys	10,000	1	30/60
	Daily Surveys	10,000	60	5/60
Stakeholders of local entities affected by TBDs.	Stakeholder Survey	1,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity,Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21187 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22FI]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National HIV Behavioral Surveillance System: Brief HIV Bio-behavioral Assessment (NHBS–BHBA)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 13, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National HIV Behavioral Surveillance: Brief HIV Bio-behavioral Assessment (NHBS–BHBA)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of National HIV Behavioral Surveillance: Brief HIV Bio-behavioral Assessment (NHBS–BHBA) is to monitor behaviors of populations at high risk for Human Immunodeficiency Virus (HIV) infection using mixed-methods in selected geographic areas in the United States which lack biobehavioral data related to HIV transmission and prevention.

Preventing HIV, especially among populations at high risk, is an effective strategy for reducing individual, local, and national healthcare costs. The utility of this information is to provide CDC and health department staff with data for evaluating progress towards state public health goals, such as reducing new HIV infections, increasing the use of condoms, and focusing on populations at high risk by describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection.

The Centers for Disease Control and Prevention (CDC) requests a three-year approval for a new information collection. Data will be systematically collected using mixed methods of quantitative and qualitative interviews. Brief screening interviews will be used to determine eligibility for participation in the quantitative and qualitative interviews.

Project areas will conduct brief standardized quantitative interviews and anonymous HIV blood-based rapid testing and supplemental testing to those who participate in quantitative data collection to assess HIV seroprevalence. The data from the quantitative interviews will provide estimates of: (1) behavior related to the risk of HIV and other sexually transmitted diseases; (2) prior testing for HIV; and (3) use of HIV prevention services. HIV screening results will be made available to participants, and those with preliminary positive test results will be linked to HIV care. Qualitative data collection includes key informant interviews with community

members and professionals familiar with the population and focus groups to interpret standardized quantitative findings and inform grantee-developed recommendations for state/local public health partners. The data from qualitative interviews will be used to interpret standardized quantitative findings and inform recipient-developed recommendations for state and local public health authorities. No other federal agency collects this type of information in the populations at high risk in these selected geographic areas using mixed methods of quantitative and qualitative interviews.

CDC estimates that during quantitative interviewing, 1338 individuals will complete the quantitative base eligibility screener, 1204 will complete the quantitative population eligibility screener, and 338 will be either not interested or ineligible, yielding a total of 1000 eligible respondents over a 12-month period. For qualitative data collection approximately 96 individuals will complete the eligibility screener, 16 of the respondents will be either not interested in completing a qualitative interview, or will be ineligible, yielding a total of 80 eligible respondents over a 12-month period.

The total estimated annualized burden requested is 497 hours. Participation of is voluntary, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Persons Screened	Quantitative Base Eligibility Screener	1338	1	1/60
Persons Screened	Quantitative Population Eligibility Screener	1204	1	5/60
Eligible Participants	Quantitative Core Survey	1000	1	10/60
Eligible Participants	Quantitative Population-specific Questions	1000	1	5/60
Persons Screened	Qualitative Eligibility Screener	96	1	1/60
Eligible Participant	Qualitative interviews	80	1	90/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21215 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1030; Docket No. CDC–2022–0117]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Developmental Studies to improve the National Health Care Surveys. The goal of the project is to cover new survey research that will evaluate and improve upon survey design and operations, as well as examine the feasibility and address challenges that may arise with future expansions of the National Health Care Surveys.

DATES: CDC must receive written comments on or before November 29, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0117 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Developmental Studies to improve the National Health Care Surveys (OMB Control No. 0920–1030, Exp. 06/30/2023—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes the Secretary of Health and Human Services (DHHS), acting through the Division of Health Care Statistics (DHCS) within NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The DHCS conducts the National Health Care Surveys, a family of nationally representative surveys of encounters and health care providers in inpatient, outpatient, ambulatory, and post-acute and long-term care settings. This information collection request (ICR) is for the Extension of a Generic clearance to conduct developmental studies to improve this family of surveys. This three-year clearance period will include studies to evaluate and improve upon existing survey design and operations, as well as to examine the feasibility of, and address challenges that may arise with, future expansions of the National Health Care Surveys.

Specifically, this request covers developmental research with the following aims: (1) to explore ways to refine and improve upon existing survey designs and procedures; and (2) to explore and evaluate proposed survey designs and alternative approaches to data collection. The goal of these research studies is to further enhance DHCS existing and future data collection protocols to increase research capacity and improve health care data quality for the purpose of monitoring public health and well-being at the national, state, and local levels, thereby informing health policy decision-making process. The information collected through this Generic ICR will not be used to make generalizable statements about the population of interest or to inform public policy; however, methodological findings may be reported.

This Generic ICR would include studies conducted in person, via the telephone or web surveys, and by postal or electronic mail. Methods covered would include qualitative (*e.g.,* usability testing, focus groups, ethnographic studies, and respondent debriefing questionnaires) and/or quantitative (*e.g.,* pilot tests, pre-tests and split sample experiments) research methodologies. Examples of studies to improve existing survey designs and procedures may include evaluation of incentive approaches to improve recruitment and increase participation rates; testing of new survey items to obtain additional data on providers, patients, residents, and their encounters while minimizing misinterpretation and human error in data collection; testing data collection in panel surveys; triangulating and validating survey responses from multiple data sources; assessment of the feasibility of data retrieval; and development of protocols that will locate, identify, and collect accurate survey data in the least labor-intensive and burdensome manner at the sampled practice site.

To explore and evaluate proposed survey designs and alternative approaches to collecting data, especially with the nationwide adoption of electronic health records, studies may expand the evaluation of data extraction of electronic health records and submission via continuity of care documentation to small/mid-size/large medical providers and hospital networks, managed care health plans, retail health clinics, and other inpatient, outpatient, ambulatory, and long-term care settings that are currently either in-scope or out-of-scope of the National Health Care Surveys. Research on feasibility, data quality and respondent burden also may be carried out in the context of developing new surveys of health care providers and establishments that are currently out-of-scope of the National Health Care Surveys.

Specific motivations for conducting developmental studies include: (1) Within the National Ambulatory Medical Care Survey (NAMCS), new clinical groups may be expanded to include dentists, psychologists, podiatrists, chiropractors, optometrists), mid-level providers, and allied-health professionals (*e.g.,* certified nursing aides, medical assistants, radiology technicians, laboratory technicians, pharmacists, dieticians/nutritionists). Current sampling frames such as those from the American Medical Association may be obtained and studied, as well as frames that are not currently in use by NAMCS, such as state and organizational listings of other licensed providers; (2) Within the National Study of Post-Acute and Long-Term Care Providers, additional new frames may be sought, developed, and evaluated and data items from home care agencies, long-term care hospitals, and facilities exclusively serving individuals with intellectual/developmental disability may be tested. Similarly, data may be obtained from lists compiled by states and other organizations. Data about the facilities as well as residents and their visits will be investigated; (3) In the inpatient and outpatient care settings, the National Hospital Care Survey (NHCS) may investigate the addition of facility and patient information especially as it relates to insurance and electronic medical records.

The National Health Care Surveys collect critical, accurate data that are used to produce reliable national estimates—and in recent years, state-level estimates—of clinical services and of the providers who delivered those services in inpatient, outpatient, ambulatory, and long-term care settings. The data from these surveys are used by providers, policy makers and researchers to address important topics of interest, including the quality and disparities of care among populations, epidemiology of medical conditions, diffusion of technologies, effects of policies and practice guidelines, and changes in health care over time. Research studies need to be conducted to improve existing and proposed survey design and procedures of the National Health Care Surveys, as well as to evaluate alternative data collection approaches particularly due to the expansion of electronic health record use, and to develop new sample frames of currently out-of-scope providers and settings of care.

Average burdens are designed to cover 15–40 min interviews as well as 90-minute focus groups, longer on-site visits, and situations where organizations may be preparing electronic data files. CDC requests OMB approval for an estimated 3,000 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Health Care Providers and Business entities.	Interviews, surveys, focus groups, experiments (in person, phone, internet, postal/electronic mail).	2,582	1	1	2,582
Health Care Providers, State/local government agencies, and business entities.	Interviews, surveys, focus groups, experiments (in person, phone, internet, postal/electronic mail).	167	1	2.5	418
Total					3,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21220 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22ES]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Assessing Respirator Perceptions, Experiences, and Maintenance'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 6, 2022, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessing Respirator Perceptions, Experiences, and Maintenance—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), is requesting approval of a new Generic information collection for a period of three years under the project titled ''Assessing Respirator Perceptions, Experiences, and Maintenance.''

The National Personal Protective Technology Laboratory (NPPTL) is a division of NIOSH which operates within the CDC. NPPTL was established in 2001, at the request of Congress, with the mission of preventing disease, injury, and death for the millions of working men and women relying on personal protective technology (PPT). As the nation's respirator approver for all workplaces (42 CFR part 84), the development of NPPTL filled a need for improved personal protective equipment (PPE) and focused research into PPT. To this end, NPPTL conducts respiratory protection research to examine exposures to inhalation hazards, dermal hazards, and any other hazardous environmental threats within an occupational setting.

Federal regulations exist regarding the use of respirators in the workplace. The Occupational Safety and Health Administration (OSHA) requires employers whose hazard management includes the use of respirators to have a respiratory protection program (RPP), which has specified components. Thus, the information collected from human subjects about their use of respirators is generally consistent across NPPTL studies with only the use conditions changing (*e.g.,* respirator type or management implementation practices related to cleaning/decontamination, fit testing, and training). NPPTL requests a Generic information collection package for information collected from individual workers and managers related to the perceptions, maintenance, and evaluation of respirator use on the job.

Different types of data collection including surveys, focus groups, interviews, and physiological monitoring will be used to: (1) assess workers' health and safety knowledge, attitudes, skills, and other personal attributes as they relate to their respiratory protection use and maintenance; (2) identify and overcome barriers that workers face while using respiratory protection to prevent

exposure to contaminants and other hazards; (3) understand organizations' maintenance of RPP directives, and guidelines that support worker best practices; and (4) determine appropriate training, interventions, and programs that support activities around respirator use and maintenance. Data collection may focus on respirator types ubiquitous to the industry being studied, new to the industry being studied, or novel to any industry. These data collection efforts may occur either electronically or in the field.

Respondents are expected to include a variety of employees from occupations such as public safety and emergency response, healthcare, and social assistance occupations who wear or manage respirator use on the job. Expected respondent job roles include industrial hygienists, occupational health professionals, infection control professionals, physicians, nurse practitioners, nurses, infection preventionists, fire department chiefs, battalion chiefs, sheriffs, shift supervisors, firefighters, police officers, and paramedics. CDC requests OMB approval for an estimated 643,626 total burden hours with an estimated annual burden of 214,542 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Individuals who wear respirators in any occupational setting or oversee/advise on respirator use.	Informed consent	110,000	1	5/60
	Demographics standardized survey with decision logic allowing some questions to be omitted.	110,000	1	15/60
	Qualitative fit testing survey measurements	675	20	15/60
	Perceptions-based survey instrument	105,000	2	15/60
	Knowledge-based survey instrument	105,000	2	30/60
	Interview/Focus group	4,000	2	1
	Physiological Monitoring: Heart rate, blood pressure, blood oxygen saturation, breathing rate, etc.	1,000	1	9

Jeffrey M. Zirger,

Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21214 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-22–1275]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Promoting Adolescent Health through School-Based HIV Prevention'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 8, 2022, to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Promoting Adolescent Health through School-Based HIV Prevention, (OMB Control No. 0920–1275, Exp. 11/30/2022)—Extension—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Many young people engage in sexual behaviors that place them at risk for HIV infection, other sexually transmitted diseases (STD), and pregnancy. According to the 2017 Youth Risk Behavior Survey (YRBS), 39.5% of high school students in the United States had never had sexual intercourse and 28.7% were currently sexually active. Among currently sexually active students, 46.2% did not use a condom, and 13.8% did not use any method to prevent pregnancy the last time they had sexual intercourse. While the proportion of high school students who are sexually active has steadily declined, half of the 20 million new STDs reported each year

are among young people between the ages of 15 and 24. Young people aged 13–24 account for 21% of all new HIV diagnoses in the United States, with most occurring among 20–24-year-olds.

Establishing healthy behaviors during childhood and adolescence is easier and more effective than trying to change unhealthy behaviors during adulthood. One venue that offers valuable opportunities for improving adolescent health is at school. Schools have direct contact with over 50 million students for at least six hours a day over 13 key years of their social, physical, and intellectual development. In addition, schools often have staff with knowledge of critical health risk and protective behaviors and have pre-existing infrastructure that can support a varied set of healthful interventions. This makes schools well-positioned to help reduce adolescents' risk for HIV infection and other STD through sexual health education (SHE), access to sexual health services (SHS), and safe and supportive environments (SSE).

Since 1987, the Division of Adolescent and School Health (DASH) in the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) of the Centers for Disease Control and Prevention (CDC), has worked to support HIV prevention efforts in the nation's schools. CDC requests OMB approval to collect data over a two-year period from funded agencies under award PS18–1807: Promoting Adolescent Health through School-Based HIV Prevention. Funded agencies are local education agencies (LEAs), also known as school districts. The fundamental purposes of PS18–1807 are to build and strengthen the capacity of LEAs and their priority schools to effectively contribute to the reduction of HIV infection and other STD among adolescents; and the reduction of disparities in HIV infection and other STD experienced by specific adolescent sub-populations. Priority schools are middle and high schools within the funded LEAs in which youth are at risk for HIV infection and other STDs. This funding supports a multi-component, multilevel effort to support youth reaching adulthood in the healthiest possible way.

CDC will use a web-based system to collect data on the approaches that LEAs are using to meet their goals. Approaches include helping LEAs and priority schools deliver SHE emphasizing HIV and other STD prevention; increasing adolescent access to key SHS; and establishing SSEs for students and staff. Given the impact of the COVID–19 pandemic on schools, these data will also be used to help understand which approaches LEAs were able to implement during the pandemic and which approaches presented challenges in this context.

To track LEA progress and evaluate the effectiveness of program activities, CDC will collect data using a mix of process and outcome measures. Process measures to be completed by all LEAs will assess the extent to which planned program activities have been implemented and lead to feasible and sustainable programmatic outcomes. Process measures include items on school health policy and practice assessment and training and technical assistance received from non-governmental partner organizations. Outcome measures, which will be completed by local education agencies, assess whether funded activities at each site are leading to intended outcomes including public health impact of systemic change in schools. These measures drove the development of questionnaires that have been tailored to each LEA's strategies (*i.e.,* SHE, SHS, SSE).

Respondents are the same 25 LEAs that have been funded under PS18–1807. LEAs will continue to complete the questionnaires semi-annually using the Program Evaluation and Reporting System (PERS), an electronic web-based interface specifically designed for this data collection. CDC anticipates that semi-annual information collection will continue after the current OMB approval time frame ends on November 30, 2022. With this extension, additional data collection will be conducted at two time points, November 1, 2022–March 1, 2023, and May 1, 2023–September 1, 2023. The estimated burden per response is approximately 2–26 hours. This estimate includes time for LEAs to gather information at the district and school levels. Annualizing this collection over two years results in an estimated annualized burden of 1,750 hours per year and a total of 3,500 hours for the requested two-year extension across all funded LEAs. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Local Education Agencies	Funded District Questionnaire	25	2	2
	Priority School Questionnaire	25	2	26
	District Assistance Questionnaire	25	2	7

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21216 Filed 9–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3430–PN]

Medicare and Medicaid Programs: Application From The Joint Commission (TJC) for Continued Approval of its Psychiatric Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from The Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by October 31, 2022.

ADDRESSES: In commenting, refer to file code CMS–3430–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3430–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3430–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Danielle Adams, (410) 786–8818, Donald Howard, (410) 786–6764, or Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all 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.* Follow the search instructions on that website to view public comments. CMS 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. CMS continues to encourage 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.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital provided certain requirements are met. Section 1861(f) of the of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 subpart E specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into an agreement, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet these requirements. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide the Centers for Medicare & Medicaid Services (CMS) with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for their psychiatric hospital accreditation program expires February 25, 2023.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of The Joint Commission's request for continued approval of its psychiatric hospital accreditation program. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the Medicare conditions of participation (CoPs) for psychiatric hospitals.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its psychiatric hospital accreditation program. This application was determined to be complete on July 30, 2022. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of The Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of The Joint Commission's standards for psychiatric hospitals as compared with CMS' psychiatric hospital CoPs.
- The Joint Commission's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the Joint Commission's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The Joint Commission's processes and procedures for monitoring a psychiatric hospital found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission's identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ The Joint Commission's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the Joint Commission's staff and other resources, and its financial viability.

++ The Joint Commission's capacity to adequately fund required surveys.

++ The Joint Commission's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

++ The Joint Commission's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ The Joint Commission's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document on September 8, 2022, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 27, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–21305 Filed 9–28–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4200–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2023. The calendar year 2023 AIC threshold amounts are $180 for ALJ hearings and $1,850 for judicial review.

DATES: This annual adjustment takes effect on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Liz Hosna, (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act) established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Additionally, section 1869(b)(1)(E) of the Act provides that beginning in January 2005, the AIC threshold amounts are to be adjusted annually by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved and rounded to the nearest multiple of $10. Sections 1852(g)(5) and 1876(c)(5)(B) of the Act apply the AIC adjustment requirement to Medicare Part C/ Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement, pursuant to 42 CFR 417.840. Section 1860D–4(h)(1) of the Act, provides that a Medicare Part D plan sponsor shall meet the requirements of paragraphs (4) and (5) of section 1852(g) of the Act with respect to benefits, including appeals and the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations at § 405.1006(b)(2) require the Secretary of Health and

Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register**. In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 1852(g)(5) of the Act applies the AIC adjustment requirement to Medicare Part C appeals. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, sections 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration (except the MA organization) who is dissatisfied with the reconsideration determination a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals in accordance with 42 CFR 417.600(b). The Medicare Part C appeals rules also apply to health care prepayment plan appeals in accordance with 42 CFR 417.840.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 1860D–4(h)(1) of the Act regarding Part D appeals requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. More specifically, § 423.2006 of the Part D appeals rules discusses the AIC threshold amounts for ALJ hearings and judicial review. Sections 423.2002 and 423.2006 grant a Part D enrollee who is dissatisfied with the independent review entity (IRE) reconsideration determination a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary, and other requirements set forth in § 423.2002. Sections 423.2006 and 423.2136 allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council decision if the AIC meets the threshold amount established annually by the Secretary, and other requirements are met as set forth in these provisions.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

Section 1869(b)(1)(E)(iii) of the Act requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2023

The AIC threshold amount for ALJ hearings will remain at $180 and the AIC threshold amount for judicial review will rise to $1,850 for CY 2023. These amounts are based on the 84.665 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 549.562 in July 2022. The AIC threshold amount for ALJ hearings changes to $184.66 based on the 84.665 percent increase over the initial threshold amount of $100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of $10. Therefore, the CY 2023 AIC threshold amount for ALJ hearings is $180.00. The AIC threshold amount for judicial review changes to $1,846.65 based on the 84.665 percent increase over the initial threshold amount of $1,000. This amount was rounded to the nearest multiple of $10, resulting in the CY 2023 AIC threshold amount of $1,850.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2019 through 2023 threshold amounts.

	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
ALJ Hearing	$160	$170	$180	$180	$180
Judicial Review	1,630	1,670	1,760	1,760	1,850

III. Collection of Information Requirements

This document does not impose any ''collection of information'' requirements as defined under 5 CFR 1320.3(c). Consequently, the notice is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 27, 2022.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–21284 Filed 9–29–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

Proposed Reallotment of Fiscal Year 2021 Funds for the Low Income Home Energy Assistance Program

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of public comment.

SUMMARY: The ACF, OCS, Division of Energy Assistance (DEA) announces a preliminary determination that funds from the federal fiscal year (FFY) 2021 Low Income Home Energy Assistance Program (LIHEAP) are available for reallotment to states, territories, tribes, and tribal organizations that received FFY 2022 direct LIHEAP grants. The purpose of this award is to redistribute FFY 2021 annual LIHEAP funds that grant recipients were unable to obligate or carry over to FFY 2022. No sub-recipients of these grant recipients or other entities may apply for these funds.

DATES: Comments are due by: October 31, 2022.

ADDRESSES: Comments may be submitted to: Peter Edelman, Program Analyst, Office of Community Services, Administration for Children and Families, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201 or via email: *peter.edelman@acf.hhs.gov.* Comments may also be faxed to (202) 401–5661.

FOR FURTHER INFORMATION CONTACT: Akm Rahman, Program Operations Branch Chief, Division of Energy Assistance, Office of Community Services, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201. Telephone: (202) 401–5306; Email: *Akm.Rahman@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: After receiving Carryover and Reallotment Reports from FFY 2021 LIHEAP recipients and reconciling the unobligated funds on those reports with the respective Federal Financial Reports, ACF has determined that $711,932 in FFY 2021 LIHEAP funds were available for reallotment for FFY 2022. This determination is based on the reports of 20 recipients, minor corrections to certain amounts available for carryover, and the amounts of funds that these recipients had in their Payment Management System (PMS) accounts. LIHEAP grant recipients submitted the FFY 2021 Carryover and Reallotment Reports to OCS, as required by regulations applicable to LIHEAP at 45 CFR 96.81(b).

The LIHEAP statute allows grant recipients who have funds unobligated at the end of the federal fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their full-year allotments to the next federal fiscal year, (42 U.S.C. 8626(b)(2)). Funds in excess of this amount must be returned to HHS and are subject to reallotment under 42 U.S.C. 8626(b)(1).

FFY 2021 funds appropriated under the American Rescue Plan Act of 2021 (Pub. L. 117–2) were not subject to 42 U.S.C. 8626(b)(2)(B), which caps carryover at 10 percent. Therefore, these funds were not included in the reallotment calculation.

In accordance with 42 U.S.C. 8626(b)(3), ACF notified each of the 20 grant recipients that reported $711,932 of unobligated funds above their carryover caps. In these notices, ACF told each about the amount it returned for de-obligation and the amount that will be redistributed to FFY 2022 grant recipients as part of the reallotment. It also gave each recipient 30 calendar days to provide comments directly to ACF.

If funds are reallotted, then they will be allocated in accordance with 42 U.S.C. 8623 and must be treated by LIHEAP grant recipients that receive them as an amount appropriated for FFY 2022. As FFY 2022 funds, they will be subject to all requirements of the LIHEAP statute, including 42 U.S.C. 8626(b)(2), which requires that a recipient obligate at least 90 percent of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2022.

All LIHEAP grant recipients that receive a portion of these funds will be notified of the final reallotment amount redistributed to them for obligation in FFY 2022. This decision will also be published in the **Federal Register** and in a Dear Colleague Letter that is posted to ACF's website at *https://www.acf.hhs.gov/ocs/resource/dear-colleagues.*

The FFY 2021 LIHEAP funds that ACF preliminarily expects to become available for reallotment determination come from the following grant recipients in the following amounts:

Name of grant recipient that reported funds to be returned for reallotment	Amount available for reallotment
Bishop Paiute Tribe	$17,531
Colorado River Indian Tribes	16,914
Cow Creek Band of Umpqua Tribe of Indians	7,302
Hopland Band of Pomo Indians	1,755
Jicarilla Apache Nation	16,873
Kalispel Tribe of Indians	7,921
Little River Band of Ottawa Indians	106,187
Makah Tribe	36,164
Muckleshoot Indian Tribe	37,669
Nooksack Indian Tribe	38,535
Oglala Sioux Tribe	268,413
Paiute Indian Tribe of Utah	61,183
Pit River Tribe	9,255
Quileute Tribe	1,673
Round Valley Indian Tribes	558
Sac and Fox Nation of Oklahoma	44,538
Samish Indian Nation	331
Shawnee Tribe	3,600
Spokane Tribe of Indians	19,951
The Delaware Tribe of Indians	15,579
Total	711,932

If funds are reallotted, then grant recipients may use them for any purpose authorized under LIHEAP and must add these funds to their total LIHEAP funds payable for FFY 2022 for purposes of calculating statutory caps on administrative costs, carryover, Assurance 16 activities, and weatherization assistance.

Additionally, all recipients of these funds must (1) ensure that they are included in the amounts on Lines 1.1 of their FFY 2022 Carryover and Reallotment Reports; (2) reconcile these funds, to the extent that they received them, on a separate Federal Financial Form (SF–425); and (3) record, on their FFY 2022 Household Reports, households that receive benefits at least partly from these funds. State recipients must also ensure that these funds are included in the Grantee Survey sections of their FFY 2022 LIHEAP Performance Data Forms.

Statutory Authority: 42 U.S.C. 8626(b).

Karen D. Shields,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2022–21296 Filed 9–29–22; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; Traumatic Brain Injury (TBI) State Partnership Program Performance Measures (OMB Control Number 0985–0066)

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This IC Extension solicits comments on the information collection requirements relating to the Traumatic Brain Injury (TBI) State Partnership Program.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by November 29, 2022.

ADDRESSES: Submit electronic comments on the collection of information to: Elizabeth Leef at *Elizabeth.Leef@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC, 20201, Attention: Elizabeth Leef.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leef, phone (202) 475–2482 or email *Elizabeth.Leef@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The purpose of the Federal Traumatic Brain Injury (TBI) State Partnership Program is to create and strengthen a system of services and supports that maximizes the independence, well-being, and health of people with TBIs across the lifespan and all other demographics, their family members, and support networks. The TBI State Partnership Program funds the development and implementation of statewide systems that ensure access to TBI related services, including transitional services, rehabilitation, education and employment, and long-term community support. To best monitor, guide, and support TBI State Partnership Program grantees, ACL needs regular information about the grantees' activities and outcomes. The simplest, least burdensome, and most useful way to accomplish this goal is to require grantees to submit information as part of their required semiannual reports via the proposed electronic data submission instrument (appendix A).

In 1996, the Public Health Service Act was amended ''to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes'' (Pub. L. 104–166). This legislation allowed for the implementation of ''grants to States for the purpose of carrying out demonstration projects to improve access to health and other services regarding traumatic brain injury.'' The TBI Reauthorization Act of 2014 (Pub. L. 113–196) allowed the Department of Health and Human Services Secretary to review oversight of the Federal TBI programs (TBI State Partnership Grant program and the TBI Protection and Advocacy program) and reconsider which operating division should lead them. With avid support from TBI stakeholders, the Secretary found that the goals of the Federal TBI programs closely align with ACL's mission to advance policy and implement programs that support the rights of older Americans and people with disabilities to live in their communities. As a result, on Oct. 1, 2015, the Federal TBI programs moved from the Health Resources and Services Administration to ACL. These programs were reauthorized again by the Traumatic Brain Injury Reauthorization Act of 2018 (Pub. L. 115–377).

The performance measures are consistent with both the TBI State Partnership Program's purpose and ACL's mission. The 2010 Government Performance Results Modernization Act [1] requires Federal agencies to develop annual and long-term performance outcome measures and to report on these measures annually. ACL sees the GPRA Modernization Act as an opportunity to document annually the results that are produced through the programs it administers under the authority for the TBI State Partnership Program. It is the intent and commitment of ACL, in concert with grantees, to use the performance measurement tools of GPRAMA to continuously improve its programs and services.

The proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

Instrument	Number of respondents	Number of responses (per respondent)	Average burden hours (per response)	Total burden hours
Semiannual Performance Measures Report	27	2	8	432
Estimated Total Annual Burden Hours:				432

States will likely expend varying amounts of time completing data submissions. The estimate above is based upon states that invest considerable attention to submitting comprehensive, accurate data.

[1] *http://www.gao.gov/key_issues/managing_for_results_in_government/issue_summary.*

The estimate of future levels of effort assumes the following:

- The length of the grant funding is three years, except for the three grants awarded in FY19 that will only have funding for two years.
- The annual burden may decrease after the first entry of data into the system by the grantees. Once the data for the first report has been entered, subsequent reports will only require updated data and, therefore, less effort.
- The annual burden may decrease if the same individuals compile the required data, because they will become more adept at finding the information and submitting the report.

The estimated Performance Measures Report annual burden is based upon an average hourly salary of $46.00 for state programmatic staff. Across all respondents, assuming a group of 27 grantees, the programmatic staff total average annual burden is estimated at 432 hours at $46 per hour for a total of $19,872.

Dated: September 23, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–21282 Filed 9–29–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Animal Generic Drug User Fee Act.'' The purpose of the meeting is to discuss the proposed recommendations for the reauthorization of the Animal Generic Drug User Fee Act (AGDUFA IV) for fiscal years 2024 through 2028.

DATES: The public meeting will be held virtually on October 26, 2022, from 2 p.m. to 4 p.m. eastern time. Either electronic or written comments on this meeting must be submitted by November 9, 2022. See the **SUPPLEMENTARY INFORMATION** section for registration dates and further information.

ADDRESSES: The public meeting will be hosted via a live virtual webcast.

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 Wednesday, November 9, 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–2011–N–0655 for ''Animal Generic Drug User Fee Act; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *lisa.kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a virtual public meeting to discuss proposed recommendations for the reauthorization of AGDUFA, which authorizes FDA to collect user fees and use them for the process of reviewing new animal generic drug applications

and associated submissions. The authority for AGDUFA expires September 30, 2023. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal generic drug review process for future fiscal years. Section 742(d)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379j–13(d)(4)) requires that, after holding negotiations with regulated industry and periodic consultations with stakeholders, and before transmitting the Agency's final recommendation to Congress for the reauthorized program (AGDUFA IV), we do the following: (1) present the recommendation to the relevant congressional committees, (2) publish such recommendations in the **Federal Register**, (3) provide for a period of 30 days for the public to provide written comments on such recommendations, (4) hold a meeting at which the public may present its views on such recommendations, and (5) consider such public views and comments and revise such recommendations as necessary. This notice, the 30-day comment period, and the public meeting will satisfy certain of these requirements. After the public meeting, we will revise the draft recommendations as necessary. In addition, the Agency will present the draft recommendations to the congressional committees.

FDA considers the timely review of abbreviated new animal drug applications (ANADAs) to be central to the Agency's mission to protect and promote human and animal health. Prior to 2009, the timeliness and predictability of the generic new animal drug review program was a concern. The Animal Generic Drug User Fee Act enacted in 2008 (Pub. L. 110–316; hereinafter referred to as ''AGDUFA I'') amended the FD&C Act to authorize FDA's first-ever generic animal drug user fee program. AGDUFA I provided FDA with additional funds to enhance the performance and predictability of the generic new animal drug review process. Furthermore, the authorization of AGDUFA I enabled FDA's continued assurance that generic new animal drug products are safe and effective.

Under AGDUFA I, FDA agreed to meet review performance goals for certain submissions over 5 years from FY 2009 through FY 2013. The purpose of establishing these review performance goals was to ensure the timely review of ANADAs and reactivations, supplemental ANADAs, and generic investigational new animal drug (JINAD) submissions and have enabled FDA to reduce the time for the application review process for generic new animal drugs without compromising the quality of the Agency's review.

With the reauthorization of AGDUFA for an additional 5 years under AGDUFA II (FY 2014 to FY 2018), FDA agreed to further enhance and improve the review process. The AGDUFA II authorization enhancements included developing Question Based Review Process for Bioequivalence Submissions and shortening review time for key submission types. Additionally, there were Chemistry, Manufacturing, and Controls (CMC) enhancements, including permitting manufacturing supplements to be resubmitted as ''Supplement-Changes Being Effected in 30 Days'' if deficiencies are not substantial for manufacturing supplements requiring prior approval according to § 514.8(b) (21 CFR 514.8(b)); permitting comparability protocols as described in § 514.8(b)(2)(v) to be submitted as protocols without substantial data in a JINAD file; and developing guidance for a two-phased CMC technical section submission and review process under the JINAD file. Finally, the proportion of revenue collected from user fees was redistributed as follows: application fees from 30 percent to 25 percent; product fees from 35 percent to 37.5 percent; and sponsor fees from 35 percent to 37.5 percent.

Most recently, AGDUFA was reauthorized for an additional 5 years under AGDUFA III (FY 2019 to FY 2023). The AGDUFA III authorization enhancements included reducing performance goal review times for nearly all submission types, requiring 100 percent electronic submission and requiring an ''approved by FDA'' statement along with an ANADA number on approved animal drugs by September 30, 2023. Additionally, the inflation adjuster was changed from a fixed rate to a variable rate and the final year offset provision was eliminated. Finally, a new provision was added that any excess collections would be used to offset workload adjuster fee increases, if invoked.

FDA has published a number of reports that provide useful background on AGDUFA I, AGDUFA II, and AGDUFA III. AGDUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports can be found at: *https://www.fda.gov/industry/fda-user-fee-programs/animal-generic-drug-user-fee-act-agdufa.*

II. Topics for Discussion at the Public Meeting

In preparing the proposed recommendation to Congress for AGDUFA reauthorization, we conducted discussions with the regulated industry, and consulted with stakeholders as required by the law. We began the AGDUFA reauthorization process with a public meeting held on May 20, 2021 (86 FR 18986, April 12, 2021). Following the May 2021 public meeting, FDA conducted negotiations with regulated industry and continued regular consultations with public stakeholders from July through October 2021. As directed by Congress, FDA posted minutes of these discussions on its website at *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings.*

The proposed enhancements in AGDUFA IV will address priorities identified by stakeholders, regulated industry, and FDA. The full description of these proposed recommendations can be found in the proposed AGDUFA IV Performance Goals and Procedures Letter. FDA intends to post the full text of the proposed AGDUFA IV Performance Goals and Procedures Letter at *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings,* no later than one week prior to the public meeting. FDA will post the agenda approximately 5 days before the meeting at *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings.*

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register online at *https://fda.zoomgov.com/meeting/register/vJItcuCtqD4pGPe2DNgbbQZYaRswsTm9iRM* no later than October 24, 2022. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Also, please self-identify as a member of one of the following stakeholder categories: scientific or academic experts, veterinary professionals, patients and consumer advocacy groups, or the regulated industry, and whether you are requesting a scheduled presentation. Early registration is recommended. Registrants will receive confirmation when their registration has been received and will be provided the webcast link.

If you need special accommodations due to a disability, please contact Lisa Kable (see **FOR FURTHER INFORMATION CONTACT**) no later than October 20, 2022.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during the public comment session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate. We will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will notify participants by October 24, 2022. All requests to make oral presentations must be received by October 20, 2022, 11:59 p.m. eastern time. If selected for presentation, any presentation materials must be emailed to Lisa Kable (see **FOR FURTHER INFORMATION CONTACT**) no later than October 24, 2022. No commercial or promotional material will be permitted to be presented at the public meeting.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings.*

Dated: September 23, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–21304 Filed 9–29–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than November 29, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Ending the HIV Epidemic (EHE) Initiative Triannual Report OMB No. 0915- 0051 – Extension.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people with HIV. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people with diagnosed HIV in the United States. Nearly two-thirds of clients (patients) live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities.[1]

The federal Ending the HIV Epidemic in the U.S. (EHE) initiative focuses on reducing the number of new HIV infections in the United States by at least 90 percent by 2030, which would be fewer than 3,000 per year.[2] Authorized by section 311(c) and title XXVI of the Public Health Service Act, this 10-year initiative beginning in Fiscal Year (FY) 2020 focuses on 48 counties; Washington, DC; San Juan; and seven states that have a substantial rural HIV burden. EHE initiative efforts focus on the following four key strategies that together can end the HIV epidemic in the United States:

1. Diagnose all people with HIV as early as possible.
2. Treat people with HIV rapidly and effectively to reach sustained viral suppression.
3. Prevent new HIV transmissions by using proven interventions, including pre-exposure prophylaxis and syringe services programs.
4. Respond quickly to potential HIV outbreaks to get needed prevention and treatment services to people who need them.

The EHE initiative is a collaborative effort among key HHS agencies, primarily HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration. Through HRSA's RWHAP and Health Center Program, the agency has a leading role in helping diagnose, treat, prevent, and respond to end the HIV epidemic in the United States.

In June 2022, HRSA awarded nearly $115 million to RWHAP recipients to help implement the EHE initiative to support innovative strategies that help people with HIV access care, support, and treatment services to live long, healthier lives. EHE initiative funding was awarded to 39 metropolitan areas (RWHAP part A) and eight states (RWHAP part B) to implement strategies and interventions for the provision of core medical and supportive services to reduce new HIV infections.[3]

Need and Proposed Use of the Information: To support federal requirements to monitor and report on funds distributed through the EHE Initiative, HRSA created a reporting module, the EHE Triannual Report, an aggregate data report submitted three times a year by EHE recipients and providers of services. EHE-funded providers report aggregate information on the number of clients receiving specific services and the number of clients who were prescribed antiretroviral medications in the 4-month reporting period. This module will provide HRSA with frequent and timely data on EHE Initiative progress by providing information on the number of clients who are reached through the EHE Initiative. In addition, HRSA can calculate the number of clients who did not receive services in the previous year by subtracting the number of clients who received services in the previous year and the number of new clients from the total number of clients. This will

[1] HRSA. Ryan White HIV/AIDS Program Data Report, 2020.

[2] HRSA. Ending the HIV Epidemic in the U.S. *https://www.hrsa.gov/ending-hiv-epidemic.* Accessed July 12, 2022.

[3] FY 2022 EHE Awards. *https://ryanwhite.hrsa.gov/about/parts-and-initiatives/fy-2022-ending-hiv-epidemic-awards.* Accessed August 19, 2022.

provide valuable information on the scope of outreach to new clients and clients who have had a lapse in service, which could be an indication of reengagement in care. This module will support project officer monitoring and HRSA's understanding of service provision. Finally, the information collected in the EHE Triannual Report will complement the annual information collected through the RWHAP Services Report and other reporting mechanisms and support HRSA in its ability to monitor EHE initiative activities and assess progress toward meeting national goals for ending the HIV epidemic.

Likely Respondents: RWHAP part A and part B Recipients and Subrecipients funded by the EHE initiative.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
EHE Triannual Module	47	3	141	2	282
	47		141		282

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–21251 Filed 9–29–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Innate Immunity and Inflammation Study Section, October 13, 2022, 9:00 a.m. to October 14, 2022, 6:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, ND 20892 which was published in the **Federal Register** on September 12, 2022, 87 FRN 316099.

This Meeting is being amended to change the contact person from Shahrooz Vahedi to Kenneth Izumi, Ph.D., Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD, 301–496–6980. The meeting is closed to the public.

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21265 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: October 25–26, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 27–28, 2022.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Alexandrian, 480 King Street, Alexandria, VA 22314.

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: October 27–28, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Georgetown, 2121 M Street NW, Washington, DC 20037.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 27–28, 2022.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Clinical Care and Health Interventions.

Date: October 27–28, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575 *faradaym@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Evolution, Heterogeneity and Metastasis Study Section.

Date: October 27–28, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7806, Bethesda, MD 20892, 301–435–1718, *jakobir@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: International Bioethics Research Training, Education and Curriculum Development.

Date: October 27, 2022.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–139: STRIPE applications.

Date: October 28, 2022.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Veterinary and Comparative Medicine.

Date: October 28, 2022.

Time: 2:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: November 1–2, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Carmen Angeles Ufret-Vincenty, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0912, *carmen.ufret-vincenty@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21268 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Mitochondria and Oxidative Stress in Aging.

Date: November 14, 2022.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bita Nakhai, Ph.D., Chief, Basic and Translational Sciences Section (BTSS), Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701 *nakhaib@nia.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21262 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; U24 Genomic Community Resources.

Date: November 8, 2022.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Data Scientists R25.

Date: November 30, 2022.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS.)

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21260 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Advanced Laboratories for Accelerating the Reach and Impact of Treatments for Youth and Adults with Mental Illness (P50).

Date: October 25, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health Neuroscience Center, 6001 Executive Blvd., Room 6000, MSC 9606, Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early-Stage Clinical Trials of Pharmacologic or Device-Based Interventions.

Date: October 26, 2022.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606 301–443–9699 *bursteinme@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21263 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 24, 2022.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 26, 2022.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 27, 2022.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: September 26, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21261 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 11, 2022, 10 a.m. to October 11, 2022, 4 p.m., National Institute on Aging,

Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD, 20892 which was published in the **Federal Register** on September 09, 2022, 317059.

The meeting notice is amended to change the date of the meeting from October 11, 2022 to October 17, 2022. The time of the meeting will change to 10 a.m. to 1:30 p.m. The meeting is closed to the public.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: September 26, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21255 Filed 9–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0032]

Importers of Merchandise Subject to Actual Use Provisions

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than October 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 29757) on May 16, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Form Number: N/A.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: In accordance with 19 CFR 10.137, importers of goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are required to maintain detailed records to establish that these goods were actually used as contemplated by the law, and to support the importer's claim for a free or reduced rate of duty. The importer shall maintain records of use or disposition for a period of three years from the date of liquidation of the entry, and the records shall be available at all times for examination and inspection by CBP.

The collection of information is supplemental to importer information about goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) and pursuant to section 10.137 of title 19 of the Code of Federal Regulations (CFR) (19 CFR 10.137).

Importers of goods subject to 19 CFR 10.137 Actual Use Provisions are required to show the imported item/merchandise:

1. Is not on an exclusion list;
2. Complies with provisions of the law; and
3. Meets the required actual use provisions laid out in law.

This information is collected from members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Importers Subject to Actual Use Provision Recordkeeping.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 12,000.

Estimated Time per Response: 65 minutes.

Estimated Total Annual Burden Hours: 13,000 hours.

Dated: September 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–21266 Filed 9–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0018]

Ship's Stores Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than October 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 33179) on June 1, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Ship's Stores Declaration.

OMB Number: 1651–0018.

Form Number: CBP Form 1303.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (*e.g.*, alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. The form was developed as a single international standard ship's stores declaration form to replace the different forms used by various countries for the entrance and clearance of vessels. CBP Form 1303 collects information about the ship, the ports of arrival and departure, and the articles on the ship. This form is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply*.

Proposed Change: This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: CBP Form 1303.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 26,000.

Dated: September 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–21264 Filed 9–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–223–L14400000.BJ0000; MO# 4500167252]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of surveys for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Bureau of Land Management, Billings Field Office, Billings, Montana are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than October 31, 2022.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Joshua Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Alexander. 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 lands surveyed are:

Principal Meridian, Montana

T. 4 S., R. 16 E.
Sec. 7.

A person or party who wishes to protest an official filing of a plat of survey identified earlier must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the date described in the **DATES** section of this notice; If received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. Upon receipt of a timely protest, and after a review of the protest, the Authorized Officer will issue a decision either dismissing or otherwise resolving the protest. A plat of survey will then be officially filed 30 days after the protest decision has been issued in accordance with 43 CFR part 4.

If a notice of protest is received after the date described in the **DATES** section of this notice and the 10-calendar-day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. chapter 3.)

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2022–21303 Filed 9–29–22; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF02000–L14400000.EU0000 223L1109AF]

Notice of Realty Action: Non-Competitive Direct Sale for the Disposal of 1.4 Acres of Public Land in Rio Arriba County, NM

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is offering to sell a 1.4-acre parcel of public land at not less than the appraised fair market value of $14,000 to Gilbert Borrego through a non-competitive (direct) sale to resolve an unauthorized use of public lands. The sale is subject to the applicable provisions of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the BLM land sale and mineral conveyance regulations.

DATES: Interested parties may submit written comments regarding the direct sale by November 14, 2022.

ADDRESSES: Send written comments to the BLM Field Manager, Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: BLM Realty Specialist Mark T. Lujan at (575) 751–4747, or *mtlujan@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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 BLM proposes to conduct a direct sale for the following public land located in the unincorporated community of Lyden in Rio Arriba County, New Mexico. Lyden is north of Española, New Mexico, along the Rio Grande. The parcel of public land is legally described as:

Tract 24B within the Sebastian Martin Grant, Rio Arriba County, New Mexico.

The area described contains 1.4 acres. Upon publication of this notice, these public lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this notice, and until completion of the sale, the BLM will no longer accept land use applications affecting these public lands. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on September 30, 2024, unless extended by the BLM New Mexico State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The BLM proposes this direct sale of approximately 1.4 acres of public land to Mr. Gilbert Borrego in Rio Arriba County, New Mexico, to resolve an inadvertent trespass in accordance with a settlement agreement entered between the United States of America vs. Gilbert Borrego (12–cv–434–JB–GBW) in Federal District Court. An environmental assessment (EA) has been prepared to evaluate criteria under FLPMA section 203(a)(3) and 43 CFR 2710.0–3(a)(2) that the disposal of such tract will serve important public objectives. Under section 203 of FLPMA, a tract of public land may be sold if the tract meets the disposal criteria of that section as determined through the land use planning process. The public land in question has been identified as suitable for disposal by direct sale in the BLM Taos Resource Management Plan, appendix F, pages 190 through 192, dated May 24, 2012, because of its inadvertent unauthorized use or occupancy, as determined by the authorized officer. Furthermore, the subject tract, because of its location and other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The parcel is not required for any other Federal purpose. Regulations contained in 43 CFR 2711.3–3(a)(1) make allowances for direct sales when a competitive sale is not appropriate, and the public interest would be best served by a direct sale.

As noted earlier, the BLM has prepared an EA, DOI–BLM–NM–F020–2021–0018–EA, for the non-competitive direct sale and has made it available for comment. The comment period on the EA will end concurrently with the close of the comment period associated with this Notice of Realty Action. The EA, environmental site assessment, mineral potential report, map, and approved appraisal report will be made available for review at the Taos Field Office at the address in the **ADDRESSES** section and online at the BLM e-Planning website at:

https://eplanning.blm.gov/eplanning-ui/project/2015283/510.

The BLM proposes a non-competitive direct sale because it serves an important local public objective of facilitating the settlement agreement for the inadvertent trespass. The public land will not be offered for sale prior to 45 days from the date of publication of this notice in the **Federal Register**. The patent, if issued, would be subject to the following terms, conditions, and reservations:

1. A reservation for any right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890.

2. The parcel is subject to all valid existing rights.

3. The purchaser, by accepting the patent, agrees to an indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupations on the patented lands.

The BLM prepared a mineral potential report dated October 30, 2020, which concluded there are no known mineral values in the land. The mineral estate should be transferred simultaneously with the surface under the authority of Section 209 of FLPMA.

The BLM New Mexico State Director or other authorized official of the Department of the Interior will review adverse comments regarding the parcel and may sustain, vacate, or modify this realty action, in-whole or in-part. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

In addition to publication in the **Federal Register**, the BLM will also publish this notice in the New Mexican, once a week, for 3 consecutive weeks.

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. Only written comments to the Field Manager, BLM Taos Field Office, will be considered properly filed.

(Authority: 43 CFR 2711.1–2(a) and (c).)

Steven R. Wells,

Associate State Director.

[FR Doc. 2022–21285 Filed 9–29–22; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34596; 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 September 17, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by October 17, 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 September 17, 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.

IOWA

Polk County

Val-Air Ballroom, 301 Ashworth Rd., West Des Moines, SG100008304

Webster County

Sacred Heart Catholic Church, 211 South 13th St., Fort Dodge, SG100008305

KANSAS

Lincoln County

Behrhorst Brothers Hardware (Post Rock Limestone Properties in Kansas, 1870–1948 MPS), 105 North Main St., Sylvan Grove, MP100008289

Russell County

Lucas School Gymnasium (Post Rock Limestone Properties in Kansas, 1870–1948 MPS), 130 North Greely Ave., Lucas, MP100008290

Gernon, Nicholas, House (Post Rock Limestone Properties in Kansas, 1870–1948 MPS), 818 North Kansas St., Russell, MP100008291

UTAH

Carbon County

Helper Historic District (Boundary Increase), Roughly bounded by Maple (400 South), Bryner (600 West), Ridgeway (500 East), and E (450 North) Sts., Helper, BC100008303

VIRGINIA

Hanover County

Brown Grove Rural Historic District, Ashcake, Carters Heights, Egypt, Johnson-Town, Sliding Hill, Lewistown, Brook Springs, and Mount Hermon Rds., Ashland vicinity, SG100008295

A request for removal has been made for the following resources:

MICHIGAN

Marquette County

Longyear Hall of Pedagogy-Northern Michigan University, Presque Isle Ave., Marquette, OT80001880

Wayne County

Sante Fe Apartments (University-Cultural Center Phase II MRA), 681 Merrick, Detroit, OT86000996

Additional documentation has been received for the following resources:

GEORGIA

Fulton County

Virginia-Highland Historic District (Additional Documentation), Roughly bounded by Amsterdam Ave., Rosedale Rd., Ponce de Leon Ave., and the Norfolk Southern Railroad, Atlanta, AD05000402

NEW JERSEY

Morris County

Acorn Hall (Additional Documentation), 68 Lafayette Ave., Morristown, AD73001124

UTAH

Carbon County

Helper Historic District (Additional Documentation), Roughly bounded by Maple (400 South), Bryner (600 West), Ridgeway (500 East), and E (450 North) Sts., Helper, AD79002491

Sanpete County

Spring City Historic District (Additional Documentation), Roughly bounded by city corporate boundary, Spring City, AD80003957

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 20, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2022–21291 Filed 9–29–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0106; Docket ID BOEM–2017–0016]

Agency Information Collection Activities; Oil Spill Financial Responsibility

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection request (ICR) with revisions.

DATES: Comments must be received by October 31, 2022.

ADDRESSES: Submit your written comments on this ICR to the Office of Management and Budget's desk officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain* within 30 days of publication of this notice. From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by parcel delivery to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0106 in the subject line of your comments. You may also comment by searching the docket number BOEM–2017–0016 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025. 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, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Title of Collection: 30 CFR part 553, ''Oil Spill Financial Responsibility for Offshore Facilities.''

Abstract: This ICR concerns the paperwork requirements in 30 CFR part 553 and forms BOEM–1016 through –1023 and BOEM–1025. This ICR also includes paperwork requirements found in any supplementary notices to lessees and operators that provide clarification, description, or explanation of these regulations.

BOEM uses forms to collect information to ensure proper and efficient administration of its oil spill financial responsibility requirements. BOEM collects information to:

- Provide a standard method for establishing whether a party is required to demonstrate oil spill financial responsibility for offshore facilities;
- Identify and maintain a record of those offshore facilities that have a potential oil spill liability requiring the demonstration of oil spill financial responsibility;
- Establish and maintain a continuous record of evidence of oil spill financial responsibility to assure payment of claims for oil spill cleanup and damages resulting from operations conducted on covered offshore facilities and from the transportation of oil from covered offshore facilities;
- Establish and maintain a continuous record of responsible parties, as defined in title I of the Oil Pollution Act of 1990, and their agents or authorized representatives for oil spill financial responsibility for covered offshore facilities; and
- Establish and maintain a continuous record of persons to contact and U.S. agents for service of process for claims associated with oil spills from covered offshore facilities.

OMB Control Number: 1010–0106.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Designated applicants and holders of leases, permits, right-of-way grants, and right-of-use and easement grants on the Outer Continental Shelf (OCS) and in State coastal waters who are responsible parties. Other respondents may be designated applicants' insurance agents and brokers, bonding companies, and guarantors. Some respondents may also be claimants.

Total Estimated Number of Annual Responses: 2,233 responses.

Total Estimated Number of Annual Burden Hours: 34,695 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion or annual.

Total Estimated Annual Non-Hour Burden Cost: There is no non-hour cost burden associated with this collection.

Estimated Reporting and Recordkeeping Hour Burden: The current annual burden for this collection is 22,133 hours. BOEM proposes to increase the annual burden to 34,695 hours to account for changes in industry operations due to COVID and remote work. As COVID restrictions ease and OCS energy companies resume production, BOEM expects an increase in the annual number of respondents as those companies re-establish oil spill financial coverage. This increase is attributable to the continued use of remote work practices developed during the pandemic by those companies.

Remote work led to changes in how industry reviews and processes required documents. Prior to COVID, in-person meetings with a group of reviewers were held to complete the task quickly and efficiently. Now with many employees working from home, document preparation, review, and editing take longer as the documents move through several individual reviewers. Through its outreach efforts, BOEM received this feedback from industry. Therefore, BOEM is increasing hour burdens to account for the additional review and editing time. This increase in respondents and burden hours may be temporary and will be revisited by BOEM during future reviews of this control number.

The following table details the hour burden estimates of this ICR. In the table, the term ''oil spill financial responsibility'' has been shortened to ''OSFR.''

BURDEN BREAKDOWN

Citation 30 CFR part 553	Reporting requirement *	Hour burden	Average number of annual reponses	Annual burden hours
Various sections	The burdens for all references to submitting evidence of OSFR, as well as required or supporting information, are covered with the forms below.			0
	Applicability and Amount of OSFR			
11(a)(1); 40; 41	Form BOEM–1016—Designated Applicant Information Certification.	3	250	750
11(a)(1); 40; 41	Form BOEM–1017—Appointment of Designated Applicant.	10	750	7,500
11(a)(1); (2)	Form BOEM–1025—Independent Designated Applicant Information Certification.	2	200	400
12, 45	Request for determination of OSFR applicability. Provide required and supporting information.	2	5	10
15	Notify BOEM of change in ability to comply	1	1	1
15(f)	Provide claimant written explanation of denial	1	15	15
Subtotal			1,221	8,676
	Methods for Demonstrating OSFR			
21–28; 40	Form BOEM–1018—Self-Insurance Information, including renewals.	3	50	150
30; 40; 41; 43	Form BOEM–1023—Financial Guarantee	2	50	100
29; 40; 41; 43	Form BOEM–1019—Insurance Certificate	120	150	18,000
31; 40; 41; 43	Form BOEM–1020—Surety Bond	24	4	96
32	Proposal and supporting information for alternative method to evidence OSFR (anticipate no proposals, but regulations provide the opportunity).	120	1	120
Subtotal			255	18,466
	Requirements for Submitting OSFR Information			
14; 40; 41; 43	Form BOEM–1021—Covered Offshore Facilities	10	255	2,550
40–42	Form BOEM–1022—Covered Offshore Facility Changes.	10	500	5,000
Subtotal			755	7,550
	Claims for Oil-Spill Removal Costs and Damages			
Subpart F	Claims: BOEM is not involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (33 CFR parts 135, 136, 137) falls under the responsibility of the U.S. Coast Guard.			0
60(d)	Claimant request for BOEM assistance to determine whether a guarantor may be liable for a claim.	2	1	2
62	Within 15-calendar days of claim, designated applicant must notify the guarantor and responsible parties of the claim.	1	1	1
Subtotal		2		3
Total Burden			2,233	34,695

* In the future, BOEM may require electronic filing of financial and bonding submissions.

A **Federal Register** notice with a 60-day public comment period on this proposed ICR was published on April 11, 2022 (87 FR 21133). BOEM did not receive any comments during the 60-day comment period.

BOEM is again soliciting comments on the proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under the FOIA, your information will only be withheld if BOEM determines that a FOIA exemption to disclosure applies. BOEM will make such a determination in accordance with the Department of the Interior's (DOI) FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence of the disclosure of information, such as embarrassment, injury, or other harm.

Note that BOEM will make available for public inspection all comments on *www.reginfo.gov,* in their entirety, submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations or businesses.

BOEM protects proprietary information in accordance with FOIA (5 U.S.C. 552), DOI's implementing regulations (43 CFR part 2), and 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1352(c)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2022–21271 Filed 9–29–22; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–038]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 3, 2022 at 2 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–475 and 731–TA–1177 (Second Review)(Aluminum Extrusions from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 17, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of meeting was not possible.

By order of the Commission.

Issued: September 27, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–21391 Filed 9–28–22; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–039]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: October 5, 2022 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–557 and 731–TA–1312 (Review)(Stainless Steel Sheet and Strip from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 18, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of meeting was not possible.

By order of the Commission.

Issued: September 27, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–21392 Filed 9–28–22; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Federal Explosives Licensee (FEL) Out of Business Records

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0102 (FEL Out of Business Records) is being revised due to an increase in the number of respondents to this IC, which has also contributed to a rise in both the public burden hours and cost associated with this IC since the last renewal in 2019.

DATES: Comments are encouraged and will be accepted for 60 days until November 29, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments,

regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Shawn C. Stevens, Industry Liaison, Firearms & Explosives Services Division, either by mail at 244 Needy Road Martinsburg, WV 24505, by email at *shawn.stevens@atf.gov,* or by telephone at 304–616–4421.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* FEL Out of Business Records.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Sponsor: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: Per 27 CFR 555.128, when an explosive materials business or operation is discontinued, the records must be delivered to the ATF Out of Business Records Center within 30 days of the business or operations discontinuance.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 538 respondents will utilize this information collection, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 269 hours, which is equal to 538 (# of respondents) * 1 (# of responses per respondents) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include an increase in the total respondents by 289 respectively, since the last renewal in 2019. Consequently, the cost burden has also risen by $70,548 since 2019.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3.E–206, Washington, DC 20530.

Dated: September 27, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–21292 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Matt M. Ahmadi, D.P.M.; Decision and Order

On February 17, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Matt M. Ahmadi, D.P.M. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2 (OSC), at 1; RFAA, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BA8767646 at the registered address of 26800 Crown Valley Pkwy, Suite 320, Mission Viejo, CA 92691. RFAAX 2, at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to prescribe controlled substances in the State of California, the state in which [he is] registered with the DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).[1]

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA,[2] which was submitted on September 6, 2022.[3]

Findings of Fact

Following an Accusation against Registrant from the State of California, Department of Consumer Affairs, Board of Podiatric Medicine (hereinafter, the Board), dated May 7, 2019, on March 27, 2020, an Administrative Law Judge from the State of California, Office of Administrative Hearings, issued a Proposed Decision revoking Registrant's podiatric medicine license. RFAAX 3, appendix A, at 3, 38, 39. On June 16, 2020, the Board issued a Decision and Order accepting and adopting the Proposed Decision, effective July 16, 2020. *Id.* at 1.

According to California's online records, of which the Agency takes official notice, Registrant's license is still revoked.[4] Medical Board of California License Verification, *https://www.mbc.ca.gov/License-Verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in California,

[1] According to Agency records, Registrant's Certificate of Registration No. BA8767646 expired on June 30, 2022. The fact that a Registrant allows his registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68,474 (2019).

[2] The Government's RFAA is dated July 13, 2022. RFAA, at 5.

[3] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 3, at 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1, 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[4] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[5]

According to California statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Cal. Health & Safety Code section 11010 (West 2022). Further, a ''practitioner'' means a person ''licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.'' *Id.* at section 11026(c).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BA8767646 issued to Matt M. Ahmadi, D.P.M. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Matt M. Ahmadi, D.P.M., to renew or modify this registration, as well as any other pending application of Matt M. Ahmadi, D.P.M., for additional registration in California. This Order is effective October 31, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 26, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–21269 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–09–P

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas Blair, M.D.; Decision and Order

On May 25, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Thomas Blair, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) D (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AB1253880 at the registered address of 725 W. La Veta Avenue, Suite 110, Orange, CA 92868. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to prescribe controlled substances in the State of California, the state in which [he is] registered with the DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence offered by the Government in its RFAA, which was submitted on September 8, 2022.[1]

Findings of Fact

On November 2, 2021, an Administrative Law Judge from the State of California, Office of Administrative Hearings, issued a Decision and Order suspending Registrant's California medical license. RFAAX B, at 2, 35. According to California's online records, of which the Agency takes official notice, Registrant's license is still suspended.[2] Medical Board of California License Verification, *https://www.mbc.ca.gov/License-Verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in California, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to

[1] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Declaration 1, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1, 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[3]

According to California statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Cal. Health & Safety Code § 11010 (West 2022). Further, a ''practitioner'' means a person ''licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.'' *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice medicine in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AB1253880 issued to Thomas Blair, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Thomas Blair, M.D., to renew or modify this registration, as well as any other pending application of Thomas Blair, M.D., for additional registration in California. This Order is effective October 31, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 26, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–21274 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–09–P

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21–24]

Lewisville Medical Pharmacy; Decision and Order

I. Introduction

On June 9, 2021, the United States Department of Justice, Drug Enforcement Administration (hereinafter, Agency) issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter collectively, OSC) to Lewisville Medical Pharmacy (hereinafter, Respondent) of Lewisville, Texas. OSC, at 1–2, 11. The OSC immediately suspended, and proposed the revocation of, Respondent's Drug Enforcement Administration (hereinafter, DEA) registration No. FL2190332, pursuant to 21 U.S.C. 824(d) and (a)(4), respectively, ''because . . . [Respondent's] continued registration constitutes 'an imminent danger to the public health or safety' '' and ''because . . . [Respondent's] continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).'' *Id.* at 1. The OSC more specifically alleged that, according to Respondent's ''dispensing information'' from at least March 2, 2018, through at least March 20, 2021, Respondent ''repeatedly filled prescriptions for Schedule III through V controlled substances in the face of obvious and unresolved red flags of drug abuse and diversion [hereinafter, red flags], and therefore, in violation of both federal and Texas law,'' including 21 CFR 1306.04(a) and Texas Health & Safety Code § 481.074(a).[1] *Id.* at 2. The OSC includes allegations about pattern prescribing (which it defines as prescribing the same controlled substance in identical or substantially similar quantities to multiple individuals indicating a lack of individualized therapy), distance (which it defines as traveling abnormally long distances to fill a controlled substance prescription), cash payment (which it defines as a common red flag of abuse and diversion as it permits an individual to avoid scrutiny associated with the use of insurance as part of the payment process), and shared address (which it defines as multiple persons with the same address presenting the same or substantially similar controlled substance prescriptions from the same practitioner) red flags.[2] *Id.* at 4–10.

Respondent timely requested a hearing. Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law

[1] The Agency is only adjudicating controlled substance prescriptions in the record that are dated on or after September 16, 2018. *See* 22 TAC § 291.29 (effective September 16, 2018).

[2] The phrase ''red flag'' is used in the record before the Agency with varying accuracy. The testimony of the Government's expert accurately defines the phrase and a Texas pharmacist's obligation when presented with a controlled substance prescription, that is, consistent with federal law. *See, e.g.,* Tr. 555–56; *infra,* section II.A. The use of the phrase in Respondent's case, on the other hand, is not always fully accurate. *Infra,* section II.B. When Respondent's case accurately acknowledges circumstances that are red flags, it rarely states a Texas pharmacist's ensuing obligation accurately. *Id.* When Respondent uses the phrase when questioning the Government's expert, the context out of which the expert responds is an accurate understanding of the phrase regardless of what Respondent meant by its question.

Judge (hereinafter, RD), at 1. DEA Administrative Law Judge Paul E. Soeffing (hereinafter, ALJ) conducted a four-day video teleconference hearing from November 15 through 18, 2021. *Id.* On April 1, 2022, the ALJ issued his RD, recommending revocation of Respondent's registration.[3] *Id.* at 57.

Having thoroughly analyzed the record and applicable law, the Agency summarizes its findings and conclusions: (1) the Diversion Control Division (hereinafter, Government) presented a *prima facie* case, (2) Respondent attempted, but failed, to rebut the Government's *prima facie* case, and (3) substantial record evidence, including the testimony of the Government's expert witness and large portions of the testimony of Respondent's owner and Pharmacist-in-Charge (hereinafter, PIC), shows Respondent's violations of applicable law, violations against a foundation of the Controlled Substances Act (hereinafter, CSA). Accordingly, the Agency will revoke Respondent's registration. *Infra,* Order.

II. Findings[4]

A. The Government's Case

The Government's principal case presented two witness—a Diversion Investigator and its expert, Diane Ginsburg, Ph.D., whom the ALJ accepted, without objection, as an expert in Texas retail pharmacy practice and Texas pharmacy practice.[5] Tr. 21–85 (DI testimony), *id.* at 85–559 (Dr. Ginsburg testimony). Having thoroughly analyzed the record and applicable law, the Agency agrees with the RD and finds that Dr. Ginsburg ''presented credible testimony that was internally consistent and logically persuasive, . . . [and] an objective analysis . . . [admitting] times where . . . she may not have identified a red flag.'' RD, at 18. The Agency agrees with the RD and affords Dr. Ginsburg's testimony ''significant weight'' in this adjudication. *Id.*

The Agency finds that Dr. Ginsburg's testimony about the red flags alleged in the OSC constitutes a portion of the substantial record evidence that Respondent filled controlled substance prescriptions exhibiting red flags without documenting the resolution of those red flags, thereby violating applicable legal requirements.[6] *E.g.,* Tr. 108–120, 122–56, 169–90, 219–57, 261–72, 277–86, 506, 518, 553, 556; *accord, e.g.,* RD, at 8–11, 13–18, 34–37, 41–45, 47–48.

B. The Respondent's Case

Respondent's owner and PIC, whom Respondent characterized as ''an expert on Texas pharmacy law and practice,'' was the only witness Respondent presented.[7] Respondent's Prehearing Statement, at 4; Tr. 561–849.[8] Having thoroughly analyzed the record and applicable law, the Agency finds that Respondent's owner and PIC is the witness with the most at stake in this adjudication. The Agency finds that, while the testimony of Respondent's owner and PIC does include reliable statements, it also includes statements that lack credibility, are implausible, and/or are not persuasive. The Agency finds that the testimony of Respondent's owner and PIC must be considered with much caution, and where his testimony conflicts with credible record evidence or applicable law, the Agency does not credit it. *Supra,* section II; *infra,* sections III, IV.B., and V; *see also* RD, at 27.

The Agency finds substantial record evidence that (1) the testimony of Respondent's owner and PIC includes his unsupported and previously undocumented statements justifying, in retrospect, the legitimacy of controlled substance prescriptions that Respondent filled, (2) the testimony of Respondent's owner and PIC includes his ensuing conclusions that there is no red flag on those controlled substance prescriptions, (3) the testimony of Respondent's owner and PIC includes his admissions that he did not document the existence or resolution of any red flag on those controlled substance prescriptions since, according to him, there were no red flags on the controlled substance prescriptions and, when there is no red flag on a controlled substance prescription, there is ''nothing to document,'' and (4) Respondent filled controlled substance prescriptions without documented resolution of the red flags on them.[9] *E.g.,* Tr. 654–56, 664–79, 714–32, 738–53, 758–75, 779–85; *see also, e.g.,* Respondent's Closing Brief with Proposed Findings of Fact and Conclusions of Law (hereinafter, Resp Posthearing), at 1–2 (''With a few exceptions, . . . [Respondent] denies such red flags were present for the prescriptions at issue.''); RD, at 33 n.33, 40–51, 53–54.

III. Texas Pharmacists' Professional Responsibility[10]

According to the CSA, ''Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . distribute, . . . dispense, or possess with intent to . . . distribute[ ] or dispense, a controlled substance.'' 21 U.S.C. 841(a)(1). The CSA's implementing regulations state that a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice'' and that, while the ''responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner,'' a ''corresponding responsibility rests with the pharmacist who fills the prescription.'' 21 CFR 1306.04(a); *The Pharmacy Place,* 86 FR 21008, 21012–14, 21034–35 (2021) (requisite scienter under 21 CFR 1306.04(a)).

The OSC is addressed to Respondent at its registered address in Texas. Therefore, the Agency also evaluates Respondent's actions according to Texas law, including the applicable Texas

[3] Neither party filed exceptions to the RD.

[4] The Agency incorporates the parties' Stipulations and accepts them as fact. RD, at 2–3. The first and second stipulations address Respondent's DEA registration and its status. *Id.* at 2.

[5] In rebuttal, the Government presented one witness, the undercover Task Force Officer. Tr. 850–95.

[6] Dr. Ginsburg testified that a ''red flag is something that would raise suspicion or cause you concern related to a medication and certainly there are those that have been identified, as well as types of things that are considered red flags, federally, as well as within our State that pharmacists are aware of'' and that the ''obligation is to verify validity and then to document the resolution of that red flag.'' Tr. 555–56; *see also* RD, at 41.

[7] At the hearing, however, Respondent did not proffer its owner and PIC as an expert. Respondent's owner and PIC testified that he is ''legally responsible'' for ensuring that Respondent, its operations, its policies, and ''everything'' go ''according to the rule and the law.'' Tr. 564. He also testified that he filled the controlled substance prescriptions at issue in this adjudication. Tr. 848.

[8] As the parties' closing briefs do not challenge any of the ALJ's pre-hearing or hearing rulings, and as neither party filed exceptions, the Agency need not address, and does not address, any of those rulings in this Decision/Order.

[9] ''[A] corresponding responsibility rests with the pharmacist who fills the prescription.'' 21 CFR 1306.04(a).

The testimony of Respondent's owner and PIC about ''red flags'' and ''potential red flags'' is not fully accurate. He testified at length on multiple occasions about why, in his view, there is no red flag on a given controlled substance prescription at issue in this proceeding. *E.g., infra,* sections II.B., III., and IV.B. His testimony lacks legal and factual credibility particularly because Texas law explicitly lists and clearly articulates what red flags are, making the identification of red flags on controlled substance prescriptions a process largely devoid of professional analysis or judgment, and because the applicable standard of practice requires the resolution of those red flags and the documentation of the red flags' resolutions before the controlled substance prescription is filled. *Supra,* section II.A.; *infra,* sections III and IV.B.

[10] *See also* 22 TAC § 291.33 (Texas drug utilization review requirement); RD, at 34–35.

pharmacists' professional responsibilities.[11]

During the period alleged in the OSC, Texas law specifically addressed pharmacists' professional responsibilities concerning red flags. First, according to Texas law, pharmacists ''shall make every reasonable effort to ensure that any prescription drug order . . . has been issued for a legitimate medical purpose by a practitioner in the course of medical practice.'' 22 TAC § 291.29(b); *The Pharmacy Place,* 86 FR at 21012. Further, according to Texas law, a ''pharmacist shall make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist's corresponding responsibility'' and lists ''red flag factors'' that are ''relevant to preventing the non-therapeutic dispensing of controlled substances'' that ''shall be considered by evaluating the totality of the circumstances rather than any single factor.'' 22 TAC § 291.29(f); *The Pharmacy Place,* 86 FR at 21012; *see also* Resp Posthearing, at 2–3, 4. A pharmacy's ''dispens[ing]'' a ''reasonably discernible pattern of substantially identical prescriptions for the same controlled substance . . . for numerous persons, including a lack of individual drug therapy in prescriptions issued by the practitioner'' is the first red flag listed. 22 TAC § 291.29(f)(1). Other red flags explicitly identified in Texas law that are relevant to this proceeding are ''multiple persons with the same address [who] present substantially similar controlled substance prescriptions from the same practitioner'' and ''persons [who] consistently pay for controlled substances with cash or cash equivalents more often than through insurance.'' 22 TAC § 291.29(f)(11) and (12).

Dr. Ginsburg's testimony, including her explanations of the standard of practice of Texas pharmacies and Texas pharmacists' professional responsibilities, is consistent with this legal analysis and states that the applicable standard of practice is for the resolution of red flags to be documented before the controlled substance prescription is filled. *Supra,* section II.A.; *e.g.,* Tr. 228, 506, 518, 553, 556; *accord id.* at 588 (Respondent's owner and PIC testifying about the duty to document the resolution of a red flag).

[11] *See Gonzales* v. *Oregon,* 546 U.S. 243, 269–71 (2006); *see also* OSC, at 2–3.

IV. Discussion

A. The Controlled Substances Act

Under Section 304 of the CSA, ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''pharmacy,'' Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(f)(1–5). The five factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003).

According to Agency decisions, the Agency ''may rely on any one or a combination of factors and may give each factor the weight [it] deems appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U. S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

According to DEA regulations, ''[a]t any hearing for the revocation . . . of a registration, the . . . [Government] shall have the burden of proving that the requirements for such revocation . . . pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e).

In this matter, while all of the 21 U.S.C. 823(f) Factors have been considered, the Government's evidence in support of its *prima facie* case is confined to Factors Two and Four.[12] Government's Proposed Findings of Fact and Conclusions of Law, at 18. The Government presented a *prima facie* case based on Factors Two and Four, and portions of the testimony of Respondent's owner and PIC actually admit, even if unintentionally, to foundational violations of federal law. 21 CFR 1306.04(a), *supra,* sections II.A., II.B., and III. Accordingly, the Agency finds that Respondent's continued registration is inconsistent with the public interest. 21 U.S.C. 824(a)(4) and 823(f)(2) and (f)(4).

B. Factors Two and/or Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Allegation That Respondent's Registration Is Inconsistent With the Public Interest

According to the CSA's implementing regulations, a lawful prescription for controlled substances is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); *see Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006); *see also* Tex. Health & Safety Code § 481.074.

Respondent engaged a skillful team and defended itself against the OSC's allegations. As already noted, the record evidence, including testimony of Respondent's owner and PIC, contains substantial evidence of violations of applicable law. Those violations go to the heart of this Agency's law enforcement mission. *Supra,* sections II.A., II.B., and III; *infra,* sections IV.B. and V.

Having thoroughly analyzed the record and applicable law, the Agency finds substantial record evidence, including testimony and admissions of Respondent's owner and PIC, that (1) Respondent filled controlled substance prescriptions containing red flags, including red flags explicitly listed in Texas law, such as pattern prescribing, cash payment, distance, and shared address and (2) Respondent filled these controlled substance prescriptions without resolving, and documenting the resolution of, the red flags on them.[13]

[12] Neither Respondent nor the Government argues that it offered evidence relevant to Factors One, Three, or Five. Although the Agency considered Factors One, Three, and Five, it finds that none of them is relevant to this adjudication, as the RD recommends. RD, at 30, n.32.

[13] *E.g.,* Government Exhibit (hereinafter, GX) 3, at 3 (customer AC, February 29, 2020, pattern prescribing); GX 3, at 6 (customer AC, October 6, 2020, pattern prescribing); GX 4, at 4 (customer AM,

Supra, sections II.A., II.B., and III. Indeed, Respondent's owner and PIC repeatedly denied that controlled substance prescriptions at issue in this proceeding even included a red flag. *Supra,* section II.B. Substantial record evidence of any one of the founded controlled substance prescription violations is sufficient for the Agency to revoke Respondent's registration.

Prior Agency decisions consistently find that controlled substance prescriptions with these red flags are so suspicious as to support a finding that the pharmacists who filled them violated their corresponding responsibility due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. 21 CFR 1306.04(a); *see also, e.g.,* Tex. Health & Safety Code §§ 481.074, 481.128; *The Pharmacy Place,* 86 FR at 21013 (collecting Agency decisions).[14] Indeed, the testimony of Respondent's owner and PIC, during which he spoke at length about why red flags, that are explicitly listed in Texas law as such, are not red flags, is record evidence that Respondent was willfully blind to red flags on the prescriptions it filled. *Supra,* section II.B. Accordingly, the Agency finds that there is substantial record evidence of violations of applicable law and, therefore, that it is appropriate to sanction Respondent for these violations. *Supra,* sections II, III, and IV.

Summary of Factors Two and Four

Respondent did not successfully rebut the Government's *prima facie* case, established by substantial record evidence, that it violated applicable law by filling controlled substance prescriptions without resolving and documenting the resolution of the red flags on them. 21 CFR 1306.04(a), 22 TAC § 291.29. Accordingly, the Agency finds that Respondent violated applicable law, supporting the revocation of its registration. 21 U.S.C. 824(a)(4).

V. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest due to its numerous violations pertaining to controlled substances, the burden shifts to the Respondent to show why it can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18,882 (2018). Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that it will not engage in future misconduct. *Id.* A registrant's acceptance of responsibility must be unequivocal. *Id.* In addition, a registrant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* In addition, DEA Administrators have found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* DEA Administrators have also considered the need to deter similar acts by the respondent and by the community of registrants. *Id.*

Regarding these matters, there is no record evidence that Respondent, or its owner and PIC, takes responsibility, let alone unequivocal responsibility, for the founded violations.[15] Instead, the testimony of Respondent's owner and PIC is replete with unsupported and undocumented assertions about why controlled substance prescriptions evidencing what Texas law labels as ''red flag factors'' are not red flags at all, typically then followed by the incantation that, if there is no red flag, there is nothing to document. *Supra,* sections II.B. and IV.B; *see also* Tr. 793 (testimony of Respondent's owner and PIC regarding a prescription that, according to the customer's profile, shows ''a pretty bad drug interaction,'' and his assertion that ''you don't necessarily have to document that'' while acknowledging that ''I know we say document, document, but a lot of things are expected as a plan of care for patients that are very important that are not documented'') in conjunction with 22 TAC § 291.33(c)(2)(A)(ii); Tr. 805 (testimony of Respondent's owner and PIC that ''there was really nothing to document because, typically, with red flags, the things we want to document is if you think the prescription is fraudulent''); *id.* at 815 (testimony of Respondent's owner and PIC that a controlled substance prescription for codeine cough syrup is medicine for a ''communicable disease, . . . I don't think any pharmacist would really see that as a red flag'') in conjunction with 22 TAC § 291.29(f)(3) (listing prescriptions for cough syrups containing codeine, a treatment for a communicable disease, Tr. 823, as a ''red flag factor''). The Agency finds that most of the testimony of Respondent's owner and PIC evidences, at best, a deep

September 21, 2020, pattern prescribing); GX 5, at 2 (customer AR, July 8, 2020, pattern prescribing); GX 12, at 2 (customer DG, July 13, 2019, distance); GX 15, at 2 (customer FL, June 22, 2020, pattern prescribing); GX 16, at 3 (customer FA, August 3, 2020, pattern prescribing); GX 17, at 2 (customer GG, August 5, 2020, pattern prescribing); GX 18, at 2 (customer IS, March 8, 2019, pattern prescribing); GX 18, at 5 (customer IS, March 29, 2019, pattern prescribing); GX 18, at 8 (customer IS, January 6, 2020, pattern prescribing); GX 18 at 11 (customer IS, September 3, 2020, pattern prescribing); GX 19, at 2 (customer IS, October 5, 2020, pattern prescribing); GX 20, at 109 (customer IG, October 12, 2020, pattern prescribing); GX 21, at 3 (customer IG, September 22, 2020, pattern prescribing); GX 22, at 2 (customer JB, February 7, 2019, distance); GX 22, at 4 (customer JB, May 16, 2019, distance); GX 22, at 6 (customer JB, March 20, 2020, distance); GX 23, at 2 (customer JS, July 8, 2020, pattern prescribing); GX 24, at 3 (customer JR, October 8, 2020, pattern prescribing); GX 25, at 2 (customer JC, January 23, 2020, shared address and pattern prescribing with customer AL, January 23, 2020) alone and in conjunction with GX 60, at 1 (shared address); GX 26, at 3 (customer JL, July 24, 2020, pattern prescribing); GX 31, at 3 (customer LO, October 7, 2020, pattern prescribing) alone and in conjunction with GX 50, at 1 (cash); GX 35, at 3 (customer MO, July 8, 2020, pattern prescribing); GX 37, at 2 (customer MN, August 26, 2020, pattern prescribing); GX 41, at 5 (customer PG, January 4, 2020, pattern prescribing) alone and in conjunction with GX 56, at 1 (cash); GX 41, at 8 (customer PG, March 3, 2020, pattern prescribing) alone and in conjunction with GX 56, at 1 (cash); GX 42, at 5 (customer RT, February 11, 2020, pattern prescribing); GX 45, at 2 (customer TS, February 20, 2020, distance); GX 46, at 18 (customer YG, January 15, 2019, pattern prescribing) alone and in conjunction with GX 51, at 1 (cash); and GX 46, at 24 (customer YG, February 29, 2020, pattern prescribing) alone and in conjunction with GX 51, at 1 (cash).

[14] Agency decisions have consistently found that prescriptions with the same red flags at issue here were so suspicious as to support a finding that the pharmacists who filled them violated the Agency's corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. 21 CFR 1306.04(a); *see, e.g., Morning Star Pharmacy and Medical Supply 1,* 85 FR 51045, 51061 (2020) (pattern prescribing; distance; cash payments; high doses/quantities of high-alert controlled substances); *Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy,* 83 FR 10876, 10898 (2018), *pet. for rev. denied,* 789 F. App'x 724 (11th Cir. 2019) (long distances; pattern prescribing; cash payments); *Hills Pharmacy,* 81 FR 49816, 49836–39 (2016) (multiple customers presenting prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting similar prescriptions on the same day; long distances); *The Medicine Shoppe,* 79 FR 59504, 59507, 59512–13 (2014) (unusually large quantity of a controlled substance; pattern prescribing).

[15] Respondent's owner and PIC ''accept[ed] responsibility'' for putting a customer's ID address as the main address in the patient profile instead of the customer's local, Texas, address. Tr. 763–64. While this testimony might sound like an acceptance of responsibility, it is not the requisite acceptance of responsibility required by past Agency decisions. The Agency interprets this testimony as a way for Respondent's owner and PIC to minimize the illegality of Respondent's actions by highlighting that the particular customer was in the military and, for that reason, had multiple addresses, and by stating his ''understanding'' that the customer was ''living locally'' when he presented the controlled substance prescription instead of resolving and documenting the resolution of the red flag. *Id.*

and endemic misunderstanding of Texas and federal law.

Testimony of Respondent's owner and PIC about what he is ''doing differently regarding documentation now,'' given the OSC, may sound like it describes Respondent's proposed remedial measures, but it does not.[16] Tr. 845. The testimony of Respondent's owner and PIC in response to this question starts with his statement that he has ''changed a few things'' with ''rules to go above and beyond what is required.'' *Id.* He testified that, ''in a lot of cases where patients are coming from far,'' he ''will document more than I like to document just so that way the situations like this is prevented,'' elaborating that he told all of his employees that ''what we need is the local address'' noted as the ''primary address.'' [17] Tr. 846–47. This testimony appears to be more indicative of an attempt to avoid law enforcement attention in the future rather than of an accurate understanding of Texas and federal legal requirements, to recognize, resolve, and document the resolution of red flags, and a commitment to comply with them.

In sum, the record supports the imposition of a sanction because Respondent, through its owner and PIC, did not unequivocally accept responsibility and because Respondent, through its owner and PIC, has not convinced the Agency that it can be entrusted with a registration.

The interests of specific and general deterrence weigh in favor of revocation. The testimony of Respondent's owner and PIC repeatedly denied the existence of any legal violations, let alone accepted unequivocal responsibility for them. *See, e.g., supra,* sections II.B., IV.B., and V. Respondent, through its owner and PIC, has not convinced the Agency that it understands that its controlled substance prescription filling fell short of the applicable legal standards and that this substandard controlled substance prescription filling has serious negative ramifications for the health, safety, and medical care of individuals who come to it with controlled substance prescriptions. *See, e.g., Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.''). As such, it is not reasonable to believe that Respondent's future controlled substance prescription filling and recordkeeping will comply with legal requirements. Further, given the foundational nature and vast number of Respondent's violations, a sanction less than revocation would send a message to the existing and prospective registrant community that compliance with the law is not a condition precedent to maintaining a registration.

Accordingly, I shall order the sanction the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. FL2190332 issued to Lewisville Medical Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby deny any pending application of Lewisville Medical Pharmacy to renew or modify this registration, as well as any other pending application of Lewisville Medical Pharmacy for registration in Texas. This Order is effective October 31, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 26, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–21276 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–09–P

[16] In any event, actual remedial measures are insufficient without an unequivocal acceptance of responsibility. *Brenton D. Wynn, M.D.,* 87 FR 24,228, 24,261 (2022); *see also Michael T. Harris, M.D.,* 87 FR 30,276, 30,278 (2022) (collecting Agency decisions).

[17] Respondent's owner and PIC also testified in response to this question that he now documents the ''BMIs'' (body mass indexes) of customers who present phentermine prescriptions to be filled, elaborating ''just so we know on our own that the doctor's doing the right thing and also that the patients really need the medication.'' Tr. 845. He testified that he now will also ask the doctor for the patient's BMI and document it. *Id.* at 845–46. Even if this BMI-related testimony constitutes remedial measures, which it does not, remedial measures are insufficient without an unequivocal acceptance of responsibility.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0006]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Law Enforcement Officers Killed or Assaulted: Extension of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until October 31, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Edward Abraham, Unit Chief, Module D–1, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, phone number 304–625–4830. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Officers Killed or Assaulted (LEOKA)

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: LEOKA Form 1–705. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

City, county, state, tribal, territory and federal law enforcement agencies. Abstract: Under Title 28, U.S. Code 534, Acquisition, Preservation, and Exchange of Identification Records; Appointments of Officials, 1930, this collection requests Law Enforcement Officers Killed or Assaulted data from city, county, state, federal, and tribal law enforcement agencies in order for the FBI's UCR Program to serve as the national clearinghouse for the collection and dissemination of crime data and to publish these statistics in the Law Enforcement Officers Killed or Assaulted (LEOKA) annual publication.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,600 law enforcement agencies within the universe of potential respondents. Due to the recent National Incident-Based Reporting System (NIBRS) transition, the FBI's UCR Program is no longer accepting new monthly submissions for LEOKA data using this clearance but will accept updates to Summary Reporting System submissions for incidents occurring prior to 2021. The submission of updates to past data is strictly voluntary and at the discretion of the contributing agency. Based on current reporting patterns, the FBI's UCR Program has received 64,734 LEOKA update submissions since January 1, 2021, with an estimated response time of 7 minutes per response on this form. As more agencies transition to NIBRS, it is expected that the total number of updates will steadily decline, mainly due to updates being submitted through NIBRS on a more frequent basis. However, due to the need for these updates, the burden hour estimate is based on the most recent submission volumes to achieve the highest possible burden estimate.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 7,552.3 hours, annual burden, associated with this information collection.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: September 26, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–21172 Filed 9–29–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0014]

Proposed Extension of Information Collection; Hazardous Conditions Complaints

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Hazardous Conditions Complaints.

DATES: All comments must be received on or before November 29, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0044.

• *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

• MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Under Section 103(g) of Mine Act, a representative of miners, or any individual miner where there is no representative of miners, may submit a written or oral notification of an alleged violation of the Mine Act or a mandatory standard or that an imminent danger exists. The notifier has the right to obtain an immediate inspection by MSHA. A copy of the notice must be provided to the operator, with individual miner names redacted.

MSHA regulations at 30 CFR 43 implement section 103(g) of the Mine Act. These regulations provide the

procedures for submitting notification of the alleged violation and the actions that MSHA must take after receiving the notice. Although the regulations contain a review procedure (required by section 103(g)(2) of the Mine Act) whereby a miner or a representative of miners may request a review in writing if no citation or order is issued as a result of the original notice, the option is so rarely used that it was not considered in the burden estimates.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Hazardous Conditions Complaints. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Hazardous Conditions Complaints. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0014.

Affected Public: Business or other for-profit.

Number of Respondents: 1,785.

Frequency: On occasion.

Number of Responses: 1,785.

Annual Burden Hours: 357 hours.

Annual Respondent or Recordkeeper Cost: $0.

MSHA Forms: Hazardous Condition Complaint.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-Ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–21231 Filed 9–29–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0016]

Proposed Extension of Information Collection; Ventilation Plan and Main Fan Maintenance Record

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Ventilation Plan and Main Fan Maintenance Record.

DATES: All comments must be received on or before November 29, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0043.
- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Underground mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. A well planned mine ventilation system is necessary to ensure a fresh air supply to miners at all working places, to control the amounts of harmful airborne contaminants in the mine atmosphere, and to dilute possible accumulation of explosive gases.

Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and/or explosions due to a buildup of explosive gases. Inadequate ventilation can be a primary factor for deaths caused by disease of the lungs (*e.g.,* silicosis). In addition, poor working conditions from lack of adequate ventilation contribute to accidents resulting from heat stress, limited visibility, or impaired judgment from contaminants.

30 CFR 57.8520 (Ventilation plan) requires the mine operator to prepare a written plan of the mine ventilation system. The plan is required to be updated at least annually. Upon written request of the District Manager, the plan or revisions must be submitted to MSHA for review and comment.

30 CFR 57.8525 (Main fan maintenance) requires the main ventilation fans for an underground mine must be maintained according to the manufacturer's recommendations or a written periodic schedule. Upon request of an authorized representative of the Secretary, this fan maintenance schedule must be made available for review. The records assure compliance with the standard and may serve as a warning mechanism for possible ventilation problems before they occur.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Ventilation Plan and Main Fan Maintenance Record. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Ventilation Plan and Main Fan Maintenance Record in 30 CFR 57.8520 and 30 CFR 57.8525. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0016.

Affected Public: Business or other for-profit.

Number of Respondents: 232.

Frequency: On occasion.

Number of Responses: 243.

Annual Burden Hours: 5,608 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–21232 Filed 9–29–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0002]

National Advisory Committee on Occupational Safety and Health (NACOSH); Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the NACOSH charter.

SUMMARY: The Secretary of Labor (Secretary) has renewed the charter for NACOSH.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information: Ms. Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2049; email: *long.lisa@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary has renewed the NACOSH charter. The charter will expire two years from its filing date.

Congress established NACOSH in Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a non-discretionary advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the NACOSH charter must be renewed every two years.

The new charter increases the estimated annual operational costs for NACOSH by approximately 3 percent (from $195,840 to $201,715.20).

The new NACOSH charter is available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2022–0002), the federal rulemaking portal. The charter also is available on the NACOSH page on OSHA's web page at *http://www.osha.gov* and at the OSHA Docket Office, N–3653, U.S. Department of Labor, 200 Constitution Avenue NW,

Washington, DC 20210; telephone (202) 693–2350. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at *http://www.facadatabase.gov.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020).

Signed at Washington, DC, on September 26, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–21230 Filed 9–29–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

Minimum Wage for Federal Contracts Covered by Executive Order 14026, Notice of Rate Change in Effect as of January 1, 2023

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 14026, Increasing the Minimum Wage for Federal Contractors (the Executive Order or the order). Beginning on January 1, 2023, the Executive Order 14026 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $16.20 per hour, while the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $13.75 per hour. Similar contracts that were entered into, renewed, or extended prior to January 30, 2022, are generally subject to a lower minimum wage rate established by Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors.

DATES: These new Executive Order 14026 wage rates shall take effect on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Executive Order 14026 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' 86 FR 22835. In relevant part, Executive Order 14026 raised the hourly minimum wage paid by federal contractors to workers performing work on or in connection with certain covered Federal contracts to $15.00 per hour, beginning January 30, 2022, with annual adjustments for inflation thereafter in amounts determined by the Secretary of Labor. *Id.*

Executive Order 14026 directed the Secretary to issue regulations to implement the order's requirements. *See* 86 FR 22836. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a final rule on November 24, 2021, implementing Executive Order 14026. *See* 86 FR 67126. The final regulations, set forth at 29 CFR part 23, established standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 14026.[1]

Executive Order 14026 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2023. *See* 86 FR 22835–36; *see also* 29 CFR 23.10(b)(2), 23.50(a)(2), 23.120(a). Sections 2(a) and (b) of Executive Order 14026 establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 86 FR 22835–36. These provisions, which are implemented in 29 CFR 23.50(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of $0.05.

Section 2(b) of Executive Order 14026 further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 86 FR 22835–36. To calculate the annual percentage increase in the CPI–W, the Department elected in its final rule implementing Executive Order 14026 to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 23.50(b)(2)(iii). Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.5, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the order) with the CPI–W for the preceding year, ''to minimize the impact of seasonal fluctuations on the Executive order minimum wage rate.'' 86 FR 67167.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 14026 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 86 FR 22835; 29 CFR 23.50(a)(2), 23.120(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR

[1] Based on an order issued by the U.S. Court of Appeals for the Tenth Circuit on February 17, 2022, the minimum wage requirements of the final rule implementing Executive Order 14026 are not currently being enforced as to ''contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.'' The final rule's requirements remain in effect for all other contracts subject to the rule.

23.120(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on *https://sam.gov/content/wage-determinations,* or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 23.120(c)(2)(ii)–(iv).

Section 3 of Executive Order 14026 explains the application of the order to tipped workers. 86 FR 22836. It provides that for workers covered by section 2 of the order who are tipped employees pursuant to section 3(t) of the FLSA, 29 U.S.C. 203(t), the cash wage that must be paid by an employer to such workers shall be at least: (i) $10.50 an hour, beginning on January 30, 2022; (ii) beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of $0.05; and (iii) beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the order. 86 FR 22836. Where workers do not receive a sufficient additional amount of tips, when combined with the hourly cash wage paid by the employer, such that their total earnings are equal to the minimum wage under section 2 of the order, section 3 requires that the cash wage paid by the employer be increased such that the workers' total earnings equal the section 2 minimum wage. *Id.* Consistent with applicable law, if the wage required to be paid under the SCA, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the order, the employer must pay additional cash wages sufficient to meet the highest wage required to be paid. 86 FR 22836.

Because Executive Order 14026 is still in its first year of implementation, the Executive Order 14026 minimum wage and the cash wage required for tipped employees are currently at their initial amounts of $15.00 and $10.50 per hour, respectively.[2]

II. The 2023 Executive Order 14026 Minimum Wage Rate

Using the methodology set forth in Executive Order 14026 and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 14026 minimum wage rate. In calculating the annual percentage increase in the CPI–W, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of $0.05.

To determine the Executive Order 14026 minimum wage rate beginning January 1, 2023, the Department therefore calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2022 and the last two quarters of 2021 (*i.e.,* July 2021 through June 2022). This produced an average index level of 277.2779.[3] The Department then compared that data to the average CPI–W for the preceding year—257.0463—which consists of the first two quarters of 2021 and the last two quarters of 2020 (*i.e.,* July 2020 through June 2021). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 7.871 percent ((277.2779 ÷ 257.0463) − 1). The Department then applied that annual percentage increase of 7.871 percent to the current Executive Order 14026 minimum wage ($15.00 per hour), which resulted in an hourly wage rate of $16.181 (($15.00 × 0.07871) + $15.00); however, pursuant to Executive Order 14026, the updated minimum wage rate must be rounded to the nearest multiple of $0.05.

Accordingly, effective January 1, 2023, the new minimum wage rate that must generally be paid to workers performing on or in connection with contracts covered by Executive Order 14026 will be $16.20 per hour. A poster reflecting this new Executive Order 14026 minimum wage rate is set forth at Appendix B.

III. The 2023 Executive Order 14026 Minimum Cash Wage for Tipped Employees

As noted above, section 3 of Executive Order 14026 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. In relevant part, section 3(a)(ii) of the Executive order specifies that, for calendar year 2023, the minimum hourly cash wage for tipped employees shall increase to 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of $0.05. *See* 86 FR 22836; *see also* 29 CFR 23.280(a)(1)(ii). Eighty-five percent of the new Executive Order 14026 minimum wage rate of $16.20 is $13.77 ($16.20 × 0.85). Because the Executive Order provides that the rate must be rounded to the nearest $0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts will—effective on January 1, 2023—be $13.75 per hour.

IV. Appendix

The Appendix to this notice provides a chart of the CPI–W data published by BLS that the Department used to calculate the new Executive Order 14026 minimum wage rate based on the methodology explained herein.

Martin J. Walsh,

Secretary of Labor.

Appendix A: Data Used To Determine Executive Order 14026 Minimum Wage Rate Effective January 1, 2023

Data Source: Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W)

(United States city average, all items, not seasonally adjusted)

[2] Contracts of the same kind as are covered by Executive Order 14026 and that were entered into, renewed, or extended prior to January 30, 2022, are generally subject to Executive Order 13658 and its lower minimum wage requirements. The Executive Order 13658 minimum wage and the cash wage required for tipped employees are currently $11.25 and $7.90 per hour, respectively. *See* 86 FR 51683.

[3] In 1988, the reference base for the CPI–W was changed from 1967=100 to 1982–84=100. The 1982–84 period was chosen to coincide with the updated expenditure weights which were based on the Consumer Expenditure Surveys for the years 1982, 1983 and 1984.

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual average
2020Q3 to 2021Q2	252.636	253.597	254.004	254.076	253.826	254.081	255.296	256.843	258.935	261.237	263.612	266.412	257.0463
2021Q3 to 2022Q2	267.789	268.387	269.086	271.552	273.042	273.925	276.296	278.943	283.176	284.575	288.022	292.542	277.2779
Annual Percentage Increase ..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7.871%

Appendix B: Updated Version of the Executive Order 14026 Poster

BILLING CODE 4510–27–C

WORKER RIGHTS
UNDER EXECUTIVE ORDER 14026

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$16.20 PER HOUR

EFFECTIVE JANUARY 1, 2023 – DECEMBER 31, 2023

The law requires certain employers to display this poster where employees can easily see it.

MINIMUM WAGE Executive Order 14026 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) $15.00 per hour beginning January 30, 2022, and (2) beginning January 1, 2023, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 1, 2023 through December 31, 2023 is $16.20.

TIPS Covered tipped employees must be paid a cash wage of at least $13.75 per hour effective January 1, 2023 through December 31, 2023. If a worker's tips combined with the required cash wage of at least $13.75 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- The EO minimum wage may not apply to some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week.
- The EO minimum wage may not apply to certain other occupations and workers.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing this law. WHD can answer questions about your workplace rights and protections, investigate employers, and recover back wages. All WHD services are free and confidential. Employers cannot retaliate or discriminate against someone who files a complaint or participates in an investigation. WHD will accept a complaint in any language. You can find your nearest WHD office at https://www.dol.gov/whd/local/ or call toll-free 1(866) 4US-WAGE (1-866-487-9243). We do not ask workers about their immigration status. We can help.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations at 29 CFR part 23.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must follow the law that requires the highest rate of pay.
- More information about the EO is available at: www.dol.gov/agencies/whd/government-contracts/eo14026.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/agencies/whd

WH1088 REV 01/23

[FR Doc. 2022–20906 Filed 9–29–22; 8:45 am]
BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

Minimum Wage for Federal Contracts Covered by Executive Order 13658, Notice of Rate Change in Effect as of January 1, 2023

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the order), beginning January 1, 2023. Beginning on that date, the Executive Order 13658 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $12.15 per hour, while the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $8.50 per hour. Covered contracts that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, are generally subject to a higher minimum wage rate established by Executive Order 14026 of April 27, 2021, Increasing the Minimum Wage for Federal Contractors.

DATES: These new Executive Order 13658 rates shall take effect on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

Executive Order 13658 was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to $10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a final rule on October 7, 2014, to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the order.

Executive Order 13658 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of $0.05.

Section 2(b) of Executive Order 13658 further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI–W, the Department elected in the final rule implementing the Executive Order to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In the final rule, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the order) with the CPI–W for the preceding year, ''to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.'' 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 13658 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site;[1] on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)–(iv).

Section 3 of Executive Order 13658 requires contractors to pay tipped employees covered by the order performing on or in connection with covered contracts an hourly cash wage

[1] WDOL.gov has since moved to *https://sam.gov/content/wage-determinations.* This website is the authoritative and single website for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

of at least $4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). The order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. *Id.* When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive Order, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order 13658 minimum wage and the cash wage required for tipped employees are currently $11.25 and $7.90 per hour, respectively. The Department announced these rates on September 15, 2021, and the rates took effect on January 1, 2022. 86 FR 51683

II. Effect of Executive Order 14026

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, Increasing the Minimum Wage for Federal Contractors. 86 FR 22835. Executive Order 14026 establishes a higher hourly minimum wage of $15.00 per hour, beginning on January 30, 2022, and, beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the order. This higher hourly minimum wage applies to the same types of contracts with the Federal Government that are covered by Executive Order 13658. However, Executive Order 14026 only applies to contracts with the Federal Government that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For some amount of time, the Department therefore anticipates that there will be some existing contracts with the Federal Government that do not qualify as a covered ''new contract'' for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658.

The Department anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as ''new'' contracts under Executive Order 14026 and be subject to its higher minimum wage rate. Until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place. Accordingly, the Department will continue announcing annual updates to Executive Order 13658's minimum wage rates for existing contracts still covered by Executive Order 13658.[2]

III. The 2022 Executive Order 13658 Minimum Wage Rate

Using the methodology set forth in Executive Order 13658 and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 13658 minimum wage rate. In calculating the annual percentage increase in the CPI–W, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of $0.05.

In order to determine the Executive Order 13658 minimum wage rate beginning January 1, 2023, the Department calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2022 and the last two quarters of 2021 (*i.e.,* July 2021 through June 2022). This produced an average index level of 277.2779.[3] The Department then compared that data to the average CPI–W for the preceding year—257.0463—which consists of the first two quarters of 2021 and the last two quarters of 2020 (*i.e.,* July 2020 through June 2021). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 7.871 percent ((277.2779 ÷ 257.0463)—1). The Department then applied that annual percentage increase of 7.871 percent to the current Executive Order hourly minimum wage rate of $11.25, which resulted in a wage rate of $12.135 (($11.25 × 0.07871) + $11.25); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of $0.05.

The new Executive Order 13658 minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2023 is therefore $12.15 per hour. A poster reflecting this new Executive Order 13658 minimum wage rate is set forth at Appendix B.

IV. The 2022 Executive Order 13658 Minimum Cash Wage for Tipped Employees

As noted above, section 3 of Executive Order 13658 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order 13658 minimum wage beginning on January 1, 2018 (*i.e.,* $7.25 per hour compared to $10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order 13658 minimum wage. Seventy percent of the new Executive Order 13658 minimum wage rate of $12.15 is $8.505 ($12.15 × 0.70). Because the Executive Order provides that the rate must be rounded to the nearest $0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2023, is therefore $8.50 per hour.

V. Appendix

The Appendix to this notice provides a chart of the CPI–W data published by BLS that the Department used to calculate the new Executive Order

[2] Based on an order issued by the U.S. Court of Appeals for the Tenth Circuit on February 17, 2022, the minimum wage requirements of the final rule implementing Executive Order 14026 are not currently being enforced as to ''contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.'' The final rule's requirements remain in effect for all other contracts subject to the rule.

[3] In 1988, the reference base for the CPI–W was changed from 1967=100 to 1982–84=100. The 1982–84 period was chosen to coincide with the updated expenditure weights which were based on the Consumer Expenditure Surveys for the years 1982, 1983 and 1984.

13658 minimum wage rate based on the methodology explained herein.

Martin J. Walsh,

Secretary of Labor.

Appendix A: Data Used to Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2023

Data Source: Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted).

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual average
2020Q3 to 2021Q2	252.636	253.597	254.004	254.076	253.826	254.081	255.296	256.843	258.935	261.237	263.612	266.412	257.0463
2021Q3 to 2022Q2	267.789	268.387	269.086	271.552	273.042	273.925	276.296	278.943	283.176	284.575	288.022	292.542	277.2779
Annual Percentage Increase													7.871%

Appendix B: Updated Version of the Executive Order 13658 Poster

BILLING CODE 4510–27–P

WORKER RIGHTS
UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$12.15 PER HOUR

EFFECTIVE JANUARY 1, 2023 – DECEMBER 31, 2023

The law requires certain federal contractors to display this poster where employees can easily see it.

MINIMUM WAGE Federal construction and service contracts are generally subject to a minimum wage rate under either Executive Order (EO) 13658 or EO 14026.

- If the contract was entered into on or between January 1, 2015 and January 29, 2022, EO 13658 generally requires that workers be paid at least **$12.15 per hour** for all time spent performing on or in connection with the contract in calendar year 2023.
- If the contract is renewed or extended on or after January 30, 2022, or a new contract is entered into on or after January 30, 2022, EO 14026 generally requires that workers be paid at least **$16.20 per hour** for all time spent performing on or in connection with the contract in calendar year 2023.

EXCLUSIONS

- The EO minimum wage may not apply to some workers who provide support in connection with covered federal contracts for less than 20 percent of their hours worked in a week.
- The EO minimum wage may not apply to certain other occupations and workers.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing this law. WHD can answer questions about your workplace rights and protections, investigate employers, and recover back wages. All WHD services are free and confidential. Employers cannot retaliate or discriminate against someone who files a complaint or participates in an investigation. WHD will accept a complaint in any language. You can find your nearest WHD office at https://www.dol.gov/whd/local/ or call toll-free 1(866) 4US-WAGE (1-866-487-9243). We do not ask workers about their immigration status. We can help.

ADDITIONAL INFORMATION

- Workers with disabilities must be paid at least the EO minimum wage rate for time spent performing on or in connection with covered contracts.
- Some state or local laws may provide greater worker protections and employers must follow the law that requires the highest rate of pay.
- More information about the EO minimum wage is available at: www.dol.gov/whd/flsa/eo13658.

WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

WH1089 REV 01/23

[FR Doc. 2022–20905 Filed 9–29–22; 8:45 am]
BILLING CODE 4510–27–C

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings Notice

DATES AND TIME: Each Wednesday of every month through Fiscal Year 2023 at 2:00 p.m. Changes in date and time will be posted at *www.nlrb.gov.*

PLACE: Meetings will be held via videoconferencing technology. If Board meetings resume in person, the Board will meet in the Board Agenda Room, No. 5065, 1015 Half St. SE, Washington, DC. Any in-person meetings will be noted at *www.nlrb.gov.*

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, 1015 Half Street SE, Washington, DC 20570. Telephone: (202) 273–1940.

Submitted by

Dated: September 28, 2022.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2022–21377 Filed 9–28–22; 11:15 am]
BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Engineering (#1170).

DATE AND TIME:

October 25, 2022; 11:00 a.m.–6:00 p.m. (Eastern)

October 26, 2022; 9:00 a.m.–2:00 p.m. (Eastern)

PLACE: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314/Virtual.

TYPE OF MEETING: Open.

CONTACT PERSONS: Don Millard, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8300.

Additional meeting information, an updated agenda, and registration information will be available on the AC website at *https://www.nsf.gov/eng/advisory.jsp.*

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Tuesday, October 25, 2022; 11:00 a.m.–6:00 p.m. (Eastern)

Directorate for Engineering Report
NSF Budget Update
NSF and the CHIPS and Science Act
Advanced Manufacturing
Engineering Research at Diverse Institutions
Overview of the ENG Office of Emerging Frontiers and Multidisciplinary Activities (EFMA)
Committee of Visitors Report on EFMA
Strategic Recommendations for ENG

Wednesday, October 26, 2022; 9:00 a.m.–2:00 p.m. (Eastern)

Engineering Education and Workforce Training
Preparation for Discussion with the Director's Office
Perspective from the Director's Office
Engineering Research Centers
Strategic Recommendations for ENG

Dated: September 26, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–21190 Filed 9–29–22; 8:45 am]
BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0182, Optional Form 306 (OF 306)

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and Federal agencies that OPM proposes to request the Office of Management and Budget (OMB) renew a previously-approved information collection, Optional Form 306 (OF 306).

DATES: Comments are encouraged and will be accepted until October 31, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The general policy for comments and other submissions from member of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057, or by electronic mail at *SuitEAForms@opm.gov.* Please contact Alexys Stanley at 202–936–2501 if you have questions.

SUPPLEMENTARY INFORMATION: This notice announces that OPM has submitted to OMB a request for renewal of a previously-approved information collection, control number 3206–0182, Optional Form 306 (OF 306). The information collection (OMB No. 3206–0182) was previously published in the **Federal Register** on April 27, 2022 at 87 FR 24885, allowing for a 60-day public comment period. OPM received five comments in response to its request for this collection, which are addressed in the Supplemental Statement of this ICR package. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The OF 306 form is completed by applicants who are under consideration for Federal or Federal contract employment and collects information about an applicant's selective service registration, military service, and general background. The information collected on this form is mainly used to determine a person's acceptability for Federal and Federal contract employment, and that person's retirement status and life insurance enrollment. The information on this form may be used in conducting an investigation to determine a person's suitability or ability to hold a security clearance, and it may be disclosed to authorized officials making similar, subsequent determinations. The OF 306 asks for personal identifying data and information about violations of the law, past convictions, imprisonments, probations, parole, military court martial, delinquency on a Federal debt, Selective Service Registration, United States military service, Federal civilian or military retirement benefits received or applied for, and life insurance enrollment.

A copy of the proposed information collection and the associated instructions is available at *https://www.opm.gov/forms/pdf_fill/of0306.pdf.* OPM is proposing to amend the instructions to better clarify the timing of when an individual may be asked to complete the OF 306. No other changes are proposed. The systems of record notice for this collection is: *https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf.*

Analysis

Agency: Suitability Executive Agent Program, Office of Personnel Management.

Title: Optional Form 306 (OF 306).

OMB Number: 3206–0182.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 315,478.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 78, 870.

Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–21408 Filed 9–29–22; 8:45 am]

BILLING CODE 6325–66–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–141 and CP2022–145; MC2022–142 and CP2022–146]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 4, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–141 and CP2022–145; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 52 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 26, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 4, 2022.

2. *Docket No(s).:* MC2022–142 and CP2022–146; *Filing Title:* USPS Request to Add Priority Mail Contract 763 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 26, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 4, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–21315 Filed 9–29–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95910; File No. SR–CBOE–2022–047]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.6 Concerning the Clearing Editor

September 26, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 6.6. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 6.6. Clearing Editor

(a) No change.

(b) Trading Permit Holders may change the following fields through the Clearing Editor: (1) Executing Firm and Contra Firm; (2) Executing Broker and Contra Broker; (3) CMTA; (4) Account and Sub Account; (5) Client Order ID; (6) Position Effect (open/close); (7) Capacity (if the change is from a customer Capacity code of (C) to any other Capacity code, it must be accompanied by a Reason Code and notice of such change will automatically be sent to the Exchange with the submission of the change through the Clearing Editor); (8) Strategy ID; (9) Frequent Trader ID; (10) Compression Trade ID; [or] (11) ORS ID*; or (12) the MPID for the stock component of a stock-option order the Exchange electronically communicated to a designated broker-dealer (as defined in Rule 5.33(l)), if such broker-dealer systematically supports the change.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Rule 6.6(b). Specifically, the proposed rule change adds a field to the list of specific fields in Rule 6.6(b) that Trading Permit Holders (''TPHs'') may change through the Clearing Editor. The Clearing Editor allows a TPH to update certain information with respect to an executed trade on its trading date for clearing. The Clearing Editor may be used to update certain information entered pursuant to Rule 6.1[5] or to correct certain bona fide errors.[6] Rule 6.6(b) provides the list of fields that a TPH may edit through Clearing Editor. Specifically, Rule 6.6(b) provides that TPHs may change the fields in Clearing Editor in connection with orders executed electronically and in open outcry. Such fields may include: (1) Executing Firm and Contra Firm; (2) Executing Broker and Contra Broker; (3) CMTA; (4) Account and Sub Account; (5) Client Order ID; (6) Position Effect (open/close); (7) Capacity (if the change is from a customer Capacity code of (C) to any other Capacity code, it must be accompanied by a Reason Code[7] and notice of such change will automatically be sent to the Exchange with the submission of the change through the Clearing Editor); (8) Strategy ID; (9) Frequent Trader ID; (10) Compression Trade ID; or (11) ORS ID.[8]

The proposed rule change amends this provision to add the market participant identifier (''MPID'') for the stock component of a stock-option order the Exchange electronically communicated to a designated broker-dealer (as defined in Rule 5.33(l)[9]), if such broker-dealer systematically supports the change[10] as a field that TPHs may change through the Clearing Editor without including a Reason Code. Like the other fields listed in Rule 6.6(b) that do not require a Reason Code or trigger notification to the Exchange, a TPH's MPID for a stock leg does not affect the terms of execution for that stock leg or what is reported to the tape, and instead relates only to noncritical backoffice information. TPHs may currently update this information by reaching out to its designated broker-dealer, which then contacts the Exchange to manually update the information. The proposed rule change streamlines the process for TPHs so they may update it directly and more efficiently using Clearing Editor. The Exchange notes that such changes, like all other changes entered into Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 6.1 describes how TPHs must report transactions to the Exchange (including what information must be included in those reports).

[6] *See* Rule 6.6(a).

[7] Reason Codes include: Input Error, Unmatched Trade, Unknown, Manual Add, Other Text Required, Trade Nullification, Trade Adjustment, Error Account, and System Issue.

[8] Rule 6.6(d) provides that, in addition to the fields listed in paragraph (b), TPHs may change the following fields through the Clearing Editor: (1) Series; (2) Quantity; (3) Buy or Sell; or (4) Price. However, each of these changes must be accompanied by a Reason Code, and notification of these changes will automatically be sent to the Exchange with the submission of the changes through Clearing Editor.

[9] Rule 5.33(l) states that when a TPH submits to the System a stock-option order, it must designate a specific broker-dealer with which it has entered into a brokerage agreement (as described in Rule 5.33, Interpretation and Policy .03 [sic]) to which the Exchange will electronically communicate the stock component of the stock-option order on behalf of the TPH.

[10] Currently, one designated broker-dealer to which the Exchange electronically communicates stock legs of stock-option orders on behalf of TPHs has updated its system and worked with the Exchange to permit TPHs to update stock leg MPIDs in the Exchange's Clearing Editor. To the extent any other designated broker-dealers desire to permit their customers to update the MPIDs for stock legs using Clearing Editor, those broker-dealers could similarly approach the Exchange and complete the appropriate system work to permit these modifications. As otherwise noted in this filing, TPHs may reach out to a designated broker-dealer and request that broker-dealer update the MPID for the stock leg.

Editor, would be captured in the Exchange's audit trail.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in clearing and processing information with respect to securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system, as it will streamline the process TPHs may use to update an additional piece of noncritical backoffice information for purposes of post-trade allocation. As described above, TPHs may currently update the MPIDs associated with stock legs that the Exchange electronically communicates to designated broker-dealers for execution upon entry of a stock-option order using a more onerous, manual process involving multiple parties. The proposed rule change will permit TPHs to update this information directly in Clearing Editor if their designated broker-dealer has updated its system to permit the change, which will reduce their burden when making this post-trade allocation update.

The Exchange further believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it provides the opportunity for any designated broker-dealer to work with the Exchange and update its system to permit that broker-dealer's TPH customers to update the stock leg MPID of stock components of stock-option orders the Exchange electronically communicated to that broker-dealer on behalf of those customers. The Exchange notes that TPHs whose designated broker-dealer does not systematically support changing the MPID for such stock components through Clearing Editor may still contact that broker-dealer and request the broker-dealer change that MPID.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because it would allow all TPHs on behalf of which the Exchange electronically communicates stock legs of stock-option orders to broker-dealers that systematically support the ability to amend MPIDs through Clearing Editor to amend such MPIDs in such a manner. The proposed rule change is intended to reduce the burden on TPHs to make such changes, as the current process is more onerous, indirect, and time-consuming process. The Exchange further believes the proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because it provides the opportunity for any designated broker-dealer to work with the Exchange and update its system to permit that broker-dealer's TPH customers to update the stock leg MPID of stock components of stock-option orders the Exchange electronically communicated to that broker-dealer on behalf of those customers. The Exchange notes that TPHs whose designated broker-dealer does not systematically support changing the MPID for such stock components through Clearing Editor may still contact that broker-dealer and request the broker-dealer change that MPID.

The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition, as it does not address competitive issues or impact how stock-option orders trade. Instead, the proposed rule change relates solely to correction of one additional piece of information post-trade.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange explains that the proposal does not raise any novel issues because ''TPHs may already update their MPIDs for stock legs that the Exchange electronically routes for execution—the proposed rule change merely permits them to do so using Clearing Editor as opposed to a more onerous, multi-party, manual process.'' In other words, the Exchange explains that the proposal merely makes electronic through the Clearing Editor something that TPHs currently can do through other less efficient means.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any novel issues and only provides a simplified way for TPHs to use the clearing editor to change the MPID associated with the stock

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

component of a stock-option order in certain cases. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–047 and should be submitted on or before October 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21196 Filed 9–29–22; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–601, OMB Control No. 3235–0673]

Submission for OMB Review; Comment Request; Extension: Rule 15c3–5

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–5 (17 CFR 240.15c3–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c3–5 under the Exchange Act requires brokers or dealers with access to trading directly on an exchange or alternative trading system (''ATS''), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. Each such broker or dealer is required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. Such regular review is required to be conducted in accordance with written procedures and is required to be documented. The broker or dealer is required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the rule, and that the broker-dealer conducted such review. Such certifications are required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. Compliance with Rule 15c3–5 is mandatory.

Respondents consist of broker-dealers with access to trading directly on an exchange or ATS. The Commission estimates that there are currently 520 respondents. To comply with Rule 15c3–5, these respondents will spend a total of approximately 83,200 hours per year (160 hours per broker-dealer × 520 broker-dealers = 83,200 hours). At an average internal cost per burden hour of approximately $401.89, the resultant total related internal cost of compliance for these respondents is $33,437,040 per year (83,200 burden hours multiplied by approximately $401.89/hour). In addition, for hardware and software expenses, the Commission estimates that the average annual external cost would be approximately $20,500 per broker-dealer, or $10,660,000 in the aggregate ($20,500 per broker-dealer × 520 brokers and dealers = $10,6660,000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 31, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: September 26, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21200 Filed 9–29–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–464, OMB Control No. 3235–0527]

Submission for OMB Review; Comment Request; Extension: Rule 7d–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l-3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension and approval of the collection of information discussed below.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act [3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 4,312 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 216 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 648 offering documents. The staff therefore estimates that 216 respondents would make 648 responses by adding the new disclosure statement to 648 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 108 hours (648 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $49,140 (108

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

[4] 44 U.S.C. 3501–3502.

[5] Investment Company Institute, 2021 Investment Company Fact Book (2021) at 276, tbl. 66, *available at https://www.ici.org/system/files/2021-05/2021_factbook.pdf.* Since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the number of estimated Canadian funds has increased from the last renewal.

hours × $455 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. Responses will not be kept confidential. 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 control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by October 31, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: September 26, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21201 Filed 9–29–22; 8:45 am]

BILLING CODE 8011–01–P

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $455 per hour figure for an Attorney is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013, updated for 2022, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. As discussed in footnote 5, since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the hourly burden has increased from the last renewal.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95909; File No. SR–IEX–2022–07]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 11.270 (Cleary Erroneous Executions)

September 26, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 21, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.270 (Clearly Erroneous Executions). IEX has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend IEX Rule 11.270 (Clearly Erroneous Executions). On September 1, 2022, the Commission approved the proposal of Cboe BZX Exchange, Inc. (''BZX''), to adopt on a permanent basis its pilot program for Clearly Erroneous Executions in BZX Rule 11.17.[8] Based on the BZX approval, the Exchange proposes substantially identical amendments to IEX Rule 11.270 to: (1) limit the circumstances where clearly erroneous review would continue to be available during Regular Market Hours,[9] when the National Market System Plan to Address Extraordinary Market Volatility (the ''LULD Plan'') [10] already provides similar protections for trades occurring at prices that may be deemed erroneous. The Exchange believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent basis,[11] and in light of amendments to the LULD Plan, including changes to the applicable Price Bands [12] around the open and close of trading. Further, the proposed rule change is based on and substantively identical to the recently-approved changes to BZX Rule 11.17. The only differences between this proposed rule change and the BZX rule change are: (i) IEX's Clearly Erroneous Execution rule is not a pilot program,[13] and therefore does not need to be made permanent; (ii) IEX and BZX use different terms to define trading sessions (*i.e.,* the Exchange uses the terms Regular Market Hours, Pre-Market

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] *See* Securities Exchange Act Release No. 95658 (September 1, 2022) (SRCboeBZX–2022–037) (''BZX approval'').

[9] The term ''Regular Market Hours'' or ''Regular Market Session'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* IEX Rule 1.160(gg).

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019). (File No. 4–631) (''Amendment Eighteen'').

[12] ''Price Bands'' refers to the term provided in Section V of the LULD Plan.

[13] IEX's Clearly Erroneous Execution rule has been effective, and not a pilot, since IEX's approval for registration as a national securities exchange in 2016. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222).

Session,[14] and Post-Market Session [15] whereas BZX uses the terms Early Trading Session, Pre-Opening Session, Regular Trading Hours and After Hours Trading Session); and (iii) BZX's clearly erroneous rule proposal included the deletion of different procedures for conducting a clearly erroneous review in initial public offering securities traded pursuant to unlisted trading privileges, while IEX's Clearly Erroneous Execution rule never contained this now-deleted paragraph.

Current Clearly Erroneous Execution Rule

IEX Rule 11.270 currently provides for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduces the ability of the Exchange to deviate from objective standards set forth in the rule.[16] The rule further provides that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security, and before such a trading halt has officially ended according to the primary listing market.[17]

When it originally approved the clearly erroneous pilot of BZX and other exchanges, the Commission explained that the changes were ''being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.'' [18] The clearly erroneous pilot was implemented following a severe disruption in the U.S. equities markets on May 6, 2010 (''Flash Crash'') to ''provide greater transparency and certainty to the process of breaking trades.'' [19] IEX's Clearly Erroneous Execution rule limits the discretion of the Exchange, other national securities exchanges, and Financial Industry Regulatory Authority (''FINRA'') to deviate from the objective standards in their respective rules when dealing with potentially erroneous transactions.

Amendments to the Clearly Erroneous Execution Rules

When the Participants to the LULD Plan filed to introduce the Limit Up-Limit Down (''LULD'') mechanism, itself a response to the Flash Crash, a handful of commenters noted the potential discordance between the clearly erroneous rules and the Price Bands used to limit the price at which trades would be permitted to be executed pursuant to the LULD Plan. For example, two commenters requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be subject to review.[20] While the Participants acknowledged that the potential to prevent clearly erroneous executions would be a ''key benefit'' of the LULD Plan, the Participants decided not to amend the clearly erroneous rules at that time.[21] In the years since, industry feedback has continued to reflect a desire to eliminate the discordance between the LULD mechanism and the clearly erroneous rules so that market participants would have more certainty that trades executed with the Price Bands would stand. For example, the Equity Market Structure Advisory Committee (''EMSAC'') Market Quality Subcommittee included in its April 19, 2016, status report a preliminary recommendation that clearly erroneous rules be amended to conform to the Price Bands—*i.e.,* ''any trade that takes place within the band would stand and not be broken and trades outside the LU/LD bands would be eligible for the consideration of the Clearly Erroneous rules.'' [22]

The Exchange believes that it is important for there to be some mechanism to ensure that investors' orders are either not executed at clearly erroneous prices or are subsequently busted as needed to maintain a fair and orderly market. At the same time, the Exchange believes that the LULD Plan, as amended, would provide sufficient protection for trades executed during Regular Market Hours. Indeed, the LULD mechanism could be considered to offer superior protection as it prevents potentially erroneous trades from being executed in the first instance. After gaining experience with the LULD Plan, the Exchange now believes that it is appropriate to largely eliminate clearly erroneous review during Regular Market Hours when Price Bands are in effect. Thus, as proposed, trades executed within the Price Bands would stand, barring one of a handful of identified scenarios where such review may still be necessary for the protection of investors. The Exchange believes that this change would be beneficial for the U.S. equities markets as it would ensure that trades executed within the Price Bands are subject to clearly erroneous review in only rare circumstances, resulting in greater certainty for Members and investors.

The current LULD mechanism for addressing extraordinary market volatility is available solely during Regular Market Hours. Thus, trades during the Exchange's Pre-Market Session or Post-Market Session would not benefit from this protection and could ultimately be executed at prices that may be considered erroneous. For this reason, the Exchange proposes that transactions executed during the Pre-Market Session or Post-Market Session would continue to be reviewable as clearly erroneous. Continued availability of the clearly erroneous rule during pre- and post-market trading sessions would therefore ensure that investors have appropriate recourse when erroneous trades are executed outside of the hours where similar protection can be provided by the LULD Plan. Further, the proposal is designed to eliminate the potential discordance between clearly erroneous review and LULD Price Bands, which does not exist outside of Regular Trading Hours because the LULD Plan is not in effect. Thus, the Exchange believes that it is appropriate to continue to allow transactions to be eligible for clearly erroneous review if executed outside of Regular Market Hours.

On the other hand, there would be much more limited potential to request that a transaction be reviewed as

[14] The term ''Pre-Market Hours'' or ''Pre-Market Session'' shall mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* IEX Rule 1.160(z).

[15] The term ''Post-Market Hours'' or ''Post-Market Session'' shall mean the time between 4:00 p.m. and 5:00 p.m. Eastern Time. *See* IEX Rule 1.160(aa).

[16] *See* IEX Rule 11.270.

[17] *See* IEX Rule 11.270.

[18] *See e.g.,* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BATS–2010–016).

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (n. 33505). An amendment to the LULD Plan adding IEX as a Participant was filed with the Commission on August 11, 2016, and became effective upon filing pursuant to Rule 608(b)(3)(iii) of the Act. *See* Securities Exchange Act Release No. 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016) (File No. 4–631).

[21] *Id.*

[22] *See* EMSAC Market Quality Subcommittee, Recommendations for Rulemaking on Issues of Market Quality (November 29, 2016), available at *https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemakingmarket-quality.pdf.*

potentially erroneous during Regular Market Hours. With the introduction of the LULD mechanism in 2013, clearly erroneous trades are largely prevented by the requirement that trades be executed within the Price Bands. In addition, in 2019, Amendment Eighteen to the LULD Plan eliminated double-wide Price Bands: (1) at the Open, and (2) at the Close for Tier 2 NMS Stocks 2 with a Reference Price above $3.00.[23] Due to these changes, the Exchange believes that the Price Bands would provide sufficient protection to investor orders such that clearly erroneous review would no longer be necessary during Regular Market Hours. As the Participants to the LULD Plan explained in Amendment Eighteen: ''Broadly, the Limit Up-Limit Down mechanism prevents trades from happening at prices where one party to the trade would be considered 'aggrieved,' and thus could be viewed as an appropriate mechanism to supplant clearly erroneous rules.'' While the Participants also expressed concern that the Price Bands might be too wide to afford meaningful protection around the open and close of trading, amendments to the LULD Plan adopted in Amendment Eighteen narrowed Price Bands at these times in a manner that the Exchange believes is sufficient to ensure that investors' orders would be appropriately protected in the absence of clearly erroneous review. The Exchange therefore believes that it is appropriate to rely on the LULD mechanism as the primary means of preventing clearly erroneous trades during Regular Market Hours.

At the same time, the Exchange is cognizant that there may be limited circumstances where clearly erroneous review may continue to be appropriate, even during Regular Market Hours. Thus, the Exchange proposes to amend its clearly erroneous rules to enumerate the specific circumstances where such review would remain available during the course of Regular Market Hours, as follows. All transactions that fall outside of these specific enumerated exceptions would be ineligible for clearly erroneous review.

First, pursuant to proposed paragraph (c)(1)(A), a transaction executed during Regular Market Hours would continue to be eligible for clearly erroneous review if the transaction is not subject to the LULD Plan. In such case, the Numerical Guidelines set forth in paragraph (c)(2) of Rule 11.270 will be applicable to such NMS Stock. While the majority of securities traded on the Exchange would be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and would therefore be eligible for clearly erroneous review instead.[24] Similarly, there are instances, such as the opening auction on the primary listing market,[25] where transactions are not ordinarily subject to the LULD Plan, or circumstances where a transaction that ordinarily would have been subject to the LULD Plan is not—due, for example, to some issue with processing the Price Bands. These transactions would continue to be eligible for clearly erroneous review, effectively ensuring that such review remains available as a backstop when the LULD Plan would not prevent executions from occurring at erroneous prices in the first instance.

Second, investors would also continue to be able to request review of transactions that resulted from certain systems issues pursuant to proposed paragraph (c)(1)(B). This limited exception would help to ensure that trades that should not have been executed would continue to be subject to clearly erroneous review. Specifically, as proposed, transactions executed during Regular Market Hours would be eligible for clearly erroneous review pursuant to proposed paragraph (c)(1)(B) if the transaction is the result of an Exchange technology or systems issue that results in the transaction occurring outside of the applicable LULD Price Bands pursuant to Rule 11.270(g). A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in paragraph (d) of this Rule, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (''Percentage Parameters'').

Third, the Exchange proposes to narrowly allow for the review of transactions during Regular Market Hours when the Reference Price, described in proposed paragraph (d), is determined to be erroneous by an Officer of the Exchange. Specifically, a transaction executed during Regular Market Hours would be eligible for clearly erroneous review pursuant to proposed paragraph (c)(1)(C) if the transaction involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction,[26] a Reference Price that is determined to be erroneous by an Officer of the Exchange because it clearly deviated from the theoretical value of the security. In such circumstances, the Exchange may use a different Reference Price pursuant to proposed paragraph (d)(2) of this Rule. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in paragraph (d)(2) below, by an amount that equals or exceeds the applicable Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan. Specifically, the Percentage Parameters would apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in paragraph (c)(1)(A).

In the context of a corporate action or a new issue, there may be instances where the security's Reference Price is later determined by the Exchange to be erroneous (*e.g.,* because of a bad first trade for a new issue), and subsequent LULD Price Bands are calculated from that incorrect Reference Price. In determining whether the Reference Price is erroneous in such instances, the Exchange would generally look to see if such Reference Price clearly deviated from the theoretical value of the security. In such cases, the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing.[27] In the foregoing instances, the theoretical value of the security would be used as the new Reference Price when applying the Percentage Parameters under the LULD Plan (or Numerical Guidelines if the transaction is in an NMS Stock that

[23] *See* Amendment Eighteen, *supra,* note 11.

[24] *See* Appendix A of the LULD Plan.

[25] The initial Reference Price used to calculate Price Bands is typically set by the Opening Price on the primary listing market. *See* Section V(B) of the LULD Plan.

[26] The Exchange notes that the ''resumption of trading without an auction'' provision of the proposed rule text applies only to securities that enter a Trading Pause pursuant to LULD and does not apply to a corporate action or new issue.

[27] Using transaction data reported to the FINRA OTC Reporting Facility, FINRA disseminates via the Trade Data Dissemination Service a final closing report for OTC equity securities for each business day that includes, among other things, each security's closing last sale price.

is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.

The following illustrate the proposed application of the rule in the context of a corporate action or new issue:

Example 1

1. ABCD is subject to a corporate action, 1 for 10 reverse split, and the previous day close was $5, but the new theoretical price based on the terms of the corporate action is $50.
2. The security opens at $5, with LULD bands at $4.50 × $5.50
3. The bands will be calculated correctly but the security is trading at an erroneous price based on the valuation of the remaining outstanding shares
4. The theoretical price of $50 would be used as the new Reference Price when applying LULD bands to determine if executions would be cancelled as clearly erroneous

Example 2

1. ABCD is subject to a corporate action, the company is doing a spin off where a new issue will be listed, BCDE. ABCD trades at $50, and the spinoff company is worth ⅕ of ABCD
2. BCDE opens at $50 in the belief it is the same company as ABCD
3. The theoretical values of the two companies are ABCD $40 and BCDE $10
4. BCDE would be deemed to have had an incorrect Reference Price and the theoretical value of $10 would be used as the new Reference Price when applying the LULD Bands to determine if executions would be cancelled as clearly erroneous

Example 3

1. ABCD is an uplift from the OTC market, the prior days close on the OTC market was $20
2. ABCD opens trading on the new listing exchange at $0.20 due to an erroneous order entry
3. The new Reference Price to determine clearly erroneous executions would be $20, the theoretical value of the stock from where it was last traded

In the context of the rare situation in which a security that enters a LULD Trading Pause and resumes trading without an auction (*i.e.,* reopens with quotations), the LULD Plan requires that the new Reference Price in this instance be established by using the mid-point of the best bid and offer (''BBO'') on the primary listing exchange at the reopening time.[28] This can result in a Reference Price and subsequent LULD Price Band calculation that is significantly away from the security's last traded or more relevant price, especially in less liquid names. In such rare instances, the Exchange is proposing to use a different Reference Price that is based on the prior LULD Band that triggered the Trading Pause, rather than the midpoint of the BBO.

The following example illustrates the proposed application of the rule in the context of a security that reopens without an auction:

Example 4

1. ABCD stock is trading at $20, with LULD Bands at $18 × $22
2. An incoming buy order causes the stock to enter a Limit State Trading Pause and then a Trading Pause at $22
3. During the Trading Pause, the buy order causing the Trading Pause is cancelled
4. At the end of the 5-minute halt, there is no crossed interest for an auction to occur, thus trading would resume on a quote
5. Upon resumption, a quote that was available prior to the Trading Pause (*e.g.,* a quote was resting on the book prior to the Trading Pause), is widely set at $10 × $90
6. The Reference Price upon resumption is $50 (mid-point of BBO)
7. The SIP will use this Reference Price and publish LULD Bands of $45 × $55 (*i.e.,* far away from BBO prior to the halt)
8. The bands will be calculated correctly, but the $50 Reference Price is subsequently determined to be incorrect as the price clearly deviated from where it previously traded prior to the Trading Pause
9. The new Reference Price would be $22 (*i.e.,* the last effective Price Band that was in a limit state before the Trading Pause), and the LULD Bands would be applied to determine if the executions should be cancelled as clearly erroneous

In all of the foregoing situations, investors would be left with no remedy to request clearly erroneous review without the proposed carveouts in paragraph (c)(1)(C) because the trades occurred within the LULD Price Bands (albeit LULD Price Bands that were calculated from an erroneous Reference Price). The Exchange believes that removing the current ability for the Exchange to review in these narrow circumstances would lessen investor protections.

Numerical Guidelines

Today, paragraph (c)(1) defines the Numerical Guidelines that are used to determine if a transaction is deemed clearly erroneous during Regular Market Hours, or during the Pre-Market Session and Post-Market Session. With respect to Regular Trading Hours, trades are generally deemed clearly erroneous if the execution price differs from the Reference Price (*i.e.,* last sale) by 10% if the Reference Price is greater than $0.00 up to and including $25.00; 5% if the Reference Price is greater than $25.00 up to and including $50.00; and 3% if the Reference Price is greater than $50.00. Wider parameters are also used for reviews for Multi-Stock Events, as described in paragraph (c)(2). With respect to transactions in Leveraged ETF/ETN securities executed during Regular Market Hours, Pre-Market Session and Post-Market Session, trades are deemed clearly erroneous if the execution price exceeds the Regular Market Hours Numerical Guidelines multiplied by the leverage multiplier.

Given the changes described in this proposed rule change, the Exchange proposes to amend the way that the Numerical Guidelines are calculated during Regular Trading Hours in the handful of instances where clearly erroneous review would continue to be available. Specifically, the Exchange would base these Numerical Guidelines, as applied to the circumstances described in paragraph (c)(1)(A), on the Percentage Parameters used to calculate Price Bands, as set forth in Appendix A to the LULD Plan. Without this change, a transaction that would otherwise stand if Price Bands were properly applied to the transaction may end up being subject to review and deemed clearly erroneous solely due to the fact that the Price Bands were not available due to a systems or other issue. The Exchange believes that it makes more sense to instead base the Price Bands on the same parameters as would otherwise determine whether the trade would have been allowed to execute within the Price Bands. The Exchange also proposes to modify the Numerical Guidelines applicable to leveraged ETF/ETN securities during Regular Trading Hours. As noted above, the Numerical Guidelines will only be applicable to transactions eligible for review pursuant paragraph (c)(1)(A) (*i.e.,* to NMS Stocks that are not subject to the LULD Plan). As leveraged ETF/ETN securities are subject to LULD and thus the Percentage Parameters will be applicable during Regular Market Hours, the Exchange proposes to eliminate the Numerical Guidelines for leveraged ETF/ETN

[28] *See* LULD Plan, Section I(U) and V(C)(1).

securities traded during Regular Market Hours. However, as no Price Bands are available outside of Regular Market Hours, the Exchange proposes to keep the existing Numerical Guidelines in place for transactions in leveraged ETF/ETN securities that occur during the Pre-Market Session and Post-Market Session. The Exchange also proposes to move existing paragraphs (c)(2), (c)(3), and (d) to proposed paragraph (c)(2)(B), (c)(2)(C), and (c)(2)(D), respectively, as Multi-Stock Events, Additional Factors, and Outlier Transactions will only be subject to review if those NMS Stocks are not subject to the LULD Plan or occur during the Pre-Market Session and Post-Market Session. Proposed paragraph (c)(2)(B) is substantially similar to existing paragraph (c)(2) except for a change in rule reference to paragraph (c)(1) has been updated to paragraph (c)(1)(A). Further, given the proposal to move existing paragraph (c)(2) to paragraph (c)(2)(B), the Exchange also proposes to amend applicable rule references throughout paragraph (c)(2)(A). Finally, the Exchange proposes to update applicable rule references in paragraph (c)(2)(D) based on the above-described structural changes to Rule 11.270.

Reference Price

As proposed, the Reference Price used would continue to be based on last sale and would be memorialized in proposed paragraph (d). Continuing to use the last sale as the Reference Price is necessary for operational efficiency as it may not be possible to perform a timely clearly erroneous review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. While this means that there would still be some differences between the Price Bands and the clearly erroneous parameters, the Exchange believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. The Exchange also proposes to allow for an alternate Reference Price to be used as prescribed in proposed paragraphs (d)(1), (2), and (3). Specifically, the Reference Price may be a value other than the consolidated last sale immediately prior to the execution(s) under review (1) in the case of Multi-Stock Events involving twenty or more securities, as described in paragraph (c)(2)(B) above, (2) in the case of an erroneous Reference Price, as described in paragraph (c)(1)(C) above,[29] or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred during Pre-Market Session or Post-Market Session or the execution(s) are eligible for review pursuant to paragraph (c)(1)(A).

Appeals

As described more fully below, the Exchange proposes to eliminate paragraph (f), System Disruption or Malfunction. Accordingly, the Exchange proposes to remove from paragraph (e)(2), Appeals, each reference to paragraph (f), and include language referencing proposed paragraph (g), Transactions Occurring Outside of the LULD Bands.

System Disruption or Malfunction

To conform with the structural changes described above, the Exchange now proposes to remove paragraph 11.270(f), System Disruption or Malfunction, and proposes new paragraph (c)(1)(B). Specifically, as described in paragraph (c)(1)(B), transactions occurring during Regular Market Hours that are executed outside of the LULD Price Bands due to an Exchange technology or system issue, may be subject to clearly erroneous review pursuant to proposed paragraph 11.270(g). Proposed paragraph 11.270(c)(1)(B) further provides that a transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in paragraph (d), by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan.

The Exchange also proposes to renumber paragraph (g) to paragraph (f) based on the proposal to eliminate existing paragraph (f).

Securities Subject to Limit Up-Limit Down Plan

The Exchange proposes to renumber paragraph (h) to paragraph (g) based on the proposal to eliminate existing paragraph (f), and to rename the paragraph to provide for transactions occurring outside of LULD Price Bands. Given that proposed paragraph (c)(1) defines the LULD Plan, the Exchange also proposes to eliminate redundant language from proposed paragraph (h). Finally, the Exchange also proposes to update references to the LULD Plan and Price Bands so that they are uniform throughout the Rule and to update rule references throughout the paragraph to conform to the structural changes to the Rule described above.

Multi-Day Event and Trading Halts

The Exchange proposes to renumber paragraphs (i) and (j) to paragraphs (h) and (i), respectively, based on the proposal to eliminate existing paragraph (f). Additionally, the Exchange proposes to modify the text of both paragraphs to reference the Percentage Parameters as well as the Numerical Guidelines. Specifically, the existing text of proposed paragraphs (h) and (i) provides that any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. The Exchange proposes to amend the rule text to provide that any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule, with the Percentage Parameters being applicable to an NMS Stock subject to the LULD Plan and the Numerical Guidelines being applicable to an NMS Stock not subject to the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[30] in general, and Section 6(b)(5) of the Act,[31] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

As explained in the Purpose section, the SROs that are part of the clearly erroneous execution pilot believe that the pilot has successfully ensured that

[29] As discussed above, in the case of (c)(1)(C)(1), the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing. In the case of (c)(1)(C)(2), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

such reviews are conducted based on objective and consistent standards across SROs and has therefore afforded greater certainty to Members and investors. IEX agrees with such beliefs with respect to IEX Rule 11.270. IEX understands that the SROs that are part of the clearly erroneous execution pilot will file largely identical proposals to make their respective clearly erroneous pilots permanent. The Exchange therefore believes that the proposed rule change would promote transparency and uniformity across markets concerning review of transactions as clearly erroneous and would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest.

Similarly, the Exchange believes that it is consistent with just and equitable principles of trade to limit the availability of clearly erroneous review during Regular Market Hours. The LULD Plan was approved by the Commission to operate on a permanent rather than pilot basis. As a number of market participants have noted, the LULD Plan provides protections that ensure that investors' orders are not executed at prices that may be considered clearly erroneous. Further, amendments to the LULD Plan approved in Amendment Eighteen serve to ensure that the Price Bands established by the LULD Plan are ''appropriately tailored to prevent trades that are so far from current market prices that they would be viewed as having been executed in error.'' [32] Thus, the Exchange believes that clearly erroneous review should only be necessary in very limited circumstances during Regular Market Hours. Specifically, such review would only be necessary in instances where a transaction was not subject to the LULD Plan, or was the result of some form of systems issue, as detailed in the purpose section of this proposed rule change. Additionally, in narrow circumstances where the transaction was subject to the LULD Plan, a clearly erroneous review would be available in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to LULD and resumes trading without an auction, where the Reference Price is determined to be erroneous by an Officer of the Exchange because it clearly deviated from the theoretical value of the security. Thus, eliminating clearly erroneous review in all other instances will serve to increase certainty for Members and investors that trades executed during Regular Market Hours would typically stand and would not be subject to review.

Given the fact that clearly erroneous review would largely be limited to transactions that were not subject to the LULD Plan, the Exchange also believes that it is necessary to change the parameters used to determine whether a trade is clearly erroneous. Specifically, due to the different parameters currently used for clearly erroneous review and for determining Price Bands, it is possible that a trade that would have been permitted to execute within the Price Bands would later be deemed clearly erroneous, if, for example, a systems issue prevented the dissemination of the Price Bands. The Exchange believes that this result is contrary to the principle that trades within the Price Bands should stand, and has the potential to cause investor confusion if trades that are properly executed within the applicable parameters described in the LULD Plan are later deemed erroneous. By using consistent parameters for clearly erroneous reviews conducted during Regular Market Hours and the calculation of the Price Bands, the Exchange believes that this change would also serve to promote greater certainty with regards to when trades may be deemed erroneous.

Finally, the proposed rule changes make organizational updates to the Exchange's Clearly Erroneous Execution Rule as well as minor updates and corrections to the Rule to improve readability and clarity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while also amending those rules to provide greater certainty to Members and investors that trades will stand if executed during Regular Market Hours where the LULD Plan provides adequate protection against trading at erroneous prices. The Exchange understands that the SROs that are part of the clearly erroneous execution pilot will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [35] and subparagraph (f)(6) of Rule 19b–4 thereunder.[36]

A proposed rule change filed under Rule 19b–4(f)(6) [37] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [38] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative on October 1, 2022. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to coordinate its implementation of the revised clearly erroneous execution rules with the other national securities exchanges and FINRA, and will help ensure consistency across the SROs.[39] For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[40]

[32] *See* Amendment Eighteen, *supra* note 11.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6).

[38] 17 CFR 240.19b–4(f)(6)(iii).

[39] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[40] For purposes only of waiving the 30-day operative delay, the Commission has also

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2022–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2022–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2022–07 and should be submitted on or before October 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21194 Filed 9–29–22; 8:45 am]

BILLING CODE 8011–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11875]

Notice of Determinations; 43 Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Lives of the Gods: Divinity in Maya Art'' Exhibition

SUMMARY: On July 27, 2021, notice was published on page 40225 of the **Federal Register** (volume 86, number 141) of determinations pertaining to certain objects to be included in an exhibition entitled ''Lives of the Gods: Divinity in Maya Art.'' Notice is hereby given of the following determinations: I hereby determine that 43 additional objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at The Metropolitan Museum of Art, New York, New York; the Kimbell Art Museum, Fort Worth, Texas; 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: Elliot Chiu, Attorney-Adviser, 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. 2022–21241 Filed 9–29–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 533]

Delegation of Authority; Designation of Other Incidents for Definition of Qualifying Injury

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and § 901 of the Further Consolidated Appropriations Act, 2020 (Div. J, Title IX, Pub. L. 116–94), as amended (the Act), and codified in 22 U.S.C. 2680b, I hereby delegate to the Under Secretary of State for Management, to the extent authorized by law, the authority to designate ''other incidents'' for purposes of the definition of ''qualifying injury'', as provided in subsections (e)(4)(A)(ii) and (B)(ii) and (i)(1)(d) of § 901, as amended (22 U.S.C. 2680b(e)(4); 22 U.S.C. 2680b(i)(1)).

Any act, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, regulation, or procedure as amended from time to time.

The Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources, may also exercise the authorities delegated herein. Nothing in this delegation shall be deemed to supersede or otherwise affect any other delegation of authority.

This document shall be published in the **Federal Register**.

Dated: September 20, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–21211 Filed 9–29–22; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 11869]

30-Day Notice of Proposed Information Collection: Nonimmigrant Treaty Trader/Investor Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to October 31, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham who may be reached at *PRA_BurdenComments@state.gov* or at 202–485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application.
- *OMB Control Number:* 1405–0101.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–156E.
- *Respondents:* Applicants for E nonimmigrant treaty trader/investor visas.
- *Estimated Number of Respondents:* 50,000.
- *Estimated Number of Responses:* 50,000.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 200,000.
- *Frequency:* Once per application.
- *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

Section 101(a)(15)(E) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(E), provides for the nonimmigrant classification of a national of a country with which the United States maintains an appropriate treaty of commerce and navigation who is coming to the United States to: (i) carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country; or (ii) develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing a substantial amount of capital. The Department requires all E–1 treaty trader visa applicants and E–2 treaty investor applicants, if the applicant is an Executive, Manager, or Essential Employee, to submit Form DS–156E, which collects information necessary to determine an applicant's qualifications and eligibility for such a visa.

Methodology

After completing Form DS–160, Online Nonimmigrant Visa Application, applicants will complete the DS–156E online, print the form, and submit it in person or via mail.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–21199 Filed 9–29–22; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0011]

Cancellation of Public Hearing Concerning Russia's Implementation of Its WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Cancellation of public hearing.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) sought public comments to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the World Trade Organization (WTO). USTR is cancelling the virtual public hearing on Russia's compliance with its WTO commitments that was scheduled to take place on October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Betsy Hafner, Deputy Assistant U.S. Trade Representative for Russia and Eurasia, at *Elizabeth_Hafner@ustr.eop.gov* or (202) 395–9124.

SUPPLEMENTARY INFORMATION: On August 24, 2022, the TPSC sought public comments to assist USTR in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the WTO. *See* 87 FR 52102 (Aug 24, 2022). The notice included a September 21, 2022 deadline for the submission of written comments and requests to testify at a virtual public hearing that was scheduled to take place on October 4, 2022. In response to the request for comments, USTR received four submissions, but did not receive any requests to participate in a virtual public hearing. Therefore, USTR is cancelling the October 4, 2022 virtual public hearing.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2022–21283 Filed 9–29–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cargo Fire Safety website Updates; Notice of Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is announcing a notice to form a task group to make input to any future edits to the Cargo Fire Safety website at the upcoming meetings of the International Aircraft Systems Fire Protection (IASFP) Forum (83 FR39149). Topics are related to cargo fire safety and include website architecture, hazards, operational risks, and mitigations. This notification provides details of where to find the date and location for the upcoming meeting.

DATES: The kickoff meeting will be held on Tuesday, October 18, 2022. Cargo Safety website Task Group: 12 p.m.—1:30 p.m.; Point of Contact: Dhaval Dadia.

ADDRESSES: The kickoff task group meeting will be held at the Tenth Triennial International Fire & Cabin Safety Research Conference this year followed with meetings twice a year at the IASFP Forum meetings.

The meeting dates and locations are determined based upon the availability of host organizations to provide meeting space. The cargo safety task group website (*www.fire.tc.faa.gov/cargosafety/taskgroup*) contains all information for upcoming meetings and meeting registration. The meetings are open to the public but due to limited capacity, registration is mandatory.

FOR FURTHER INFORMATION CONTACT: April Horner, Meeting Coordinator, William J. Hughes Technical Center, Building 287, Atlantic City International Airport, NJ 08405, telephone: (609) 485–4471, email: *april.ctr.horner@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Advisory Circular (AC) 120–121: ''Safety Risk Management Involving Items in Aircraft Cargo Compartments'' provides guidance in performing a safety risk assessment, as part of Safety Risk Management (SRM), associated with the transport of various types of items in the aircraft cargo compartment and the value of considering the inherent hazardous properties of these items. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further details of the AC are available at *https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1040260.*

A cargo fire safety website provides research driven information to the public regarding the hazards, operational risks, and mitigation strategies of the various types of hazardous materials shipped on aircraft. The website is referenced in Advisory Circular (AC) 120–121. The website is available at *https://www.fire.tc.faa.gov/cargosafety.*

The website was created to provide research driven information to the public, mainly shipping operations and aircraft operators, in order to make informed decisions while transporting hazardous materials. Aircraft operators that transport hazardous materials may have to develop safety risk assessments as part of Safety Risk Management (SRM) and can use the information on the website to make informed decisions.

It is the desire of the FAA to organize the task group in a way that is most productive and efficient to the various stakeholders interested in participating and giving feedback on the various elements of the website. The main areas that FAA is looking to receive comment and feedback on are: Architecture, Mitigations, Hazards, and Operational Risks.

Before any edits are made to the website, the task group will provide data supporting the modifications, and the FAA will review and accept the data. The task group will be looking for comments to add to the information available on the website.

Detailed agenda information will be posted on the cargo safety task group website address listed in the **SUMMARY** section at least one week in advance of the meeting.

Attendance at the Upcoming Meetings

Interested persons may attend the meeting. Because seating is limited, if you plan to attend please register in advance on the FAA Fire Safety Branch website (*https://www.fire.tc.faa.gov*) so that adequate meeting space may be made to accommodate attendees.

Record of the Meeting

A meeting summary for the task group meetings will be posted on the FAA Fire Safety Branch website (*www.fire.tc.faa.gov/cargosafety/taskgroup*) after the conclusion of the meeting.

Dhaval Dadia,

Research Engineer, Fire Safety Branch, ANG–E211.

[FR Doc. 2022–21189 Filed 9–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0175]

Hours of Service of Drivers: National Propane Gas Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Propane Gas Association (NPGA) for an exemption to waive various hours-of-service (HOS) requirements to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers in anticipation of, during, and to recover from emergency conditions. NPGA requests that the exemption apply on a per-driver, per-route basis, and that each company that elects to utilize it must maintain appropriate documentation to demonstrate the presence of peak consumer demand conditions within the scope of the exemption. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before October 31, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0175 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0175) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy heading below.

Docket: For access to the docket to read background documents or

comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14 –FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366–2722 or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0175), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2022–0175'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

The National Propane Gas Association (NPGA) requests a five-year exemption for its member company drivers to extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours; to extend the 11-hour driving period in § 395.3(a)(3) to no more than 14 hours, following 10 consecutive hours off duty; to waive the 60- and 70-hour rules in § 395.3(b) for a period of no more than six consecutive days; and a period of six consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours. The exemption request is made in order to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers.

NPGA is the national trade association of the propane industry with a membership of nearly 2,500 companies and 36 State and regional associations representing members in all 50 States. Their membership includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. NPGA's petition states that, as a result of various consumer needs, long- and short-haul propane drivers often reach the maximum operating hours-of-service (HOS) ''weekly'' limits within three or four days, and subsequently, operations experience reductions in available drivers while consumer demand continues. According to NPGA, the purpose of their request is to efficiently and safely prepare and serve residential, commercial, and agricultural consumers ahead of and during peak consumption periods. To clearly define the ''scope'' in its application, NPGA provides a brief outline of the terms and conditions to apply to those individuals providing propane services for periods of peak consumer demand.

A copy of NPGA's application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on NPGA's application for an exemption from various HOS requirements in 49 CFR 395.3 (a)—(c). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–21242 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2019–0093]

Deepwater Port License Application: Texas GulfLink, LLC—Supplemental Draft Environmental Impact Statement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of availability; notice of virtual public meeting; request for comments.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce the availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Texas GulfLink LLC (GulfLink) deepwater port license application for the export of crude oil from the United States to nations abroad. The GulfLink deepwater port license application describes a proposed project that would be located approximately 26.6 nautical miles off the coast of Brazoria County, Texas. Publication of this notice begins a 45-day comment period, (1) requests public participation in the environmental impact review process, (2) provides information on how to participate in the environmental impact review process, and (3) announces the availability of an informational Virtual Open House website (Virtual Room), and a Virtual Public Meeting that will be held via Zoom. Registration information is provided in the *Virtual Public Meeting and Virtual Open House website (Virtual Room)* section of this notice.

DATES: Comments on the SDEIS must be received on or before 45 days from the date of publication of this **Federal Register** Notice. MARAD and USCG will hold one Virtual Public Meeting in connection with the GulfLink SDEIS. This Virtual Public Meeting will be held via Zoom on October 18, 2022, from 6 p.m. to 8 p.m. Central Daylight Time (CDT). The Virtual Public Meeting will end no earlier than 8 p.m. CDT, but it may end later than the stated time, depending on the number of persons who wish to comment on the record. Anyone interested in attending or speaking during the Virtual Public Meeting must register in advance. Additionally, materials submitted in response to this request for comments on the SDEIS must be submitted to the *https://www.regulations.gov* website or the Federal Docket Management Facility as detailed in the **ADDRESSES** section below by the end of the comment period.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0093 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* search MARAD–2019–0093 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* The Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2019–0093, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. Due to flexible work schedules in response to COVID–19, call 202–493–0402 to determine facility hours prior to hand delivery.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, and/or a telephone number on a cover page, so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *https://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled ''PUBLIC PARTICIPATION.''

Contact USCG via email at *DeepwaterPorts@uscg.mil* and MARAD via email at *GulfLink_EIS@dot.gov*. Include ''MARAD–2019–0093'' in the subject line of the message. The purpose of providing the email contact information is to offer the public the opportunity to obtain answers related to the Virtual Public Meeting. This email will not be relied on for the intake of comments on the GulfLink deepwater port license application. To submit written comments and other material submissions, please follow the directions above.

SUPPLEMENTARY INFORMATION:

Prior Federal Actions

A Notice of Application that summarized the GulfLink Deepwater Port License Application was published in the **Federal Register** on June 26, 2019 (84 FR 30298–30300). A Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Public Scoping Meeting was published in the **Federal Register** on July 3, 2019 (84 FR 32008–32010). A Notice of Availability of the Draft Environmental Impact Statement (DEIS) and Notice of Public Meeting was published in the **Federal Register** on November 27, 2020 (85 FR 76157–76159). A Notice of Availability and Notice of Virtual Public Meeting was published in the **Federal Register** on September 24, 2021 (86 FR 53144–53147).

Request for Comments

We request public comments or other relevant information related to the SDEIS for the proposed GulfLink deepwater port. These comments will inform the environmental review of the proposed GulfLink project. We encourage you to review the information on the website and attend the Virtual Public Meeting. Also, you may submit comments electronically. It is preferred that comments be submitted electronically. Please see the information in the **ADDRESSES** section above on how to properly submit comments. All comments submitted to the docket via *https://www.regulations.gov* or delivered to the Federal Docket Management Facility will be posted, without change, to the Federal Docket Management Facility website (*https://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting such information makes it public. You may view docket submissions at the DOT Docket Management Facility or electronically at the *https://www.regulations.gov* website.

Virtual Public Meeting and Virtual Open House Website

You are invited to learn about the proposed GulfLink deepwater port via the informational website *https://tgldwp.consultation.ai*. You are also invited to attend the Virtual Public Meeting and encouraged to provide comments to the DOT GulfLink Docket on the proposed action and the environmental impact analysis contained in the SDEIS for the proposed GulfLink deepwater port. Speakers must register for the Virtual Public Meeting via the informational website. When registering, please indicate if you would like the opportunity to provide a live comment during the meeting or if you are participating to listen only.

If you need help registering, have questions on how to register, or would like to register by telephone, please contact 833–588–1191 and leave a voice mail message. This line is not a manned phone line; however, the voice mail box is checked at regular intervals on weekdays (between the hours of 8 a.m. to 5 p.m. Eastern Standard Time). Therefore, if you leave your full name with the correct spelling and your phone number after the tone, then a project team member will return your call and provide direct assistance.

During the Virtual Public Meeting, speakers will be recognized in the following order: elected officials, public agency representatives, and then individuals or groups in the order in which they registered. In order to accommodate all speakers, speaker time may be limited, meeting hours may be extended, or both. Speakers' transcribed remarks will be included in the public

docket. You may also submit written material for inclusion in the public docket. Written material must include the author's name. We ask attendees to respect the meeting procedures in order to ensure a constructive information-gathering session. The presiding officer will use his/her discretion to conduct the meeting in an orderly manner.

The Virtual Public Meeting will be conducted in English; however, translation services will be provided in Spanish. Virtual Public Meeting attendees who require special assistance, such as translation services or other reasonable accommodation, please notify MARAD and USCG (see **ADDRESSES**) at least five business days in advance. Please include contact information as well as information about specific needs.

Background

On May 30, 2019, MARAD and USCG received a license application from GulfLink for a license to own, construct, and operate a deepwater port for the export of crude oil. The proposed deepwater port would be located in the U.S. Exclusive Economic Zone, approximately 26.6 nautical miles off the coast of Brazoria County, Texas. Texas was designated as the Adjacent Coastal State (ACS) for the GulfLink license application.

The Federal agencies involved held a public scoping meeting in connection with the evaluation of the GulfLink license application. The public scoping meeting was held in Lake Jackson, Texas, on July 17, 2019. The transcript of the scoping meeting is included on the public docket at *https://www.regulations.gov/document/MARAD-2019-0093-0047*. The Federal agencies also held two consecutive virtual DEIS public meetings to receive comments on the DEIS. The virtual public comment meetings were held on December 16, 2020, and December 17, 2020. The public comment period began on November 27, 2020, and ended on January 22, 2021. Transcripts of the DEIS public comment meetings are provided on the public docket at *https://www.regulations.gov/document/MARAD-2019-0093-0318, https://www.regulations.gov/document/MARAD-2019-0093-0319, and https://www.regulations.gov/document/MARAD-2019-0093-2839*.

The Federal agencies also held a third virtual DEIS public comment meeting to receive comments on the DEIS. The public meeting was held virtually on October 14, 2021. The transcripts of the DEIS public comment meetings are also included on the public docket at *https://www.regulations.gov/document/MARAD-2019-2853*.

After the publication of the DEIS, GulfLink revised its deepwater license application in response to ongoing consultation with regulatory agencies and subsequently refined the design of the proposed deepwater port by adding a vapor control system into the design and operation of the proposed GulfLink deepwater port. The purpose of the SDEIS is to analyze the direct, indirect, and cumulative environmental impacts of the revised proposed action, and to identify and analyze the environmental impacts of a reasonable range of alternatives. The SDEIS is currently available for public review and comment at the Federal docket website: *https://www.regulations.gov* under docket number MARAD–2019–0093.

Summary of the License Application

GulfLink is proposing to own, construct, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the deepwater port would include the loading of various grades of crude oil at flow rates of up to 85,000 barrels per hour (bph). The GulfLink deepwater port would allow for up to two Very Large Crude Carriers (VLCCs) or other crude oil carriers to moor at single point mooring (SPM) buoys and connect with the deepwater port via floating connecting crude oil hoses and a floating vapor recovery hose. Although two VLCCs can be moored to the DWP simultaneously, only one can be loaded at a time. The maximum frequency of loading VLCCs or other crude oil carriers would be one million barrels per day, 365 days per year.

The overall project would consist of offshore and marine components as well as onshore components, as described below.

Offshore and marine components would consist of the following:

- *An Offshore Platform:* One fixed offshore platform with piles in Outer Continental Shelf Galveston Area Lease Block GA–423, 26.6 nautical miles off the coast of Brazoria County, Texas, in a water depth of approximately 104 feet. The fixed offshore platform would have four decks comprised of personal living space, pipeline metering, a surge system, a pig receiving station, generators, lease automatic custody transfer unit, oil displacement prover loop, sample system, radar tower, electrical and instrumentation building, portal cranes, a hydraulic crane, an Operations/Traffic Room, and helicopter deck.
- One 42-inch outside diameter, 28.1-nautical-mile long crude oil pipeline would be constructed from the shoreline crossing in Brazoria County, Texas, to the GulfLink DWP for crude oil delivery. This pipeline would connect the proposed onshore Jones Creek Terminal described below to the offshore platform.
- The fixed offshore platform is connected to VLCC tankers for loading by two separate 42-inch diameter departing pipelines. Each pipeline will depart the fixed offshore platform, carrying the crude oil to a Pipeline End Manifold (PLEM) in approximately 104 feet water depth located 1.25 nautical miles from the fixed offshore platform. Each PLEM is then connected to a Single Point Mooring (SPM) Buoy through two 24-inch cargo hoses. Two 24-inch floating cargo hoses will connect each SPM Buoy to the VLCC (or other crude oil carrier type). SPM Buoy 1 is positioned in Outer Continental Shelf Galveston Area Lease Block GA–423 and SPM Buoy 2 is positioned in Outer Continental Shelf Galveston Area Lease Block GA–A36.
- Use of a dynamically positioned third-party Offshore Support Vessel, equipped with a vapor processing system to control the release of vapor emissions during the cargo loading operations of the proposed GulfLink DWP.

Onshore storage and supply components for the GulfLink DWP would consist of the following:

- *An Onshore Storage Terminal:* The proposed Jones Creek Terminal would be located in Brazoria County, Texas, on approximately 262 acres of land, consisting of eight above ground storage tanks, each with a working storage capacity of 708,168 barrels, for a total onshore storage capacity of approximately 5,655,344 million barrels. The facility can accommodate four additional tanks, bringing the total to twelve tanks or 8,498,016 million barrels of storage capacity.
- The Jones Creek Terminal also would include: Six electric-driven mainline crude oil pumps; three electric driven booster crude oil pumps; one crude oil pipeline pig launcher; one crude oil pipeline pig receiver; two measurement skids for measuring incoming crude oil—one skid located on the Department of Energy's Bryan Mound facility, and one skid installed for the outgoing crude oil barrels leaving the tank storage to be loaded on the VLCC; and ancillary facilities to include an operations control center, electrical substation, offices, and warehouse building.
- Two onshore crude oil pipelines would be constructed to support the

GulfLink DWP and include the following:

○ One proposed incoming 9.1-statute mile long, 36-inch outside diameter pipeline connected to a leased 40-inch ExxonMobil pipeline originating at the Department of Energy's Bryan Mound facility with connectivity to the Houston market.

○ One proposed outgoing 12.1-statute mile long, 42-inch outside diameter pipeline connecting the Jones Creek Terminal to the shore crossing, where the offshore portion of this pipeline begins and supplies the proposed offshore GulfLink DWP.

As previously stated, the purpose of this notice is to announce that the SDEIS is currently available for public review and a 45-day public comment period. Comments can be submitted through the Federal docket website: *https://www.regulations.gov* under docket number MARAD–2019–0093.

Public Participation Instructions

How long do I have to submit comments?

We are providing a 45-day comment period.

How do I prepare and submit comments?

To ensure that your comments are correctly filed in the Docket, please include the docket number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD and USCG ask that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing the agencies to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically at *http://www.regulations.gov*. Search using the MARAD docket number in this notice and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.whitehouse.gov/omb/fedreg/reproducible.html*. DOT's guidelines may be accessed at *https://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines*.

I provided MARAD and USCG comments on the GulfLink SDEIS, orally or in writing, in another forum. May I provide comments in response to this notice as well?

Yes, MARAD and USCG encourage any member of the public to submit relevant comments for the docket, including input that has previously been communicated to the agencies.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

Will the agency consider late comments?

MARAD and USCG will consider all substantive comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Management Unit are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *https://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, MARAD will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–20752 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0042]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Consolidated Child Restraint System Registration for Defect Notifications and Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on an extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. NHTSA is requesting comments on an extension of the currently approved collection of information titled ''Consolidated Child Restraint System Registration for Defect Notifications and Labeling.'' A Federal Register Notice with a 60-day comment period soliciting comments on the following information collection was published on July 26, 2022 (87 FR 44494). One comment from the National Association of Mutual Insurance Companies (NAMIC) was received supporting this information collection.

DATES: Comments must be submitted on or before October 31, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain*. To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Cristina Echemendia, U.S. Department of

Transportation, NHTSA, 1200 New Jersey Avenue SE, West Building, Room W43–447, NRM–130, Washington, DC 20590. Cristina Echemendia's telephone number is 202–366–6345. Please identify the relevant collection of information by referring to its OMB Control Number (2127–0576).

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A Federal Register notice with a 60-day comment period soliciting public comments on the following information collection was published on July 26, 2022 (87 FR 44494).

Title: Consolidated Child Restraint System Registration for Defect Notifications and Labeling

OMB Control Number: 2127–0576.

Form Number: NHTSA 1053 A, NHTSA 1053 B.

Type of Request: Extension of a currently approved collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information:

This information collection provides that manufacturers of child restraint systems (CRSs): (1) produce registration cards, labels and printed instructions (brochures), (2) collect CRS owner registration information, and (3) create and keep registration records so that, in the event of a safety recall, manufacturers can provide direct notification to owners. Child restraint manufacturers are required to provide an owner's registration card for purchasers of child safety seats in accordance with title 49 of the Code of Federal Regulations (CFR), part 571—section 213, ''Child restraint systems.'' The registration card is perforated into two-parts (see Figures 1 and 2). The top part contains a message and suitable instructions to be retained by the purchaser. The bottom part is to be returned to the manufacturer by the purchaser. The bottom part includes prepaid return postage, the pre-printed name/address of the manufacturer, the pre-printed model and date of manufacture, and spaces for purchasers to fill in their name and address.

Optionally, child restraint manufacturers are permitted to add to the registration form: (a) Specified statements informing child restraint system (CRS) owners that they may register online; (b) the internet address for registering with the company; (c) revisions to statements reflecting use of the internet to register; and (d) a space for the consumer's email address. For those CRS owners with access to the internet, online registration may be a preferred method of registering a CRS.

In addition to the registration card supplied by the manufacturer, NHTSA has implemented a CRS registration system to assist those individuals who have either lost the registration card that came with the CRS or purchased a previously owned CRS. Upon the owner's request, NHTSA provides a substitute registration form that can be obtained either by mail or from the internet [1] (see Figure 3). When the completed registration is returned to the agency, it is then submitted to the CRS manufacturer. In the absence of a substitute registration system, many owners of child passenger safety seats, especially any second-hand owners, might not be notified of safety defects and non-compliances. These owners would be less likely to have the defects and non-compliances remedied without notification.

Child seat owner registration information is retained in the event that owners need to be contacted for defect recalls or replacement campaigns. Chapter 301 of Title 49 of the United States Code specifies that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. In title 49 of the Code of Federal Regulations (CFR), part 577, defect and noncompliance notification for equipment items, including child restraint systems, must be sent by first class mail to the most recent purchaser known to the manufacturer.

Child restraint manufacturers are also required to provide printed instructions in a brochure containing step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives ''quick look'' information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse. CRSs equipped with internal harnesses to restrain children, and with components to attach to a child restraint anchorage system, are also required to be labeled with a child weight limit for using the lower anchors to attach the child restraint to the vehicle. The child weight limit depends upon the weight of the CRS.

Description of the Need for the Information and Proposed Use of the Information:

CRS manufacturers are required to label each CRS and provide brochures with safety information and instructions on the proper use of the restraint. Such information would mitigate the risk of misuse and consequently reduce injuries to and fatalities of children in crashes. This collection supports the Department of Transportation's (DOT) strategic goal for safety, by working towards the elimination of transportation related deaths and injuries involving children. FMVSS No. 213 requires that each CRS has an owner registration form attached. It permits information regarding online product registration to be included on the owner registration form required under the standard. This enhances the opportunity for restraint owners to register their CRSs online, which may increase registration rates and the effectiveness of recall campaigns. Manufacturers are also permitted to supplement (but not replace) recall notification via first-class mail with email notification, which increases the likelihood that owners learn of a recall. Manufacturers are also required to include a U.S. telephone number on a CRS label for the purpose of enabling consumers to register their products by telephone.

Increasing CRS registrations is an important part to protecting young children and infants. By registering CRSs, product manufacturers will to able to directly contact owners in the event of any safety recalls.

Affected Public: Businesses, Individual Consumers.

Estimated Number of Respondents: 38 Manufacturers, 2,835,200 Consumers.[2]

Frequency: On occasion.

Estimated Total Annual Burden Hours: 109,939 hours.

The total burden hours for this collection consist of: (1) the hours spent

[1] *https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#car-seat-registration.*

[2] This is the number of registrations filled by consumers and the information collection by the CRS manufacturers of those received registrations.

by consumers filling out the registration form, (2) the hours spent collecting registration information and (3) the hours spent determining the maximum allowable child weight for lower anchor use and adding the information to the existing label and instruction manual.

(1) *Annual Burden for filling out registration card.* NHTSA estimates that 16,000,000 CRSs are currently sold each year by 38 CRS manufacturers. Of the CRSs sold each year, NHTSA estimates that 2,369,660 are registered using registration cards and 465,540 are

registered online. A consumer spends approximately 60 seconds (1 minute) filling out the registration form. The estimated annual number of burden hours for consumers to fill out the registration form is 47,253 hours (= 2,835,200 × (60 seconds/3,600 seconds/hour)).

(2) *Annual Burden for Reporting (collecting registration information).* Manufacturers must spend about 90 seconds (1.5 min) to enter the information from each returned registration card; while, online registrations are considered to have no burden for the manufacturer, as the information is entered by the purchaser. Therefore, the estimated annual number of burden hours for CRS registration information collection is 59,242 hours (= 2,369,660 × (90 seconds/3,600 seconds/hour)).

(3) *Annual Burden for Reporting (determining maximum allowable child weight).* About 12,400,000 of the CRSs sold each year are equipped with internal harnesses. About half of the CRSs equipped with internal harnesses sold annually (6,200,000 = 12,400,000 × 0.5) would require a label with the maximum allowable child weight for using the lower anchors. Manufacturers must spend about 2 seconds to determine the maximum allowable child weight for lower anchor use and to add the information to the existing label and instruction manual. Therefore, the total annual burden hours for the information on the maximum allowable child weight in the existing label and instruction manual is 3,444 hours (= 6,200,000 × (2 seconds/3,600 seconds/hour)).

The estimated total annual number of burden hours is 109,939 (= 47,253 + 59,242 + 3,444) hours. The total estimated hour burden increased from 99,330 hours to 109,939 hours (a 10,609—burden hour increase). The increase in burden is due to an increase in CRS sales. In 2018, NHTSA estimated that approximately 14,500,000 CRSs are sold each year while NHTSA's estimate in 2022 increased to 16,000,000 CRSs.

Estimated Total Annual Burden Cost: $8,781,987.85.

The total burden cost for this collection consists of printing and material costs of labels and registration cards and the mailed-in registration cards postage costs.

Printing and Material Costs of Labels and Registration Cards, and Postage Costs

The total annual printing and material cost to the respondents is estimated to be $8,000,000. NHTSA estimates that the printing and material cost of $0.20 per CRS labels and $0.30 per CRS registration card. The total annual printing and material cost to respondents is calculated by multiplying the printing and material cost ($0.50 = $0.20 + $0.30) by the estimated 16,000,000 responses (CRSs produced) per year ($0.50 × 16,000,000). The total estimated annual printing and material costs are detailed in the table below:

Number of CRS produced annually	Printing and material cost per CRS—labels	Printing and material cost per CRS—registration card	Annual printing and material cost
16,000,000	$0.20	$0.30	$8,000,000.00

The total annual postage cost for the mailed in registration cards is estimated to be $781,987.85. Approximately, 16,000,000 CRSs are sold each year with an estimated registration rate of 17.72% (2,835,200). Of the total registrations received, 83.58% (2,369,660) are from mailed in registration cards. The rests are from online registrations. CRS manufacturers are required to provide printed mail-in registration cards with pre-paid postage. The total annual postage cost is calculated by multiplying the number of mailed in registration cards (2,349,660) by the postage cost ($0.33). The total estimated postage cost is detailed in the table below:

ANNUAL POSTAGE COSTS

[Mailed-in registration cards]

Number of CRS produced each year	Annual number of returned CRS registrations (registration Rate of 17.72%)	Registrations received from registration cards (83.58%) *	Registration card postage cost	Annual postage cost
16,000,000	2,835,200	2,369,660	$0.33	$781,987.85

The estimated total annual cost burden is $8,781,987.85. The total annual cost burden is calculated by adding the annual printing and material costs ($8,000,000) and the mailed-in registration card postage cost ($781,987.85).

The total estimated burden cost increased from $0 to $8,781,987.85 (a $8,781,987.85 burden cost increase). The increase in burden is due to the addition of printing and material costs for labels and registration cards and the mailed-in registration card postage costs which had not been taken into consideration in the past.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

BILLING CODE 4910–59–P

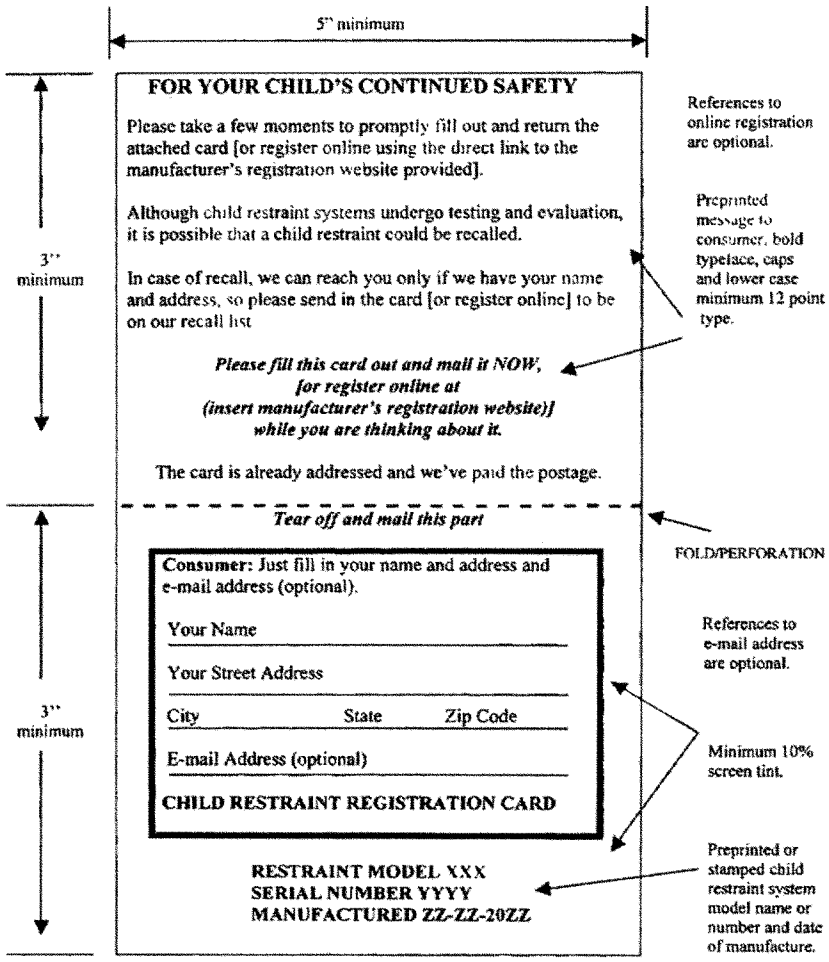


Figure 1 – Registration form for child restraint systems – product identification number and purchaser information side

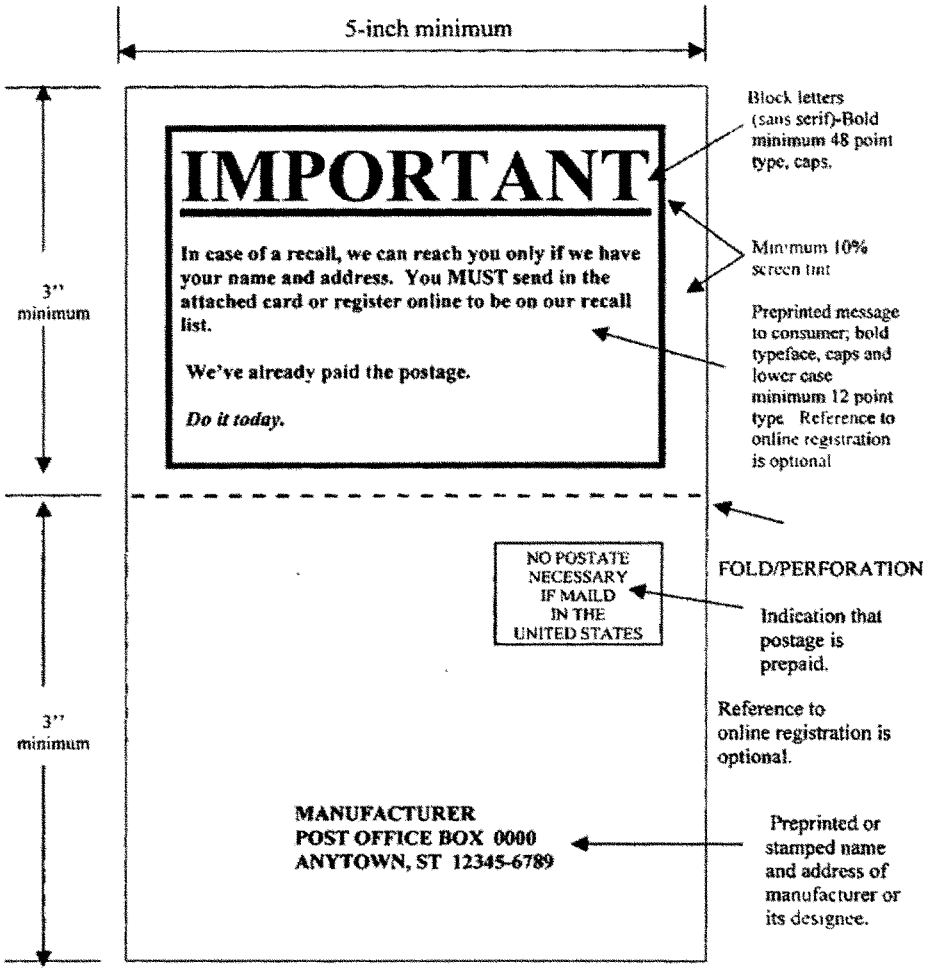
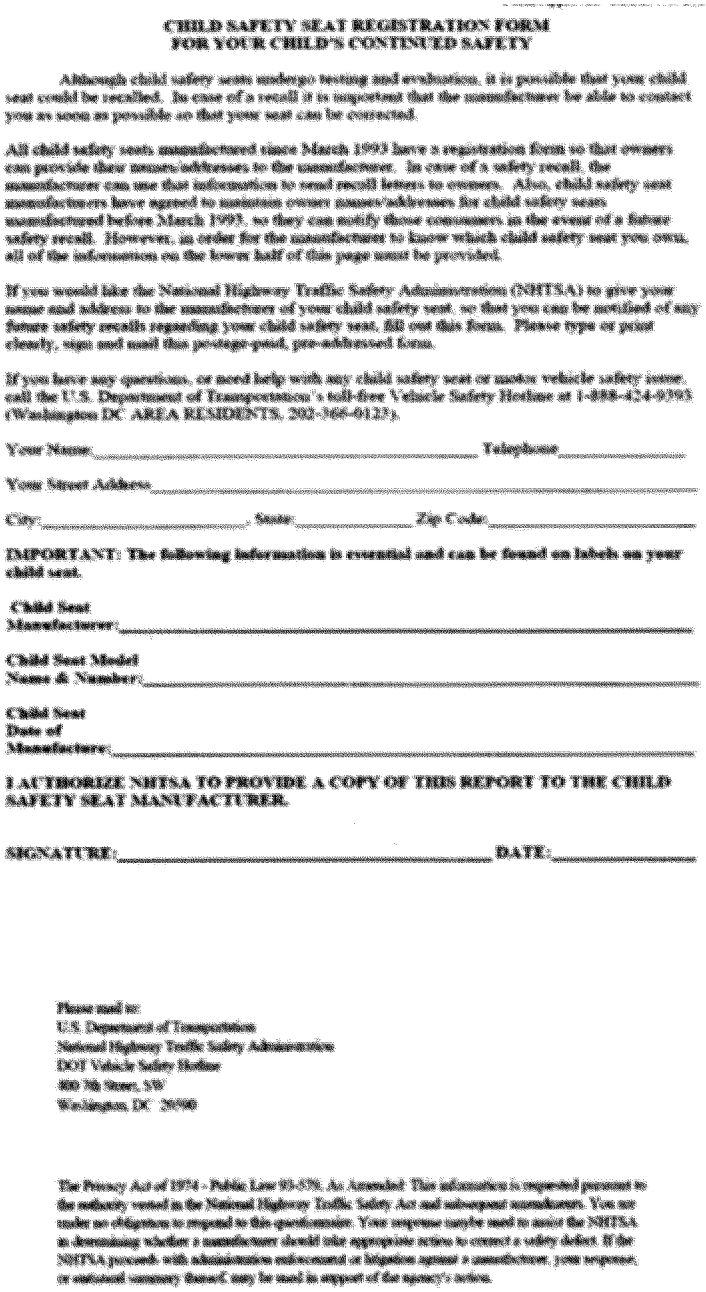


Figure 2 – Registration form for child restraint systems – address side



CHILD SAFETY SEAT REGISTRATION FORM
FOR YOUR CHILD'S CONTINUED SAFETY

Although child safety seats undergo testing and evaluation, it is possible that your child seat could be recalled. In case of a recall it is important that the manufacturer be able to contact you as soon as possible so that your seat can be corrected.

All child safety seats manufactured since March 1993 have a registration form so that owners can provide their names/addresses to the manufacturer. In case of a safety recall, the manufacturer can use that information to send recall letters to owners. Also, child safety seat manufacturers have agreed to maintain owner names/addresses for child safety seats manufactured before March 1993, so they can notify those consumers in the event of a future safety recall. However, in order for the manufacturer to know which child safety seat you own, all of the information on the lower half of this page must be provided.

If you would like the National Highway Traffic Safety Administration (NHTSA) to give your name and address to the manufacturer of your child safety seat, so that you can be notified of any future safety recalls regarding your child safety seat, fill out this form. Please type or print clearly, sign and mail this postage-paid, pre-addressed form.

If you have any questions, or need help with any child safety seat or motor vehicle safety issue, call the U.S. Department of Transportation's toll-free Vehicle Safety Hotline at 1-888-424-9393 (Washington DC AREA RESIDENTS, 202-366-0123).

Your Name:_____ Telephone_____

Your Street Address_____

City:_____, State:_____ Zip Code:_____

IMPORTANT: The following information is essential and can be found on labels on your child seat.

Child Seat
Manufacturer:_____

Child Seat Model
Name & Number:_____

Child Seat
Date of
Manufacture:_____

I AUTHORIZE NHTSA TO PROVIDE A COPY OF THIS REPORT TO THE CHILD SAFETY SEAT MANUFACTURER.

SIGNATURE:_____ DATE:_____

Please mail to:
U.S. Department of Transportation
National Highway Traffic Safety Administration
DOT Vehicle Safety Hotline
400 7th Street, SW
Washington, DC 20590

The Privacy Act of 1974 - Public Law 93-579, As Amended: This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response may be used to assist the NHTSA in determining whether a manufacturer should take appropriate actions to correct a safety defect. If the NHTSA proceeds with administrative enforcement or litigation against a manufacturer, your response, or statistical summary thereof, may be used in support of the agency's action.

Figure 3 – Illustration of a child restraint system registration form

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–21309 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2022–0110]

Privacy Act of 1974; System of Records

AGENCY: Office of the Departmental Chief Information Office, Office of the Secretary of Transportation, DOT.

ACTION: Rescindment of a System of Records notice.

SUMMARY: The Federal Aviation Administration proposes to rescind the Department of Transportation system of records titled, ''Department of Transportation/Federal Aviation Administration (DOT/FAA) 822—*Aviation Medical Examiner System*.''

DATES: *Applicable date:* September 30, 2022.

ADDRESSES: You may submit comments, identified by docket number OST–2022–0110 by any of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Fax:* (202) 493–2251

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

• *Instructions:* You must include the agency name and docket number OST–2022–0110. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Barbara Stance, FAA Chief Privacy Officer, 202.385.6516, Federal Aviation Administration, 950 L'Enfant Plaza SW, Washington, DC 20024. For privacy issues, please contact: Karyn Gorman, Acting Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov*; or 202.366.3140.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to rescind DOT system of records titled, ''DOT/FAA 822—*Aviation Medical Examiner System*,'' 65 FR 19522 (April 11, 2000). This system of records was established to determine professional qualifications and designation authorization (initial and subsequent) of Aviation Medical Examiners (AME). The categories of records included records necessary to determine professional qualifications of physicians designated (initially and subsequently) as AMEs; identify the type and location of AMEs within the AME program; monitor AMEs performance in support of the Medical Certification Program; and monitor AMEs compliance with mandatory training (initial and periodic) and other AME designation requirements. The authority for maintenance of the system was 49 U.S.C. 44702. Records previously covered by DOT/FAA 822 will be managed according to the updated DOT/FAA 830, *Representatives of the Administrator.* Consolidation of the Notices ensures consistency in the Privacy Act management of all designee records. Consequently, rescinding SORN 822 will have no adverse impact on individuals. Rescindment will promote the overall streamlining and management of DOT Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

Department of Transportation/Federal Aviation Administration (DOT/FAA) 822—*Aviation Medical Examiner System.*

HISTORY:

A full notice of this system of records, DOT/FAA 822—Aviation Medical Examiner System was published in the **Federal Register** on April 11, 2000, at 65 FR 19522

Issued in Washington, DC.

Karyn Gorman,

Acting Departmental Chief Privacy Officer.

[FR Doc. 2022–21270 Filed 9–29–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person is blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2420; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 26, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual

1. KAJMAKOVIC, Diana (a.k.a. KAJMAKOVIC, Dijana), Bosnia and Herzegovina; DOB 22 Aug 1966; POB Sarajevo, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; citizen Bosnia and Herzegovina; Gender Female (individual) [BALKANS–EO14033].

Designated pursuant to sections 1(a)(ii) and 1(a)(v) of Executive Order 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, actions or policies that undermine democratic processes or institutions in the Western Balkans and for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

Dated: September 26, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–21205 Filed 9–29–22; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 189 September 30, 2022

Part II

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Part 1010

Beneficial Ownership Information Reporting Requirements; Final Rule.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB49

Beneficial Ownership Information Reporting Requirements

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing a final rule requiring certain entities to file with FinCEN reports that identify two categories of individuals: the beneficial owners of the entity, and individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. These regulations implement Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), and describe who must file a report, what information must be provided, and when a report is due. These requirements are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States.

DATES: *Effective date:* These rules are effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Illicit actors frequently use corporate structures such as shell and front companies to obfuscate their identities and launder their ill-gotten gains through the U.S. financial system. Not only do such acts undermine U.S. national security, but they also threaten U.S. economic prosperity: shell and front companies can shield beneficial owners' identities and allow criminals to illegally access and transact in the U.S. economy, while creating an uneven playing field for small U.S. businesses engaged in legitimate activity.

Millions of small businesses are formed within the United States each year as corporations, limited liability companies, or other corporate structures. These businesses play an essential and legitimate economic role. Small businesses are a backbone of the U.S. economy, accounting for a large share of U.S. economic activity, and driving U.S. innovation and competitiveness.[1] In addition, U.S. small businesses generate jobs, and in 2021 created jobs at the highest rate on record.[2]

Few jurisdictions in the United States, however, require legal entities to disclose information about their beneficial owners—the individuals who actually own or control an entity—or individuals who take the steps to create an entity. Historically, the U.S. Government's inability to mandate the collection of beneficial ownership information of corporate entities formed in the United States has been a vulnerability in the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT) framework. As stressed in the 2022 National Strategy for Combating Terrorist and Other Illicit Financing (the ''2022 Illicit Financing Strategy''), a lack of uniform beneficial ownership information reporting requirements at the time of entity formation or ownership change hinders the ability of (1) law enforcement to swiftly investigate those entities created and used to hide ownership for illicit purposes and (2) a regulated sector to mitigate risks.[3] This lack of transparency creates opportunities for criminals, terrorists, and other illicit actors to remain anonymous while facilitating fraud, drug trafficking, corruption, tax evasion, organized crime, or other illicit activity through legal entities created in the United States.

For more than two decades, the U.S. Government has documented the use of legal entities by criminal actors to purchase real estate, conduct wire transfers, burnish the appearance of legitimacy when dealing with counterparties (including financial institutions), and control legitimate businesses for ultimately illicit ends, and has published extensively on this topic to raise awareness.[4]

Recent geopolitical events have reinforced the threat that abuse of corporate entities, including shell or front companies, by illicit actors and corrupt officials presents to the U.S. national security and the U.S. and international financial systems. For example, Russia's unlawful invasion of Ukraine in February 2022 further underscored that Russian elites, state-owned enterprises, and organized crime, as well as the Government of the Russian Federation have attempted to use U.S. and non-U.S. shell companies to evade sanctions imposed on Russia. Money laundering and sanctions evasion by these sanctioned Russians pose a significant threat to the national security of the United States and its partners and allies.

In a recent example of how sanctioned Russian individuals used shell companies to avoid U.S. sanctions and other applicable laws, Spanish law enforcement executed a Spanish court order in the Spring of 2022, freezing the Motor Yacht (M/Y) Tango (the ''Tango''), a 255-foot luxury yacht owned by sanctioned Russian oligarch Viktor Vekselberg. Spanish authorities acted pursuant to a request from the U.S. Department of Justice (DOJ) following the issuance of a seizure warrant, filed in the U.S. District Court for the District of Columbia, which alleged that the Tango was subject to forfeiture based on violations of U.S. bank fraud and money laundering statutes, as well as sanctions violations. The U.S. Government alleged that Vekselberg used shell companies to obfuscate his interest in the Tango to avoid bank oversight of U.S. dollar transactions related thereto.[5]

Furthermore, the governments of Australia, Canada, the European Commission, Germany, Italy, France, Japan, the United Kingdom, and the United States launched the Russian Elites, Proxies, and Oligarchs (REPO) Task Force in March 2022, with the purpose of collecting and sharing information to take concrete actions, including sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution with respect to persons who supported the Russian invasion of Ukraine.[6] In its June 29, 2022 Joint

[1] *See e.g.,* U.S. Small Business Administration, *Small Business GDP 1998–2014* (Dec. 2018), available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2018/12/21060437/Small-Business-GDP-1998-2014.pdf.*

[2] The White House, *The Small Business Boom under the Biden-Harris Administration* (Apr. 2022), pp. 3–4, available at *https://www.whitehouse.gov/wp-content/uploads/2022/04/President-Biden-Small-Biz-Boom-full-report-2022.04.28.pdf.*

[3] *See* U.S. Department of the Treasury (Treasury), *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), p. 12, available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf* (''2022 Illicit Financing Strategy'').

[4] *See e.g.,* Treasury, *U.S. Money Laundering Threat Assessment* (Dec. 2005), available at *https://home.treasury.gov/system/files/246/mlta.pdf,* and FinCEN, *Advisory: FATF–VII Report on Money Laundering Typologies* (Aug. 1996), available at *https://www.fincen.gov/sites/default/files/advisory/advissu4.pdf.*

[5] U.S. Department of Justice (DOJ), Office of Public Affairs, *$90 Million Yacht of Sanctioned Russian Oligarch Viktor Vekselberg Seized by Spain at Request of United States* (Apr. 4, 2022), available at *https://www.justice.gov/opa/pr/90-million-yacht-sanctioned-russian-oligarch-viktor-vekselberg-seized-spain-request-united.*

[6] Treasury, *U.S. Departments of Treasury and Justice Launch Multilateral Russian Oligarch Task*

Statement, the REPO Task Force noted that to identify sanctioned Russians who are beneficiaries of shell companies that held assets, REPO members relied on the use of registries where available, including beneficial ownership registries.[7]

Domestic criminal actors also use corporate entities to obfuscate their illicit activities. In June 2021, the Department of Justice (''DOJ'') announced that an individual in Florida pled guilty to working with co-conspirators to steal $24 million of COVID–19 relief money by using synthetic identities and shell companies they had created years earlier to commit other bank fraud. The individual and his co-conspirators used established synthetic identities and associated shell companies to fraudulently apply for financial assistance under the Paycheck Protection Program (PPP). They applied for and received $24 million dollars in PPP relief. The money was paid to companies registered to the individual and his co-conspirators, as well as to companies registered to synthetic identities that he and his co-conspirators controlled.[8] Similarly, in July 2022, the DOJ announced that a Virginia man was sentenced to 33 months in prison for his role in a conspiracy that involved the submission of at least 63 fraudulent loan applications to obtain COVID–19 pandemic relief funds to which he and his co-defendants were not entitled. According to the DOJ press release, the individual and other defendants used multiple shell entities they controlled to apply for financial assistance under PPP and for Economic Injury Disaster Loans (EIDL) through the Small Business Administration and falsified Internal Revenue Service (IRS) tax forms submitted to lenders. Altogether, the defendants wrongfully obtained over $3 million in loan proceeds.[9]

The Department of Treasury (the ''Department'' or ''Treasury'') is committed to increasing transparency in the U.S. financial system and strengthening the U.S. AML/CFT framework. Deputy Secretary of the Treasury Wally Adeyemo noted in November 2021 that ''[w]e are already taking concrete steps to fight [. . .] corruption and make the U.S. economy—and the global economy—more fair. Among the most crucial of these steps is our work on beneficial ownership reporting. Kleptocrats, human rights abusers, and other corrupt actors often exploit complex and opaque corporate structures to hide and launder the proceeds of their corrupt activities. They use these shell companies to hide their true identities and the illicit sources of their funds. By requiring beneficial owners—that is, the people who actually own or control a company—to disclose their ownership, we can much better identify funds that come from corrupt sources or abusive means.'' [10] As he further emphasized in December 2021, ''[c]orruption thrives in the financial shadows—in shell corporations that disguise owners' true identities, in offshore jurisdictions with lax anti-money laundering regulations, and in complex structures that allow the wealthy to hide their income from government authorities . . . . For too long, corrupt actors have made their home in the darkest corners of the global financial system, stashing the profits of their illegitimate activities in our blind spots. A major component of our anti-corruption work is about changing that—shining a spotlight on these areas and using what we find to deter and go after corruption.'' [11]

Earlier this year, the Department issued the 2022 Illicit Financing Strategy.[12] One of the priorities identified in the 2022 Illicit Financing Strategy is the need to increase transparency and close legal and regulatory gaps in the U.S. AML/CFT framework.[13] This priority, and the supporting goals, emphasize the vulnerabilities posed by the abuse of legal entities, including the use of front and shell companies, which can enable a wide range of illicit finance threats: drug trafficking, fraud, small-sum funding of domestic violent extremism, and illicit procurement and sanctions evasion in support of weapons of mass destruction proliferation by U.S. adversaries. The strategy reflects a broader commitment to protect the U.S. financial system from the national security threats enabled by illicit finance, especially corruption. The Department's approach to combatting corruption will make our economy—and the global economy—stronger, fairer, and safer from criminals and national security threats.

The Department's continued work to fight corruption includes implementing the Corporate Transparency Act (CTA), which was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021.[14] In December 2021, building on an earlier Advance Notice of Proposed Rulemaking (ANPRM), FinCEN published a Notice of Proposed Rulemaking (NPRM) [15] to give the public an opportunity to review and comment on a proposed rule implementing the CTA's provisions requiring entities to report information about their beneficial owners and the individuals who created the entity (together, beneficial ownership information or BOI). FinCEN explained that the proposed rule would help protect the U.S. financial system from illicit use by making it more difficult for bad actors to conceal their financial activities through entities with opaque ownership structures. FinCEN also explained that the proposed reporting obligations would provide essential information to law enforcement and others to help prevent corrupt actors, terrorists, and proliferators from hiding money or other property in the United States.

U.S. efforts to collect BOI will lend U.S. support to the growing international consensus to enhance beneficial ownership transparency, and will spur similar efforts by foreign jurisdictions. At least 30 countries have already implemented some form of central register of beneficial ownership information, and more than 100 countries, including the United States, have committed to implementing beneficial ownership transparency reforms.[16]

After carefully considering all public comments, FinCEN is now issuing final

Force (Mar. 16, 2022), available at *https://home.treasury.gov/news/press-releases/jy0659.*

[7] Treasury, *Russian Elites, Proxies, and Oligarchs Task Force Joint Statement* (June 29, 2022), available at *https://home.treasury.gov/news/press-releases/jy0839.*

[8] DOJ, Office of Public Affairs, *Defendant Pleads Guilty to Stealing $24 Million in COVID–19 Relief Money Through Fraud Scheme that Used Synthetic Identities* (Jun. 29, 2021), available at *https://www.justice.gov/usao-sdfl/pr/defendant-pleads-guilty-stealing-24-million-covid-19-relief-money-through-fraud-scheme.*

[9] DOJ, Office of Public Affairs, *Member of $3M COVID–19 Loan Fraud Conspiracy Sentenced* (Jul. 8, 2022), available at *https://www.justice.gov/usao-edva/pr/member-3m-covid-19-loan-fraud-conspiracy-sentenced.*

[10] *Remarks by Deputy Secretary of the Treasury Wally Adeyemo at the Partnership to Combat Human Rights Abuse and Corruption* (Nov. 8, 2021), available at *https://content.govdelivery.com/accounts/USTREAS/bulletins/2fb38f8.*

[11] *Remarks by Deputy Secretary of the Treasury Wally Adeyemo on Anti-Corruption at the Brookings Institution* (Dec. 6, 2021), available at *https://home.treasury.gov/news/press-releases/jy0516.*

[12] *2022 Illicit Financing Strategy, supra* note 3.

[13] *Id.* pp. 7–13.

[14] The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of chapter 53 of title 31, United States Code.

[15] 86 FR 69920 (Dec. 8, 2021).

[16] *See https://www.openownership.org/en/map/* for a graphic identifying these countries.

regulations regarding the reporting of beneficial ownership information. The regulations carefully balance the need to protect and strengthen U.S. national security, while minimizing the burden on small businesses and reporting entities. Specifically, the regulations implement the CTA's requirement that reporting companies submit to FinCEN a report containing their BOI. As required by the CTA, these regulations are designed to minimize the burden on reporting companies, particularly small businesses, and to ensure that the information collected is accurate, complete, and highly useful. The regulations will help protect U.S. national security, provide critical information to law enforcement, and promote financial transparency. This final rule implementing the CTA's beneficial ownership reporting requirements represents the culmination of years of efforts by Congress, Treasury, national security and law enforcement agencies, and other stakeholders to bolster corporate transparency by addressing U.S. deficiencies in beneficial ownership transparency noted by the Financial Action Task Force (FATF),[17] Congress, law enforcement, and others. The regulations address, among other things: who must file; when they must file; and what information they must provide. Collecting this information and providing access to law enforcement, the intelligence community, regulators, and financial institutions will diminish the ability of illicit actors to obfuscate their activities through the use of anonymous shell and front companies. In developing the proposed regulation, FinCEN aimed to minimize burdens on reporting companies, including small businesses, to the extent practicable. FinCEN estimates that it would cost the majority of reporting companies $85.14 to prepare and submit an initial BOI report.

II. Background

A. Beneficial Ownership of Entities

i. Overview

Legal entities such as corporations, limited liability companies, and partnerships, and legal arrangements like trusts play an essential and legitimate role in the U.S. and global economies. They are used to engage in lawful business activity, raise capital, limit personal liability, and generate investments, and they can be engines for innovation and economic growth, among other activities. They can also be used to engage in illicit activity and launder its proceeds, and to enable those who threaten U.S. national security to access and transact in the U.S. economy. The United States is a popular jurisdiction for legal entity formation because of the ease with which a legal entity can be created, the minimal amount of information required to do so in most U.S. states,[18] and the investment opportunities the United States presents. The number of legal entities currently operating in the United States is difficult to estimate with certainty, but Congress recently found that more than two million corporations and limited liability companies are being created under the laws of the states each year.[19] According to Global Financial Integrity, a policy organization focused on addressing illicit finance and corruption, more public and anonymous corporations are created in the United States than in any other jurisdiction.[20] The number of legal entities already in existence in the United States that may need to report information on themselves, their beneficial owners, and their formation or registration agents pursuant to the CTA is in the tens of millions.[21]

The United States does not currently have a centralized or complete store of information about who owns and operates legal entities within the United States. The data readily available to law enforcement are limited to the information required to be reported when a legal entity is created at the state or Tribal level, unless an entity opens an account at a financial institution required to collect certain BOI pursuant to the Customer Due Diligence (CDD) Rule.[22] Though state- and Tribal-level entity formation laws vary, most jurisdictions do not require the identification of an entity's individual beneficial owners at or after the time of formation. Additionally, the vast majority of states require little to no disclosure of contact information or other information about an entity's officers or others who control the entity.[23]

ii. Benefits of BOI Reporting

Access to BOI reported under the CTA would significantly aid efforts to protect the U.S. financial system from illicit use. It would impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing. For example, BOI can add critical data to financial analyses in law enforcement and tax investigations. It can also provide essential information to the intelligence and national security professionals who work to prevent terrorists, proliferators, and those who seek to undermine our democratic institutions or threaten other core U.S. interests from raising, hiding, or moving

[17] The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards for beneficial ownership transparency. Among other things, it has established standards on transparency and beneficial ownership of legal persons, so as to deter and prevent the misuse of corporate vehicles. *See* FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated October 2020), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html;* FATF Guidance, Transparency and Beneficial Ownership, Part III (October 2014), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.*

[18] For simplicity, in the remainder of this preamble the term ''state'' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

[19] CTA, Section 6402(1). FinCEN's analysis estimating such entities is included in the regulatory analysis in Section V of this NPRM.

[20] Global Financial Integrity, *The Library Card Project: The Ease of Forming Anonymous Companies in the United States* (March 2019) (''GFI Report''), available at *https://gfintegrity.org/report/the-library-card-project/.* In 2011, the World Bank assessed that 10 times more legal entities were formed in the United States than in all 41 tax haven jurisdictions combined. *See* The World Bank, UNODC, Stolen Asset Recovery Initiative, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (2011), p. 93, available at *https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf.*

[21] In the regulatory analysis later in this final rule, FinCEN estimates that there will be at least 32.6 million ''reporting companies'' (entities that meet the core definition of a ''reporting company'' and are not exempt) in existence when the proposed rule becomes effective.

[22] 31 CFR 1010.230. Even then, any BOI a financial institution collects is not systematically reported to any central repository.

[23] *See* CTA, Section 6402(2) (''[M]ost or all States do not require information about the beneficial owners of corporations, limited liability companies, or other similar entities formed under the laws of the State''); U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (Apr. 2006), available at *https://www.gao.gov/assets/gao-06-376.pdf; see also, e.g.,* The National Association of Secretaries of State (NASS), *NASS Summary of Information Collected by States* (Jun. 2019), available at *https://www.nass.org/sites/default/files/company%20formation/nass-business-entity-info-collected-june2019.pdf.*

money in the United States through anonymous shell or front companies.[24] Broadly, and critically, BOI is crucial to identifying linkages between potential illicit actors and opaque business entities, including shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies, or other types of entities that have no physical presence beyond a mailing address, generate little to no independent economic value,[25] and generally are created without disclosing their beneficial owners. Shell companies can be used to conduct financial transactions while concealing true beneficial owners' involvement.

In 2021, some of the principal authors of the CTA in the Senate and U.S. House of Representatives wrote to the Department, explaining that ''[e]ffective and timely implementation of the new BOI reporting requirement will be a dramatic step forward, strengthening U.S. national security by making it more difficult for malign actors to exploit opaque legal structures to facilitate and profit from their bad acts . . . [To do this] means writing the rule *broadly* to include in the reporting as many corporate entities as possible while *narrowly* limiting the exemptions to the smallest possible set permitted by the law.'' [26] They went on to note that such an approach ''will address the current and evolving strategies that terrorists, criminals, and kleptocrats employ to hide and launder assets. It will also foreclose loophole options for creative criminals and their financial enablers, maximize the quality of the information collected, and prevent the evasion of BOI reporting.'' [27] The integration of BOI reported pursuant to the CTA with the current data collected under the BSA, and other relevant government data, is expected to significantly further efforts to identify illicit actors and combat their financial activities. The collection of BOI in a centralized database, accessible to U.S. Government departments and agencies, law enforcement, tax authorities, and financial institutions, may also help to level the playing field for honest businesses, including small businesses with fewer resources, that are at a disadvantage when competing against criminals who use shell companies to evade taxes, hide their illicit wealth, and defraud employees and customers.[28]

As described in the preamble to the NPRM, for more than two decades FinCEN and the broader Treasury Department have been raising awareness about the role of shell companies, the way they can be used to obfuscate beneficial ownership, and their role in facilitating criminal activity—pointing out, for example, that shell companies have enabled the movement of billions of dollars across borders by unknown actors and have facilitated money laundering or terrorist financing.

FinCEN took its first major regulatory step toward identifying beneficial owners when it initiated the 2016 CDD rulemaking process in March 2012 by issuing an ANPRM,[29] followed by an NPRM in August 2014.[30] FinCEN finalized the CDD Rule in May 2016, and financial institutions began collecting beneficial ownership information under the 2016 CDD Rule in May 2018.[31] The 2016 CDD Rule was the culmination of years of study and consultation with industry, law enforcement, civil society organizations, and other stakeholders on the need for financial institutions to collect BOI and the value of that information. Citing a number of examples, the preamble to the 2016 CDD Rule noted that, among other things, BOI collected by financial institutions pursuant to the 2016 CDD Rule would: (1) assist financial investigations by law enforcement and examinations by regulators; (2) increase the ability of financial institutions, law enforcement, and the intelligence community to address threats to national security; (3) facilitate reporting and investigations in support of tax compliance; and (4) advance the Department's broad strategy to enhance financial transparency of legal entities.[32]

In December 2016, the FATF issued an Anti-Money Laundering and Counter-Terrorist Financing Measures, United States Mutual Evaluation Report (''2016 FATF Report''), and continued to note U.S. deficiencies in the area of beneficial ownership transparency. The 2016 FATF Report identified the lack of BOI reporting requirements as one of the fundamental gaps in the U.S. AML/CFT regime.[33] The 2016 FATF Report also observed that ''the relative ease with which U.S. corporations can be established, their opaqueness and their perceived global credibility makes them attractive to abuse for [money laundering and terrorism financing], domestically as well as internationally.'' [34] Following publication of the 2016 FATF Report, the Assistant Attorney General for the Criminal Division and Acting Assistant Attorney General for the National Security Division at the Department of Justice emphasized that ''[f]ull transparency of corporate ownership would strengthen our ability to trace illicit financial flows in a timely fashion and firmly declare that the United States will not be a safe haven for criminals and terrorists looking to disguise their identities for nefarious purposes.'' [35]

[24] A front company generates legitimate business proceeds to commingle with illicit earnings. *See* Treasury, *National Money Laundering Risk Assessment* (2018), p. 29, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[25] FinCEN Advisory, FIN–2017–A003, *Advisory to Financial Institutions and Real Estate Firms and Professionals* (Aug. 22, 2017), p. 3, available at *https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory_FINAL%20508%20Tuesday%20%28002%29.pdf.* ''Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or assets of another business entity or to facilitate domestic and international currency trades, asset transfers, and corporate mergers. Shell companies can often be formed without disclosing the individuals that ultimately own or control them (*i.e.,* their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement.'' *Id.* While shell companies are used for legitimate corporate structuring purposes including in mergers or acquisitions, they are also used in common financial crime schemes. *See* FinCEN, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (Nov. 2006), p. 4, available at *https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.*

[26] United States Congress, *Letter from Senator Sherrod Brown, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, Representative Maxine Waters, Chairwoman of the House Committee on Financial Services, and Representative Carolyn B. Maloney, Chairwoman of the House Committee on Oversight and Reform, letter to Department of the Treasury Secretary Janet L. Yellen* (Nov. 3, 2021), available at *https://financialservices.house.gov/uploadedfiles/11.04_waters_brown_maloney_letter_on_cta.pdf* (emphasis in original).

[27] *Id.*

[28] *See* FinCEN, *Prepared Remarks of FinCEN Director Kenneth A. Blanco,* delivered at the Federal Identity (FedID) Forum and Exposition, Identity: Attack Surface and a Key to Countering Illicit Finance (Sept. 24, 2019) (''For many of the companies here today—those that are developing or dealing with sensitive technologies—understanding who may want to invest in your ventures, or who is competing with you in the marketplace, would allow for better, safer decisions to protect intellectual property.''), available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-federal-identity-fedid.*

[29] 77 FR 13046 (Mar. 5, 2012).

[30] 79 FR 45151 (Aug. 4, 2014).

[31] 81 FR 29397 (May 11, 2016).

[32] 81 FR 29399–29402 (May 11, 2016).

[33] *See* FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures United States Mutual Evaluation Report* (2016), p. 4 (key findings) and Ch. 7., available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.*

[34] *Id.* at 153.

[35] DOJ, Assistant Attorney General Leslie Caldwell of the Criminal Division and Acting Assistant Attorney General Mary McCord of the National Security Division, *Financial Action Task Force Report Recognizes U.S. Anti-Money*

Continued

While the 2016 CDD Rule increased transparency by requiring covered financial institutions to collect a legal entity customer's BOI at the time of an account opening, it did not address the collection of BOI at the time of a legal entity's creation. BOI collected at the time of a legal entity's creation provides additional insight into the original beneficial owners of the entity.

Following the issuance of the 2016 FATF Report, officials in the Department and at the Department of Justice remained committed to working with Congress on beneficial ownership legislation that would require companies to report adequate, accurate, and current BOI at the time of a legal entity's creation. In addition, between initial congressional efforts to require beneficial ownership reporting through the Senate-proposed 2008 Incorporation Transparency and Law Enforcement Assistance Act, and the 2016 FATF Report, predecessor legislation to the CTA continued to be introduced in each Congress. The introduction of the Corporate Transparency Act of 2017 in June 2017 (in the U.S. House of Representatives) and August 2017 (in the U.S. Senate) followed the 2016 FATF Report. In November 2017 testimony before the Senate Judiciary Committee, Deputy Assistant Secretary of the Treasury Jennifer Fowler, head of the U.S. FATF delegation at the time of the 2016 FATF Report, highlighted the significant vulnerability identified by FATF, noting that ''this has permitted criminals to shield their true identities when forming companies and accessing our financial system.'' She also remarked that, while Treasury's 2016 CDD Rule was an important step forward, more work remained to be done with Congress to find a solution that would involve collecting BOI when a legal entity is created.[36]

Over the years, federal officials have repeatedly and publicly articulated the need for the United States to enhance and improve authorities to collect BOI. In February 2018, Acting Deputy Assistant Attorney General M. Kendall Day testified at a Senate Judiciary Committee hearing on BOI reporting that ''[t]he pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML regime.'' [37] In December 2019, then-FinCEN Director Kenneth Blanco noted that ''[t]he lack of a requirement to collect information about who really owns and controls a business and its assets at company formation is a dangerous and widening gap in our national security apparatus.'' [38] He also highlighted how this gap had been addressed in part through the 2016 CDD Rule and how much more work needed to be done, stating that ''[t]he next critical step to closing this national security gap is collecting beneficial ownership information at the corporate formation stage. If beneficial ownership information were required at company formation, it would be harder and more costly for criminals, kleptocrats, and terrorists to hide their bad acts, and for foreign states to avoid detection and scrutiny. This would help deter bad actors accessing our financial system in the first place, denying them the ability to profit and benefit from its power while threatening our national security and putting people at risk.'' [39]

The Department has consistently emphasized the importance of addressing the risks posed by the lack of comprehensive beneficial ownership reporting, including in the 2018 and 2022 National Money Laundering Risk Assessments, and in the 2018 and 2020 National Strategies for Combating Terrorist and Other Illicit Financing (''2018 Illicit Financing Strategy'' and ''2020 Illicit Financing Strategy'' respectively).[40] In the 2018 National Money Laundering Risk Assessment, the Department highlighted cases in which shell and front companies in the United States were used to disguise the proceeds of Medicare and Medicaid fraud, trade-based money laundering, and drug trafficking, among other crimes.[41] In its 2022 National Money Laundering Risk Assessment, Treasury reiterated that ''bad actors consistently use a number of specific structures to disguise criminal proceeds, and U.S. law enforcement agencies have had no consistent way to obtain information about the beneficial owners of these entities. The ease with which companies can be incorporated under state law and the lack of information generally required about the company's owners or activities lead to limited transparency. Bad actors take advantage of these lax requirements to set up shell companies . . .'' [42]

The Department's 2018 Illicit Financing Strategy flagged the use of shell companies by Russian organized crime groups in the United States, as well as by the Iranian government to obfuscate the source of funds and hide its involvement in efforts to generate revenue.[43] The 2020 Illicit Financing Strategy cited as one of the most significant vulnerabilities of the U.S. financial system the lack of a requirement to collect BOI at the time of legal entity creation and after changes in ownership.[44] Building on the two previous Illicit Financing Strategies, Treasury emphasized in its 2022 Illicit Financing Strategy that combating the pernicious impact of illicit finance in the U.S. financial system, economy, and society is integral to strengthening U.S. national security and prosperity. The 2022 Illicit Financing Strategy observed, however, that while the United States has made substantial progress in addressing this challenge, the U.S. AML/CFT regime must adapt to an evolving threat environment, and structural and technological changes in

Laundering and Counter-Terrorist Financing Leadership, but Action is Needed on Beneficial Ownership (Dec. 1, 2016), available at *https://www.justice.gov/archives/opa/blog/financial-action-task-force-report-recognizes-us-anti-money-laundering-and-counter.*

[36] Treasury, *Testimony of Jennifer Fowler, Deputy Assistant Secretary Office of Terrorist Financing and Financial Crimes, Senate Judiciary Committee* (Nov. 28, 2017), available at *https://www.judiciary.senate.gov/imo/media/doc/Fowler%20Testimony.pdf.*

[37] DOJ, *Statement of M. Kendall Day, Acting Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, for a Hearing Entitled ''Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency,''* presented Feb. 6, 2018, p. 3, available at *https://www.judiciary.senate.gov/imo/media/doc/02-06-18%20Day%20Testimony.pdf.*

[38] FinCEN, *Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the American Bankers Association/American Bar Association Financial Crimes Enforcement Conference,* (Dec. 10, 2019), available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-american-bankers.*

[39] *Id.*

[40] *See, e.g.,* Treasury, *National Money Laundering Risk Assessment* (2022), p. 37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf;* Treasury, *National Money Laundering Risk Assessment* (2018), pp. 28–30, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf;* Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2018), pp. 20, 47, available at *https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf;* Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), pp. 13–14, 27, 34, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[41] Treasury, *National Money Laundering Risk Assessment* (2018), pp. 28–30, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[42] Treasury, *National Money Laundering Risk Assessment* (Feb. 2022), p. 37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[43] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2018), pp. 20, 47, available at *https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf.*

[44] *2020 Illicit Financing Strategy,* p. 12, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

financial services and markets. In order to succeed in this critical fight, the 2022 Illicit Financing Strategy detailed how the United States is striving to strengthen laws, regulations, processes, technologies, and people so that the U.S. AML/CFT regime remains a model of effectiveness and innovation, noting that implementing the BOI reporting and collection regime envisioned by the CTA was essential to closing legal and regulatory gaps that allow criminals and other illicit actors to move funds and purchase U.S. assets anonymously.[45]

Congress recognized the threat posed by shell companies and other opaque ownership structures when it passed the CTA as part of the broader Anti-Money Laundering Act of 2020 (the ''AML Act'').[46] Congress explained that among other purposes, the AML Act was meant to ''improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures'' and ''discourage the use of shell corporations as a tool to disguise and move illicit funds.'' [47] As part of its ongoing efforts to implement the AML Act, FinCEN published in June 2021 the first national AML/CFT priorities, further highlighting the use of shell companies by human traffickers, smugglers, and weapons proliferators, among others, to generate revenue and transfer funds in support of illicit conduct.[48] Additionally, the 2021 United States Strategy on Countering Corruption emphasized the importance of curbing illicit finance and strengthening efforts to fight corruption and other illicit financial activity, including through greater beneficial ownership transparency.[49]

iii. National Security and Law Enforcement Implications

Although many legal entities are used for legitimate purposes, they can also be misused to facilitate criminal activity or threaten our national security. As Congress explained in the CTA, ''malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.'' [50]

For example, such legal entities are used to obscure the proceeds of bribery and large-scale corruption, money laundering, narcotics offenses, terrorist or proliferation financing, and human trafficking, and to conduct other illegal activities, including sanctions evasion. The ability of bad actors to hide behind opaque corporate structures, including anonymous shell and front companies, and to generate funding to finance their illicit activities continues to be a significant threat to the national security of the United States. The lack of a centralized BOI repository accessible to law enforcement and the intelligence community not only erodes the safety and security of our nation, but also undermines the U.S. Government's ability to address these threats to the United States.

In the United States, the deliberate misuse of legal entities, including corporations and limited liability companies, continues to significantly enable money laundering and other illicit financial activity and national security threats. The Department noted in its 2020 Illicit Financing Strategy that ''[m]isuse of legal entities to hide a criminal beneficial owner or illegal source of funds continues to be a common, if not the dominant, feature of illicit finance schemes, especially those involving money laundering, predicate offences, tax evasion, and proliferation financing. . . . A Treasury study based on a statistically significant sample of adjudicated IRS cases from 2016–2019 found legal entities were used in a substantial proportion of the reviewed cases to perpetrate tax evasion and fraud. According to federal prosecutors and law enforcement, large-scale schemes that generate substantial proceeds for perpetrators and smaller white-collar cases alike routinely involve shell companies, either in the underlying criminal activity or subsequent laundering.'' [51] The Drug Enforcement Administration also recently highlighted that drug trafficking organizations (DTOs) commonly use shell and front companies to commingle illicit drug proceeds with legitimate revenue of front companies, thereby enabling the DTOs to launder their drug proceeds.[52]

The NPRM highlighted specific examples of significant criminal investigations into the use of shell companies to launder money or evade sanctions imposed by the United States. For example, the Department of Justice, the Federal Bureau of Investigation (FBI), and the IRS Criminal Investigation Division investigated the alleged misappropriation of more than $4.5 billion in funds belonging to 1Malaysia Development Berhad that were intended to be used to improve the well-being of the Malaysian people but were allegedly laundered through a series of complex transactions and shell companies with bank accounts located in the United States and abroad. Included in the forfeiture complaint were multiple luxury properties in New York City, Los Angeles, Beverly Hills, and London, mostly titled in the name of shell companies.[53] In another case, in March 2021, the Department of Justice charged 10 Iranian nationals with running a nearly 20-year-long scheme to evade U.S. sanctions on the Government of Iran by disguising more than $300 million worth of transactions—including the purchase of two $25 million oil tankers—on Iran's behalf through front companies in California, Canada, Hong Kong, and the United

[45] *See generally,* Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf.*

[46] The Anti-Money Laundering Act of 2020 was enacted as Division F, §§ 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021).

[47] *Id.* section 6002(5)(A)–(B).

[48] FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism Priorities* (Jun. 30, 2021), pp. 11–12, available at *https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf.*

[49] The White House, *United States Strategy on Countering Corruption* (Dec. 2021), pp. 10–11, available at *https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.*

[50] CTA, section 6402(3).

[51] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), pp. 13–14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.* The 2022 Illicit Financing Strategy noted that ''[t]he passage of the CTA was a critical step forward in closing a long-standing gap and strengthening the U.S. AML/CFT regime'' and that ''[a]ddressing the gap in collection at the time of entity formation is the most important AML/CFT regulatory action for the U.S. government.'' Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), p. 8, available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf.*

[52] Drug Enforcement Administration, *2020 Drug Enforcement Administration National Drug Threat Assessment* (''DEA 2020 NDTA'') (2020), pp. 87–88, available at *https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.*

[53] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division,* ''*Combatting Illicit Financing by Anonymous Shell Companies*'' (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

Arab Emirates.[54] During the scheme, the defendants allegedly created and used more than 70 front companies, money service businesses, and exchange houses in the United States, Iran, Canada, the United Arab Emirates, and Hong Kong to disguise hundreds of millions of dollars' worth of transactions on behalf of Iran.[55] The defendants also allegedly made false representations to financial institutions to disguise more than $300 million worth of transactions on Iran's behalf, using money wired in U.S. dollars and sent through U.S.-based banks.[56]

Although the U.S. Government has tools capable of obtaining some BOI, their limitations and the time and cost required to successfully deploy them demonstrate the significant benefits that a centralized repository of information would provide law enforcement. As Congress explained in the CTA, ''money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures . . . across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process.'' [57]

As Kenneth A. Blanco, then-Director of FinCEN, observed in testimony to the U.S. Senate Committee on Banking, Housing and Urban Affairs, identifying the ultimate beneficial owner of a shell or front company in the United States ''often requires human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward facing structure of these shell companies. This takes an enormous amount of time—time that could be used to further other important and necessary aspects of an investigation—and wastes resources, or prevents investigators from getting to other equally important investigations. The collection of beneficial ownership information at the time of company formation would significantly reduce the amount of time currently required to research who is behind anonymous shell companies, and at the same time, prevent the flight of assets and the destruction of evidence.'' [58] Steven M. D'Antuono, Acting Deputy Assistant Director of the FBI's Criminal Investigative Division, elaborated on these difficulties, testifying that ''[t]he process for the production of records can be lengthy, anywhere from a few weeks to many years, and . . . can be extended drastically when it is necessary to obtain information from other countries.'' [59] He explained that if investigators obtain ownership records, they may discover that ''the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity.'' [60] By layering ownership and financial transactions, professional launderers and others involved in illicit finance can effectively delay investigations into their activity.[61] D'Antuono noted that requiring the disclosure of BOI by legal entities and the creation of a central BOI repository available to law enforcement and regulators could address these challenges.[62]

More recently, in July 2022, Andrew Adams, the Director of the DOJ-led Task Force KleptoCapture,[63] remarked that ''as a core challenge to be met through [the Task Force KleptoCapture's] work—past action means that the fruits of corruption that might be found in the United States are likely to be buried deep beneath layers of sham owners and shell companies—while the most obvious and ostentatious forms of kleptocracy will be located outside of the United States, as the world has already seen.'' [64] He also noted that ''the primary obstacle to identifying illicit proceeds and the actors for whom, and by whom, those funds are transmitted, is the use by criminal networks of shell corporations found in multiple, often offshore and relatively non-cooperative, jurisdictions . . . . The Task Force is therefore directing particular attention to attempts by foreign individuals and entities, including off-shore shell corporations, to move funds through correspondent accounts at U.S. banks.'' [65]

The process of obtaining BOI through grand jury subpoenas and other means can be time-consuming and of limited utility in some cases. Grand jury subpoenas, for example, require an underlying grand jury investigation into a possible violation of law. In addition, a law enforcement officer or investigator must work with a prosecutor's office, such as a U.S. Attorney's Office, to open a grand jury investigation, obtain the grand jury subpoena, and issue it on behalf of the grand jury. An investigator also needs to determine the proper recipient of the subpoena and coordinate service, which raises additional complications in cases where excessive layers of corporate structures hide the identity of the ultimate beneficial owners. In some cases, however, BOI records still may not be attainable because they do not exist. For example, because most states do not require the disclosure of BOI when creating or registering a legal entity, BOI cannot be obtained from the secretary of state or similar office. Furthermore, many states permit corporations to acquire property without disclosing BOI, and therefore BOI cannot be obtained from property records either.

FinCEN's other existing regulatory tools also have limitations. The 2016 CDD Rule, for example, requires that certain types of U.S. financial institutions identify and verify the beneficial owners of legal entity customers at the time those financial institutions open a new account for a legal entity customer.[66] But the rule

[54] DOJ (U.S. Attorney's Office, Central District of California), *Iranian Nationals Charged with Conspiring to Evade U.S. Sanctions on Iran by Disguising $300 Million in Transactions Over Two Decades* (Mar. 19, 2021), available at *https://www.justice.gov/usao-cdca/pr/iranian-nationals-charged-conspiring-evade-us-sanctions-iran-disguising-300-million.*

[55] *Id.*

[56] *Id.*

[57] CTA, Section 6402(4).

[58] FinCEN, *Testimony for the Record, Kenneth A. Blanco, Director, U.S. Senate Committee on Banking, Housing and Urban Affairs* (May 21, 2019), available at *https://www.banking.senate.gov/imo/media/doc/Blanco%20Testimony%205-21-19.pdf.*

[59] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division, ''Combatting Illicit Financing by Anonymous Shell Companies''* (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Task Force KleptoCapture is an interagency law enforcement endeavor led by Justice Department prosecutors and dedicated to enforcing the sweeping sanctions and export restrictions that the United States has imposed, along with allies and partners, in response to Russia's unprovoked military invasion of Ukraine. DOJ, *Statement of Andrew Adams, Director, KleptoCapture Task Force, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, for a Hearing Entitled ''KleptoCapture: Aiding Ukraine through Forfeiture of Russian Oligarchs' Illicit Assets* (Jul. 19, 2022), p. 1, available at *https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Adams%20-%202022-07-19.pdf.*

[64] *Id.* at 2.

[65] *Id.* at 4.

[66] The 2016 CDD Rule NPRM contained a requirement that covered financial institutions conduct ongoing monitoring to maintain and update customer information on a risk basis, specifying that customer information includes the beneficial owners of legal entity customers. As noted in the supplementary material to the final rule, FinCEN did not construe this obligation as imposing a categorical, retroactive requirement to identify and verify BOI for existing legal entity customers. Rather, these provisions reflect the conclusion that a financial institution should obtain BOI from existing legal entity customers when, in

provides only a partial solution: The information about beneficial owners of certain U.S. entities seeking to open an account at a covered financial institution only covers beneficial owners of a legal entity at the time a new account is opened, is not reported to the Government, and is not immediately available to law enforcement, intelligence, or national security agencies. Other FinCEN authorities offer only temporary and targeted tools and do not provide law enforcement or others the ability to quickly and effectively follow the money.

Shell companies, in particular, demonstrate how critical it is for investigators to have access to a centralized database of BOI. Treasury's 2020 Illicit Financing Strategy addressed in part how current sources of information are inadequate to prosecute the use of shell entities to hide ill-gotten gains. In particular, while law enforcement agencies may be able to use subpoenas and access public databases to collect information to identify the owners of corporate structures, the 2020 Illicit Financing Strategy explained that ''[t]here are numerous challenges for federal law enforcement when the true beneficiaries of illicit proceeds are concealed through shell or front companies.'' [67] In May 2019 testimony before the Senate Banking, Housing, and Urban Affairs Committee, then-FinCEN Director Blanco provided examples of criminals who used anonymous shell corporations, including: ''A complex nationwide criminal network that distributed oxycodone by flying young girls and other couriers carrying pills all over the United States. A New York company that was used to conceal Iranian assets, including those designated for providing financial services to entities involved in Iran's nuclear and ballistic missile program. A former college athlete who became the head of a gambling enterprise and a violent drug kingpin who sold recreational drugs and steroids to college and professional football players. A corrupt Venezuelan treasurer who received over $1 billion in bribes.'' [68] He continued, ''[t]hese crimes are very different, as are the dangers they pose and the damage caused to innocent and unsuspecting people. The defendants and bad actors come from every walk of life and every corner of the globe. The victims—both direct and indirect—include Americans exposed to terrorist acts; elderly people losing life savings; a young mother becoming addicted to opioids; a college athlete coerced to pay extraordinary debts by violent threats; and an entire country driven to devastation by corruption. But all these crimes have one thing in common: shell corporations were used to hide, support, prolong, or foster the crimes and bad acts committed against them. These criminal conspiracies thrived at least in part because the perpetrators could hide their identities and illicit assets behind shell companies. Had beneficial ownership information been available, and more quickly accessible to law enforcement and others, it would have been harder and more costly for the criminals to hide what they were doing. Law enforcement could have been more effective and efficient in preventing these crimes from occurring in the first place, or could have intercepted them sooner and prevented the scope of harm these criminals caused from spreading.'' [69]

During the same hearing in front of the Senate's Committee on Banking, Housing, and Urban Affairs in May 2019, Acting Deputy Assistant Director D'Antuono explained that ''[t]he strategic use of [shell and front companies] makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information. This practice is both time consuming and costly. The ability to easily identify the beneficial owners of these shell companies would allow the FBI and other law enforcement agencies to quickly and efficiently mitigate the threats posed by the illicit movement of the succeeding funds. In addition to diminishing regulators', law enforcement agencies', and financial institutions' ability to identify and mitigate illicit finance, the lack of a law requiring production of beneficial ownership information attracts unlawful actors, domestic and abroad, to abuse our state-based registration system and the U.S. financial industry.'' [70]

In February 2020, then-Secretary of the Treasury Steven T. Mnuchin testified at a Senate hearing on the President's Fiscal Year 2021 Budget that the lack of information on who controls shell companies is ''a glaring hole in our system.'' [71] In his December 9, 2020, floor statement accompanying the AML Act, Senator Sherrod Brown, the then-Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs and one of the primary authors of the enacted CTA, stated that the reporting of BOI ''will help address longstanding problems for U.S. law enforcement. It will help them investigate and prosecute cases involving terrorism, weapons proliferation, drug trafficking, money laundering, Medicare and Medicaid fraud, human trafficking, and other crimes. And it will provide ready access to this information under long-established and effective privacy rules. Without these reforms, criminals, terrorists, and even rogue nations could continue to use layer upon layer of shell companies to disguise and launder illicit funds. That makes it harder to hold bad actors accountable, and puts us all at risk.'' [72] Senators Sheldon Whitehouse, Charles Grassley, Ron Wyden, and Marco Rubio, who were co-sponsors of the CTA and its predecessor legislation in the Senate, commented on the ANPRM that ''the CTA marked the culmination of a years-long effort in Congress to combat money laundering, international corruption, and kleptocracy by requiring certain companies to disclose their beneficial owners to law enforcement, national security officials, and financial institutions with customer due diligence obligations.'' [73]

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the course of its normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer. Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398, 29404 (May 11, 2016).

[67] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), p. 14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[68] FinCEN, *Testimony for the Record, Kenneth A. Blanco, Director, U.S. Senate Committee on Banking, Housing and Urban Affairs* (May 21, 2019), available at *https://www.banking.senate.gov/imo/media/doc/Blanco%20Testimony%205-21-19.pdf.*

[69] *Id.*

[70] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division, ''Combatting Illicit Financing by Anonymous Shell Companies''* (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[71] Steven T. Mnuchin (Secretary, Department of the Treasury), *Transcript: Hearing on the President's Fiscal Year 2021 Budget before the Senate Committee on Finance* (Feb. 12, 2020), p. 25, available at *https://www.finance.senate.gov/imo/media/doc/45146.pdf.*

[72] Senator Sherrod Brown, *National Defense Authorization Act,* Congressional Record 166:208 (Dec. 9, 2020), p. S7311, available at *https://www.govinfo.gov/content/pkg/CREC-2020-12-09/pdf/CREC-2020-12-09.pdf.*

[73] Senators Sheldon Whitehouse, Chuck Grassley, Ron Wyden, and Marco Rubio, *Letter to the Financial Crimes Enforcement Network* (May 5, 2021), available at *https://www.rubio.senate.gov/public/_cache/files/ceb65708-7973-4b66-8bd4-*

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The Department's 2022 National Money Laundering Risk Assessment noted that lack of timely access to BOI remained a key weakness within the U.S. AML/CFT regulatory regime and emphasized that the ''new U.S. requirements for the disclosure of beneficial ownership information to the federal government, once fully implemented, are expected to help facilitate law enforcement investigations and make it more difficult for illicit actors to hide behind corporate entities registered in the United States or those foreign entities registered to do business in the United States.'' [74] As Secretary Yellen underscored last year, there are ''far too many financial shadows in America that give corruption cover'' and the Department ''must play a leading role'' in shining a spotlight on them, increasing transparency in beneficial ownership information, and making it more difficult to hide and launder ill-gotten gains.[75]

iv. Broader International Framework

The laundering of illicit proceeds frequently entails cross-border transactions involving jurisdictions with weak AML/CFT compliance frameworks, as these jurisdictions may present more ready options for criminals to place, launder, or store the proceeds of crime. For over a decade, through the Group of Seven (G7), Group of Twenty (G20),[76] FATF, and the Egmont Group,[77] the global community has worked to establish a set of mutual standards to enhance beneficial ownership transparency across jurisdictions. U.S. efforts to collect BOI are part of this growing international consensus by jurisdictions to enhance beneficial ownership transparency and will be reinforced by similar efforts by foreign jurisdictions. The 2016 FATF report concluded that ''lack of timely access to adequate, accurate and current beneficial ownership (BO) information remains one of the fundamental gaps in the U.S. context'' and ''overall, the measures to prevent the misuse of legal persons are inadequate.'' [78] The report identified the lack of beneficial ownership as one among a number of higher-risk issues deserving special focus in the report, and referenced prior U.S. risk assessment processes that concluded it was a ''serious deficiency.'' [79] As noted in the 2021 United States Strategy on Countering Corruption, because the United States ''is the largest economy in the international financial system, [it] bears particular responsibility to address [its] own regulatory deficiencies, including in [its] AML/CFT regime, in order to strengthen global efforts to limit the proceeds of corruption and other illicit financial activity.'' [80] The Administration has further recognized the importance of such global efforts by committing support through the Presidential Initiative for Democratic Renewal to bolster partners' beneficial ownership transparency frameworks.[81]

The current lack of a federal BOI reporting requirement and centralized BOI database makes the United States a jurisdiction of choice for those wishing to create shell companies that hide their ultimate beneficiaries. This makes it easier for bad actors to launder illicit proceeds through the U.S. economy. Global financial centers such as the United States are particularly exposed to transnational illicit finance threats, as they tend to have characteristics—such as extensive links to the international financial system, sophisticated financial sectors, and robust institutions—that make them appealing destinations for the proceeds of illicit transnational activity. Corrupt foreign officials, sanctions evaders, and narco-traffickers, among others, exploit the current lack of a centralized BOI reporting obligation to park their ill-gotten gains in a stable jurisdiction, thereby exposing the United States to serious national security threats.

Congress recognized that the lack of a centralized BOI reporting requirement in the United States constitutes a weak link in the integrity of the global financial system. In passing the CTA, Congress explained that federal legislation providing for the collection of BOI was ''needed to . . . bring the United States into compliance with international [AML/CFT] standards.'' [82] Many countries, including the United Kingdom and all member states of the European Union, have incorporated elements derived from these standards into their domestic legal or regulatory frameworks. At the same time, FATF mutual evaluations show that many jurisdictions, including the United States, still have work to do to meet the standards for beneficial ownership transparency. As the FATF noted in its recent public statement regarding amendments to its standard on beneficial ownership transparency of legal entities, ''[m]utual [e]valuations show a generally insufficient level of effectiveness in combating the misuse of legal persons for money laundering and terrorist financing globally, and [show] that countries need to do more to implement the current FATF standards promptly, fully and effectively.'' [83] Establishing the requirements to report BOI to a centralized database at FinCEN is a critical step in the Department's decades-long efforts to protect the U.S. and global financial systems from illicit

c8254509a6f3/13D55FBEE293CAAF52B7317C5CA7E44C.senators-cta-comment-letter-05.04.2021.pdf.

[74] Treasury, *National Money Laundering Risk Assessment* (2022), pp. 35–37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[75] Remarks by Secretary of the Treasury Janet L. Yellen at the Summit for Democracy (Dec. 9, 2021), available at *https://home.treasury.gov/news/press-releases/jy0524.*

[76] *See, e.g., United States G–8 Action Plan for Transparency of Company Ownership and Control* (Jun. 2013), available at *https://obamawhitehouse.archives.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control; G8 Lough Erne Declaration* (Jul. 2013), available at *https://www.gov.uk/government/publications/g8-lough-erne-declaration; G20 High Level Principles on Beneficial Ownership* (2014), *https://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf; United States Action Plan to Implement the G–20 High Level Principles on Beneficial Ownership* (Oct. 2015), *https://obamawhitehouse.archives.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership.*

[77] FATF also collaborated with the Egmont Group of Financial Intelligence Units on a study that identifies key techniques used to conceal beneficial ownership and identifies issues for consideration that include coordinated national action to limit the misuse of legal entities. FATF-Egmont Group, *Concealment of Beneficial Ownership* (2018), *https://egmontgroup.org/sites/default/files/filedepot/Concealment_of_BO/FATF-Egmont-Concealment-beneficial-ownership.pdf.* The Egmont Group is a body of 166 Financial Intelligence Units (FIUs); FinCEN is the FIU of the United States and a founding member of the Egmont Group. The Egmont Group provides a platform for the secure exchange of expertise and financial intelligence amongst FIUs to combat money laundering and terrorist financing.

[78] *See* FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures United States Mutual Evaluation Report* (2016), pp. 4, 10, available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.*

[79] *Id.*, at 22.

[80] The White House, *United States Strategy on Countering Corruption* (Dec. 2021), p. 11, available at *https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.*

[81] *See* The White House, *Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal* (Dec. 9, 2021), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/09/fact-sheet-announcing-the-presidential-initiative-for-democratic-renewal/* (announcing support ''[t]o enhance partner countries' ability to build resilience against kleptocracy and illicit finance, including by supporting beneficial ownership disclosure, strengthening government contracting and procurement regulations, and improving anti-corruption investigation and disruption efforts'').

[82] CTA, Section 6402(5)(E).

[83] FATF, Public Statement on Revisions to R.24 (Mar. 4, 2022), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html.*

actors and to combat money laundering and corruption.

B. The Corporate Transparency Act

The CTA added a new section, 31 U.S.C. 5336, to the BSA to address the broader objectives of enhancing beneficial ownership transparency while minimizing the burden on the regulated community to the extent practicable. The section requires certain types of domestic and foreign entities, called ''reporting companies,'' to submit specified BOI to FinCEN. In certain circumstances, FinCEN is authorized to share this BOI with government agencies, financial institutions, and financial regulators, subject to appropriate protocols.[84] The statutory requirement for reporting companies to submit BOI takes effect ''on the effective date of the regulations'' implementing the reporting obligations.[85] The section provides that reporting companies created or registered to do business after the effective date will need to submit the requisite information to FinCEN at the time of creation or registration, while reporting companies in existence before the effective date will have a specified period in which to report.[86] The CTA's reporting requirements generally apply to smaller, more lightly regulated entities that are less likely to be subject to any other BOI reporting requirements. By contrast, the CTA exempts certain categories of larger, more heavily regulated entities from its reporting requirements.

The statute prescribes the basic outline of reporting requirements. It requires reporting companies to submit to FinCEN, for each beneficial owner and each individual who files an application to form a domestic entity or register a foreign entity to do business (company applicant), four pieces of information—the individual's full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document (*e.g.,* a passport)—or the individual's FinCEN identifier. This readily accessible information should not be unduly burdensome for individuals to produce, or for reporting companies to collect and submit to FinCEN.[87] A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals or reporting companies upon request, subject to certain conditions. For individuals, FinCEN will issue a FinCEN identifier if an individual submits to FinCEN the same four pieces of identifying information as would be required in a BOI report.[88] For reporting companies, FinCEN will issue a FinCEN identifier only at or after the time the reporting company files an initial report.[89] As explained in Section III.B.vi. below, FinCEN proposed to allow a reporting company may use an individual or entity's FinCEN identifier in lieu of providing individual pieces of BOI in certain instances, and FinCEN has decided to revise and resubmit that portion of the proposed rule for additional public comment.[90]

Given the sensitivity of the reportable information, the CTA imposes strict confidentiality, security, and access restrictions on the data FinCEN collects. FinCEN is authorized to disclose reported BOI in limited circumstances to a statutorily defined group of governmental authorities and financial institutions. Federal agencies, for example, may only obtain access to BOI when it will be used in furtherance of a national security, intelligence, or law enforcement activity.[91] For state, local, and Tribal law enforcement agencies, ''a court of competent jurisdiction'' must authorize the agency to seek BOI as part of a criminal or civil investigation.[92] Foreign government access is limited to requests made by foreign law enforcement agencies, prosecutors, and judges in specified circumstances.[93] With the consent of the reporting company, FinCEN may also disclose BOI to financial institutions to help them comply with customer due diligence requirements under applicable law.[94] Finally, a financial institution's regulator can obtain BOI that has been provided to a financial institution it regulates for the purpose of performing regulatory oversight that is specific to that financial institution.[95]

To ensure that BOI collected under 31 U.S.C. 5336 is only used for these statutorily described purposes, the CTA includes specific restrictions, requirements, and security protocols, and it authorizes FinCEN to implement this security framework. FinCEN intends to address the regulatory requirements related to access to information reported pursuant to the CTA through a future rulemaking process ahead of this final rule's effective date.

The CTA also requires that FinCEN revise portions of the 2016 CDD Rule within one year after the effective date of the BOI reporting rule.[96] In particular, the CTA directs FinCEN to rescind the specific beneficial ownership identification and verification requirements of 31 CFR 1010.230(b)–(j), while retaining the general requirement for financial institutions to identify and verify the beneficial owners of legal entity customers under 31 CFR 1010.230(a).[97] The CTA identifies three purposes for this revision: to bring the rule into conformity with the AML Act as a whole, including the CTA; to account for financial institutions' access to BOI reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and to reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.[98]

FinCEN intends to revise the 2016 CDD Rule[99] through a future rulemaking process that will provide the public with an opportunity to comment on the effect of the final provisions of the BOI reporting rule on financial institutions' customer due diligence obligations. The rulemaking process will also allow FinCEN to reach informed conclusions about how to align the 2016 CDD Rule with this final rule and the future BOI access rule.[100]

Finally, the CTA requires the Inspector General of the Department of the Treasury to provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timeliness of such information.[101] The Department of the Treasury's Office of Inspector General has established the following email inbox to receive such

[84] *See generally* 31 U.S.C. 5336(b), (c).

[85] 31 U.S.C. 5336(b)(5).

[86] *See* 31 U.S.C. 5336(b)(1)(B), (C).

[87] *See* 31 U.S.C. 5336(b)(2).

[88] *See* 31 U.S.C. 5336(b)(3)(A)(i).

[89] *Id.*

[90] *See* 31 U.S.C. 5336(b)(3)(B), (C).

[91] *See* 31 U.S.C. 5336(c)(2)(B)(i)(I).

[92] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[93] *See* 31 U.S.C. 5336(c)(2)(B)(ii).

[94] *See* 31 U.S.C. 5336(c)(2)(B)(iii).

[95] *See* 31 U.S.C. 5336(c)(2)(C).

[96] CTA, Section 6403(d)(1).

[97] CTA, Section 6403(d)(2) (''[T]he Secretary of the Treasury shall rescind paragraphs (b) through (j) of section 1010.230 of title 31 . . . upon the effective date of the revised ruled promulgated under this subsection. . . . Nothing in this section may be construed to authorize the Secretary of the Treasury to repeal the requirement that financial institutions identify and verify beneficial owners of legal entity customers under section 1010.230(a) . . . .'').

[98] CTA, Section 6403(d)(1)(A)–(C).

[99] Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398–29402 (May 11, 2016).

[100] The access rule would implement 31 U.S.C. 5336(c) and explain which parties would have access to BOI, under what circumstances, as well as how the parties would generally be required to handle and safeguard BOI.

[101] *See* 31 U.S.C. 5336(h)(4).

comments or complaints: *CorporateTransparency@oig.treas.gov.*

C. Notice of Proposed Rulemaking

In December 2021, building on a previously issued ANPRM,[102] FinCEN published an NPRM proposing BOI reporting requirements. The proposed regulations described two distinct types of reporting companies that must file reports with FinCEN—domestic reporting companies and foreign reporting companies. Generally, under the proposed regulations, a domestic reporting company would include any entity that is created by the filing of a document with a secretary of state or similar office of a jurisdiction within the United States. A foreign reporting company would be any entity created under the law of a foreign jurisdiction that is registered to do business within the United States.

The proposed regulations also included twenty-three statutory exemptions from the definition of reporting company under the CTA. The CTA includes an option for the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, to exclude by regulation additional types of entities. FinCEN, however, did not propose to exempt additional types of entities beyond those specified by the CTA.

The proposed regulations more specifically identified who would be a beneficial owner and who would be a company applicant. Under the proposed rule, a beneficial owner would include any individual who meets at least one of two criteria: (1) the individual exercises substantial control over the reporting company; or (2) the individual owns or controls at least 25 percent of the ownership interests of a reporting company. The proposed regulations defined the terms ''substantial control'' and ''ownership interest'' and proposed rules for determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. The proposed regulations also, following the CTA, defined five types of individuals exempt from the definition of beneficial owner.

In addition, the proposed regulations defined who would be a company applicant. In the case of a domestic reporting company, a company applicant would be the individual who files the document that creates the entity. In the case of a foreign reporting company, a company applicant would be the individual who files the document that first registers the entity to do business in the United States. The proposed regulations specified that anyone who directs or controls the filing of an entity creation or registration document by another would also be a company applicant.

Under the proposed regulations, the time at which a report must be filed would depend on: when the reporting company was created or registered; and whether the report is an initial report, an updated report providing new information, or a report correcting erroneous information in a previously filed report of any kind. Domestic reporting companies that were created, or foreign reporting companies that were registered to do business in the United States for the first time, before the effective date of the final regulations would have one year from the effective date of the final regulations to file their initial report with FinCEN. Domestic reporting companies created, or foreign reporting companies registered to do business in the U.S. for the first time, on or after the effective date of the final regulations would be required to file their initial report with FinCEN within 14 calendar days of the date of creation or first registration, respectively. If there was a change in the information previously reported to FinCEN under these regulations, reporting companies would have 30 calendar days to file an updated report under the proposed regulations. Finally, if a reporting company had filed information that was inaccurate at the time of filing, the proposed regulations would have required the reporting company to file a corrected report within 14 calendar days of the date it knew, or should have known, that the information was inaccurate.

The proposed regulations also described the specific information that a reporting company would need to submit to FinCEN about: the reporting company itself, and each beneficial owner and company applicant. The required information about the reporting company would include basic information identifying the reporting company.[103] The required information about beneficial owners and company applicants would include items of information specifically required by the CTA—the name, date of birth, address, and document number of a specified type of identification document—for each beneficial owner and company applicant. In lieu of providing specific required information about an individual, the reporting company could provide a unique identifier issued by FinCEN called a FinCEN identifier. The proposed regulations described how a FinCEN identifier would be obtained and when it could be used. The proposed regulations also encouraged, but did not require, reporting companies to provide taxpayer identification numbers (TINs) of beneficial owners and company applicants to support efforts by government authorities and financial institutions to prevent money laundering, terrorist financing, and other illicit activities such as tax evasion.

Finally, the proposed regulations elaborated on the CTA's penalty provisions. The CTA makes it unlawful for any person to willfully provide, or attempt to provide, false or fraudulent BOI to FinCEN, or to willfully fail to report complete or updated BOI to FinCEN. The proposed regulations described persons that would be subject to this provision and what acts (or failures to act) would constitute a violation.

D. The Beneficial Ownership Secure System (BOSS)

The CTA directs the Secretary of the Treasury to maintain BOI ''in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level. . . .'' [104] To implement this requirement, FinCEN has been developing the Beneficial Ownership Secure System (BOSS) to receive, store, and maintain BOI. One commenter asked whether FinCEN intends to allow reporting companies to submit BOI reports in paper form, and if so, whether FinCEN would adopt a ''postmark rule,'' whereby a BOI report would be considered timely filed if the envelope is properly addressed, has enough postage, is postmarked, and is deposited in the mail by the due date. FinCEN expects that BOI reports will be submitted electronically through an online interface, but understands there may be certain circumstances in which a reporting company is unable to file through this interface. FinCEN is continuing to consider how to address such cases, as well as other modalities for filing through the online interface, such as ''batch'' filing or other means.

The BOSS will be secured to a Federal Information Security Management Act ''High'' compliance level, the highest information security protection level

[102] 86 FR 69920 (Dec. 8, 2021).

[103] As FinCEN explained in the NPRM, without this information, ''FinCEN would have no ability to determine the entity that is associated with each reported beneficial owner or company applicant,'' frustrating Congress's purpose in enacting the CTA. 86 FR 69920, 69931 (Dec. 8, 2021).

[104] CTA, Section 6402(7).

under the Act. FinCEN intends to issue proposed regulations governing the disclosure of BOI to authorized recipients and requiring, among other things, that recipients maintain the highest security safeguards practicable. As required by the CTA, the proposed regulations will ensure that Treasury has taken all appropriate steps to safeguard BOI and to disclose BOI only for authorized purposes consistent with the CTA.[105]

E. Comments Received

In response to the NPRM, FinCEN received over 240 comments. Submissions came from a broad array of individuals and organizations, including Members of Congress, government officials, groups representing small business interests, corporate transparency advocacy groups, the financial industry and trade associations representing its members, law enforcement representatives, and other interested groups and individuals.

In general, many commenters expressed support for the CTA and the proposed regulations. These commenters viewed the proposed regulations as an important step toward protecting the integrity of the U.S. financial system and a significant contribution to efforts to combat illicit financial activity and global corruption more broadly. These commenters supported the approach taken in the proposed rule, of avoiding loopholes and opportunities for evasion, and a few of these commenters expressed concerns about the illicit finance risks associated with certain types of legal entities. Supportive commenters agreed that FinCEN's proposed approach of defining certain key terms broadly, including in some ways that differ from the 2016 CDD Rule, is aligned with the statutory text and congressional intent in passing the CTA.

FinCEN agrees with many commenters that implementation of a beneficial ownership registry that is highly useful to law enforcement and the intelligence community will help to prevent bad actors from hiding behind opaque corporate structures, including anonymous shell and front companies, and from using such structures to generate funding to finance their illicit activities. While many legal entities are used for legitimate purposes, they can also be misused, as highlighted in the NPRM, and as Congress recognized in the CTA.[106] Moreover, existing regulatory and law enforcement tools, such as grand jury subpoenas, witness interviews, foreign legal assistance requests, and the 2016 CDD Rule, have limitations in enabling law enforcement and national security officials to identify the professional launderers and corrupt officials that hide behind anonymous shell companies.

Other commenters expressed general opposition to the proposed regulations, arguing that the proposed regulations were too broad, too complex, and too difficult and costly to understand and comply with. Some commenters claimed that the proposed regulations deviated significantly from what Congress intended. Many of these commenters expressed concerns that the proposed regulations, if finalized without significant changes, would impose numerous and costly reporting requirements on small businesses and would create privacy and security concerns with respect to personally identifiable information. A number of these commenters suggested that FinCEN adopt a narrower approach, or circumscribe the scope of the reporting obligations. Some also argued that FinCEN should replicate or closely track definitions from the 2016 CDD Rule.

Many commenters, regardless of their overarching views, suggested a range of modifications to the proposed regulations to enhance clarity, refine policy expectations, and ensure technical accuracy.

FinCEN carefully reviewed and considered each comment submitted. Many specific proposals will be discussed in more detail in Section III below. FinCEN's analysis has been guided by the statutory text, including the statutory obligations to collect information in a manner that ensures that it will be highly useful for national security, intelligence, and law enforcement activities and other authorized purposes, and minimize burdens on reporting entities, including small businesses.[107]

In implementing this final rule, FinCEN took into account the many comments and suggestions intended to clarify and refine the scope of the rule and to reduce burdens on reporting entities, including small businesses, to the greatest extent practicable. FinCEN further notes that implementation of the final rule will require additional engagement with stakeholders to ensure a clear understanding of the rule's requirements and timeframes, including through additional guidance and FAQs, help lines, and other engagement—both directly with affected entities and through state governments and other third parties. FinCEN also intends to work within Treasury and with interagency partners to inform risk assessments, advisories, guidance documents, and other products that relate to the illicit finance risks associated with legal entities.

III. Discussion of Final Rule

FinCEN is adopting the proposed rule largely as proposed, but with certain modifications that are responsive to comments received and intended to minimize unnecessary burdens on reporting companies, including by clarifying reporting obligations. The final rule extends to 30 days the deadline for newly created entities to file initial reports, and it sets the same 30-day deadline for entities filing updated and corrected reports. The final rule also removes the requirement that entities created before the effective date of the regulations report company applicant information. Newly created entities will still be required to report company applicant information, but they will not be required to update it. FinCEN believes that these changes will relieve burdens on reporting companies unique to company applicant information, while still ensuring that the database is highly useful. In addition, FinCEN has made a number of modifications to the ownership interest and substantial control definitions to enhance clarity and to facilitate compliance by reporting companies. FinCEN has made certain other clarifying and technical revisions throughout the rule. We discuss specific comments, modifications, revisions, and the shape of the final rule section by section here.

A. Timing of Reports

The CTA authorizes FinCEN to establish the filing deadlines for both reporting companies in existence prior to the effective date of the regulations and reporting companies created or registered on or after the effective date. It also requires reporting companies to update and correct information submitted to FinCEN, and authorizes FinCEN to specify the timing of such submissions.

Proposed 31 CFR 1010.380(a) set forth those timeframes. It required initial reports to be filed by existing entities within one year of the effective date and by newly created or registered entities within 14 days of their creation or registration. It also required corrected reports to be filed within 14 days after a reporting company becomes aware or

[105] All reports filed under the CTA and its implementing regulations will be exempt from search and disclosure under the Freedom of Information Act (FOIA). *See* 31 U.S.C. 5319; 31 CFR 1010.960.

[106] CTA, Section 6402.

[107] 31 U.S.C. 5336(b)(4)(B).

has reason to know that reported information is inaccurate, and it required updated reports to be filed within 30 days of a change in information requiring an update. Commenters supported the timeframes, or opposed them, based on a range of considerations, including the need to establish a highly useful database for law enforcement, the burdens on reporting companies, legal concerns about FinCEN's authority to prescribe timeframes shorter than the statutorily specified maximum periods, and practical considerations regarding the availability of certain types of information. Commenters also suggested possible alternatives, including aligning beneficial ownership reporting deadlines with other pre-existing filing obligations, such as annual federal tax reporting obligations or in connection with state corporate filing requirements and renewals. Some commenters also asked that the final rule include a mechanism for reporting companies to request extensions.

The final rule adopts in many respects the proposed rule's framework but makes certain changes with respect to timeframes and timing events to address practical considerations identified by commenters. Importantly, the final rule harmonizes the reporting timeframes at 30 days for initial reports by newly created or registered entities, updated reports, and corrected reports. A number of commenters advocated for these harmonized and extended timeframes to ease administration for reporting companies and service providers that may support reporting companies.

i. Timing of Initial Reports

Proposed Rule. For newly created or registered companies, proposed 31 CFR 1010.380(a)(1)(i) specified that a domestic reporting company created on or after the effective date of the regulation shall file a report within 14 calendar days of the date it was created as specified by a secretary of state or similar office. Proposed 31 CFR 1010.380(a)(1)(ii) specified that any entity that becomes a foreign reporting company on or after the effective date of the regulation shall file a report within 14 calendar days of the date it first became a foreign reporting company.

For entities created or registered before the effective date of the regulations, the CTA requires filing of initial reports ''in a timely manner,'' but ''not later than'' two years after the effective date of the final regulations.[108] Proposed 31 CFR 1010.380(a)(1)(iii) required any domestic reporting company created before the effective date of the regulation and any entity that became a foreign reporting company before the effective date of the regulation to file a report not later than one year after the effective date of the regulation.

Comments Received. Commenters provided general comments in support or opposition to the reporting timeframes, and specific comments on initial reporting timeframes for existing and newly created entities, as well as updated and corrected reports.

With respect to the initial reporting period for entities created after the effective date of the final rule (''newly-created entities''), some commenters supported the 14-day period for filing an initial report by newly-created domestic entities given that a large number of entities covered by the rule should have a limited number of owners and therefore have access to the required reporting information. Other commenters noted a range of concerns with the initial 14-day filing period for newly-created or -registered entities, whether domestic or foreign. For example, some commenters explained that there are varying state practices regarding registration and company formation, and that it can take several days to receive confirmation of the filing or registration from the secretary of state. Other commenters noted that a significant amount of time can elapse between company creation and the registration of alternative names through which the company is engaging in business (''d/b/a names''), and that there can be delays in receiving a TIN from the IRS, including for foreign employer identification numbers. Many of these commenters suggested alternative timeframes to accommodate these circumstances, ranging from 30 days to 6 months.

With respect to entities in existence at the time of the effective date of the regulation, some commenters supported the one-year reporting period as a reasonable timeframe, while others opposed it. Commenters raised a range of concerns, and in particular, noted that the adequacy of the one-year reporting period depended on a range of considerations, including FinCEN's ability to develop an outreach strategy and publicize the new reporting requirements to stakeholders; the readiness of the BOSS to accept filings with data privacy and security safeguards; the availability of FinCEN hotline assistance, tools, guidance, and FAQs to aid reporting company compliance; and the ability of reporting companies to collect information from beneficial owners and company applicants. Some commenters maintained that the two-year maximum period specified in the CTA should apply, and that this timeframe would be important for businesses with limited administrative capacity to implement. Commenters also suggested longer periods than the two-year period in the CTA, as well as shorter periods than the one-year period described in the proposed rule in order to ensure that reported information would be useful to financial institutions with CDD Rule obligations. Lastly, comments indicated that previously exempt entities should have 90 days or longer to submit an initial report after the qualifying conditions for the exemption lapse. One commenter, for example, asserted that existing entities that are exempt as of the effective date but that cease to be exempt during the first year after the effective date because they no longer meet the exemption criteria should receive the benefit of the one-year filing period for existing entities.

Final Rule. With respect to newly created entities, the final rule revises proposed 31 CFR 1010.380(a)(1)(i) and (ii), for domestic and foreign reporting companies, respectively, to extend the reporting timeframes to 30 days and to provide greater specificity regarding the timing of the filing of initial reports. For existing entities, however, the final rule adopts the proposed 31 CFR 1010.380(a)(1)(i) without any changes. For existing entities, the final rule requires those reporting companies that exist at the time of the effective date to submit an initial report within one year of the effective date.

For newly created entities, the final rule now specifies a trigger for the reporting period for an initial report. That trigger is the earlier of the date on which the reporting company receives actual notice that its creation (or registration) has become effective; or a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created or the foreign reporting company has been registered. In this way, the final rule takes into consideration concerns raised by commenters that the date on which a filing is made with a secretary of state or similar office to create a reporting company is not as useful a reference point as other indicators for starting the time period in which to file an initial report. The final rule also takes into account varying state filing practices, including automated systems in certain states, as notification of creation or registration is provided to newly created

[108] 31 U.S.C. 5336(b)(1)(B).

companies in some states, while in others no actual notice of creation or registration is provided and newly created companies receive public notice through state records. FinCEN believes that individuals that create or register reporting companies will have an incentive to stay apprised of creation or registration notices or publications given their interest in establishing an operating business or engaging in the activity for which the reporting company is created. FinCEN will consider additional guidance or FAQs, as appropriate, if there is a need to clarify how the final rule applies to specific factual circumstances that may arise from particular state creation or registration practices.

The final rule also extends the filing period for initial reports from 14 days to 30 days in response to comments that describe potential impediments to the ability of reporting companies to meet the proposed timeframe. Comments expressed concerns about state confirmation of filings to create or form a reporting company, the timeframes necessary to register d/b/as at the county level, and timeframes required to receive a TIN from the IRS or from foreign authorities, and they raised questions about how to report persons with substantial control given that senior officer or other positions might not be filled promptly. An expanded 30-day timeframe will provide more time to reporting companies to acquire TINs and other identifying information, which is critical to the ability of FinCEN to distinguish reporting companies from one another, which in turn is necessary to create a highly useful database. FinCEN believes that this 30-day timeframe for initial reports will provide enough time for reporting companies to resolve various issues after initial creation, including obtaining necessary information and identifying their beneficial owners with sufficient time to file an initial report.

For existing entities, the final rule requires those reporting companies that exist at the time of the effective date to submit an initial report within one year of the effective date. FinCEN disagrees with commenters who questioned its legal authority to set a one-year deadline. The CTA requires the reports to be filed ''in a timely manner, and not later than 2 years after the effective date,'' in accordance with regulations to be prescribed by FinCEN.[109] Accordingly, the statute establishes a maximum time period of not later than two years, but it does not preclude FinCEN from adopting a deadline shorter than two years. FinCEN carefully considered the benefit to law enforcement and national security agencies that might be derived from periods shorter than 2 years, as well as the burdens imposed on reporting companies to identify beneficial ownership information. These burdens are further addressed in the Regulatory Analysis in Section V below. Given that the effective date of these regulations is January 1, 2024, and existing reporting companies will not be required to file information until January 1, 2025, FinCEN believes that there will be sufficient time for reporting companies to identify and report beneficial ownership information.

Moreover, as discussed in greater detail in Section III.B.iv.b. below, in order to reduce burdens on reporting companies in meeting the one-year deadline, the final rule at 31 CFR 1010.380(b)(2)(iv) no longer requires domestic reporting companies created prior to the effective date, or foreign reporting companies registered prior to the effective date, to submit company applicant information. Rather, these reporting companies will only need to report the fact that they were created or registered prior to the effective date and the information required for reporting companies and beneficial owners. This should help to minimize any burdens associated with a one-year deadline.

In addition, some commenters said it was unclear how the initial reporting rules would apply to entities that are exempt as of the effective date but that cease to be exempt during the first year after the effective date because they no longer meet exemption criteria. FinCEN does not believe changes to the regulatory text are necessary to address this issue but notes that, in such circumstances, previously exempt entities will receive the benefit of the longer of the two applicable time frames, *i.e.,* the remaining days left in the one-year filing period or the 30 calendar day period reflected in section 1010.380(a)(1)(iv).[110] FinCEN will consider guidance or FAQs to respond to any additional particular factual circumstances that may arise.

FinCEN also takes note of the many comments stating that FinCEN outreach to secretaries of state and stakeholders, FinCEN's readiness to accept filings through its beneficial ownership information database, and the availability of FinCEN assistance will all make a one-year timeframe easier to comply with. FinCEN is actively developing the database so that it will be ready to accept filings as of the effective date and intends to conduct outreach to communicate clearly the rules and expectations for reporting companies and other stakeholders.

A number of commenters stated that the final rule should include a mechanism for reporting companies to request extensions, or provide an automatic extension period, to address a range of challenges such as the calculation of ownership interests after transfers of membership interests, locating beneficial owners or company applicants, particularly in foreign countries, or other circumstances. While the final rule does not establish a specific mechanism for reporting companies to seek extensions to the filing periods for initial, updated, or corrected reports, FinCEN may consider providing guidance or relief as appropriate, depending on the facts and circumstances.

ii. Timing of Updated and Corrected Reports

Proposed Rule. Proposed 31 CFR 1010.380(a)(2) required reporting companies to file an updated report within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN, including any change with respect to who is a beneficial owner of a reporting company, as well as any change with respect to information reported for any particular beneficial owner or applicant. Proposed 31 CFR 1010.380(a)(2)(i) specified that if a reporting company subsequently becomes eligible for an exemption from the reporting requirement after the filing of its initial report, this change will be deemed a change requiring an updated report.

Proposed 31 CFR 1010.380(a)(2)(ii) provided that if an individual is a beneficial owner of a reporting company because the individual owns at least 25 percent of the ownership interests of the reporting company, and such beneficial owner dies, a change with respect to the required information will be deemed to occur when the estate of the deceased beneficial owner is settled. This proposed rule sought to clarify that a reporting company is not required to immediately file an updated report to notify FinCEN of the death of a beneficial owner. However, when the estate of a deceased beneficial owner is settled either through the operation of

[109] 31 U.S.C. 5336(b)(1)(B).

[110] For example, if there is an event that causes an exempt entity that was in existence on the effective date to no longer meet any exemption criteria on the 350th day after the effective date, that entity would have 30 days in which to file its initial report; in contrast, if the same entity were to no longer meet any exemption criteria on the 330th day after the effective date, it would have 35 days to file its initial report.

the intestacy laws of a jurisdiction within the United States or through a testamentary disposition, the reporting company is required to file an updated report at that time, removing the deceased former beneficial owner and, to the extent appropriate, identifying any new beneficial owners.

With respect to the correction of inaccuracies in reports, proposed 31 CFR 1010.380(a)(3) required reporting companies to file a report to correct inaccurately filed information within 14 calendar days after the date on which the reporting company becomes aware or has reason to know that any required information contained in any report that the reporting company filed with FinCEN was inaccurate when filed and remains inaccurate. Proposed 31 CFR 1010.380(a)(3) also specified that a corrected report filed under this paragraph within this 14-day period shall be deemed to satisfy the safe harbor provision at 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which an inaccurate report is filed.

Comments Received. With respect to updated reports, some commenters supported the 30-day timeframe to update reports as necessary to maintain an effective database, and other commenters asked for the application of a consistent timeframe across all the reporting requirements to streamline and facilitate compliance processes. Other comments suggested that the timeframe for updating reports be extended to 60 days, 90 days, or one year, and that the frequency or number of updated reports be limited or coincide with preexisting filing obligations of reporting companies (*e.g.,* annual tax return filing, annual state filings). Some commenters also argued that there should be no requirement to file an updated report unless the reporting company becomes aware of a change in beneficial owners or beneficial ownership information. Lastly, some commenters argued that FinCEN does not have authority to shorten the timeframe to file updates to less than the one-year maximum specified in the CTA. These commenters pointed to a CTA requirement that the Secretary of the Treasury evaluate the necessity and benefit of a shorter deadline for updates than the one-year maximum.

With respect to deceased beneficial owners, commenters sought clarification of the application of the rule in specific circumstances. Commenters asked FinCEN to clarify the updated reporting timeframe if a reporting company is unable to acquire information about a successor within 30 days. In addition, commenters asked whether a report would be required if ownership interests of the deceased beneficial owner are diluted through distribution to a number of beneficiaries. Lastly, commenters suggested that the rule applicable to deceased beneficial owners should not apply to individuals who are beneficial owners based on substantial control.

With respect to corrected reports, a number of commenters noted that the timeframe of 14 days to submit a corrected report after becoming aware of an inaccuracy was too short and advocated for longer time periods, including 21 days or 30 days after the inaccuracy is discovered. Other commenters suggested longer time periods, including up to 90 days, because businesses that discover inaccuracies would need to consult with their attorney or advisor to assess an appropriate way forward.

There were also a few comments regarding the CTA's provision that provides a safe harbor to reporting companies that discover an inaccuracy and file a corrected report within 90 days of the filing of an initial report. Some commenters requested clarification that the 90 day period be applied broadly to all reporting companies correcting any inaccurate reports. Other commenters argued that small businesses acting in good faith should have an opportunity to correct a violation and come into compliance, without fines or enforcement actions. Some commenters urged FinCEN to amend the proposed rule to clarify that the CTA's safe harbor applies to all reports that are corrected within 90 days from the date on which a reporting company becomes aware or has reason to know that required information contained in any report it filed with FinCEN was inaccurate.

A number of comments also requested clarification and asked whether specific proposed scenarios would trigger an initial or updated report filing requirement (*e.g.,* company termination). Multiple commenters noted that the timeline for an updated report should be based on when a company becomes aware of the need to submit an update.

Final Rule. The final rule adopts proposed 31 CFR 1010.380(a)(2) regarding the 30-day timeframe to submit updated reports, but makes certain clarifying edits and revises the proposed rule to exclude updates on company applicants. This exclusion is intended to reduce unnecessary burdens associated with the updating requirement, and is discussed in more detail in Section III.B.v. below in connection with 31 CFR 1010.380(b)(3), which describes the contents of updated reports. For corrected reports, the final rule at 31 CFR 1010.380(a)(3) revises the timeframe for the submission of reports to correct inaccuracies to 30 days, but otherwise adopts the language of the proposed rule with clarifying edits.

Aligning the updated and corrected report deadlines with the initial reporting deadline for new entities will help to harmonize the reporting timelines, provide substantial time to obtain required information, and minimize potential confusion. A more standardized reporting timeline for these reports should make compliance easier for reporting companies.

For updated reports, as stated in the proposed rule, FinCEN considers that keeping the database current and accurate is essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. FinCEN has considered that a more frequent updating requirement may entail more burdens than a less frequent one, but reporting companies can be expected to know who their beneficial owners are, and it is reasonable to expect that reporting companies will update the information they report when it changes. Moreover, keeping the requirement to update reports at 30 days is consistent with international practice on the collection of beneficial ownership information.[111] For example, in the United Kingdom, changes to beneficial ownership information for companies required to register with the UK registry must be reported within 15 days, and in France, companies and certain other types of associations and groups must file updates to beneficial ownership information within one month.[112] Similarly, in the jurisdiction of Jersey, a major center for corporate formation, such updates must be filed

[111] *See* World Bank, *Beneficial ownership: increasing transparency in a simple way for entrepreneurs* (July 2, 2021), Figure 2, available at *https://blogs.worldbank.org/developmenttalk/beneficial-ownership-increasing-transparency-simple-way-entrepreneurs* (noting that in most economies, the timeframe to disclose beneficial ownership information is from 21 to 30 days after a change in ownership).

[112] *See* Financial Action Task Force, *United Kingdom Mutual Evaluation Report* (December 2018) (p. 211), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf;* Financial Action Task Force, *France Mutual Evaluation Report* (May 2022) (p. 280), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-France-2022.pdf.*

within 21 days.[113] The Financial Action Task Force, the international standard-setting body for AML/CFT, has viewed longer timelines to update beneficial ownership information critically, and inconsistent with the FATF standard that beneficial ownership information of legal persons be up-to-date.[114] As noted, FinCEN has eliminated the requirement that reporting companies update company applicant information, which should reduce compliance burdens. FinCEN has provided an alternative cost analysis for less frequent report updates in in the Regulatory Analysis in Section V, below.

FinCEN disagrees with commenters who questioned its authority to impose a 30-day deadline based on the CTA's requirement that the Secretary of the Treasury evaluate the necessity and benefit of a deadline shorter than the one-year maximum. The CTA requires updates to be filed ''in a timely manner, and not later than 1 year'' after there is a change with respect to any reported information, in accordance with regulations to be prescribed by FinCEN.[115] The statutory one-year timeframe is plainly a maximum, and it does not preclude FinCEN from prescribing a deadline shorter than one year. Although the CTA requires ''a review to evaluate'' the necessity and benefit of a period shorter than one year, the deadline for this review notably does not run from the effective date of the final rule, and nothing in the CTA requires that the final rule be issued with a one-year deadline before the review occurs.[116] In adopting a 30-day deadline, FinCEN has evaluated the necessity of a shorter updating period, the benefit to law enforcement and national security officials of such shorter period, and the burden on reporting companies.[117] FinCEN has also consulted with the Departments of Justice and Homeland Security.[118]

With respect to deceased beneficial owners, 31 CFR 1010.380(a)(2)(iii) adopts the proposed rule's requirement that an updated report must identify new beneficial owners within 30 days of the settlement of the estate of the deceased beneficial owner, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary disposition. The final rule, however, clarifies that an updated report must be filed if the deceased individual was a beneficial owner ''by virtue of property interests or other rights subject to transfer upon death,'' not solely because the deceased beneficial owner owned or controlled 25 percent of the reporting company's ownership interests. Finally, for the purposes of determining whether any of the successors to the deceased beneficial owner continue to be beneficial owners of the reporting company, no special rules apply, and the reporting company will need to apply the beneficial owner definition to assess whether any successor is a beneficial owner by virtue of the new property interests or rights.

With respect to corrected reports, the final rule extends the filing deadline from 14 to 30 days in order to provide reporting companies with adequate time to obtain and report the correct information. The final rule reflects the concerns raised by commenters that the 14-day timeframe may not provide sufficient time for reporting companies to conduct adequate due diligence, consult with advisors, or conduct appropriate outreach, while at the same time providing a sufficiently short timeframe to ensure that errors are corrected quickly so that the database will remain ''accurate, complete, and highly useful.''

In addition, for the sake of clarity, the final rule adds 31 CFR 1010.380(a)(2)(iv), which provides that when a reporting company has previously reported information with respect to a parent or legal guardian of a minor child in lieu of the minor child's information, pursuant to 31 CFR 1010.380(b)(2)(ii) and (d)(3)(i), a reporting company must submit an updated report when a minor child attains the age of majority.

FinCEN stresses that the requirement to update reports in 31 CFR 1010.380(a)(2)(i) is triggered only where there is ''any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.'' Consistent with this defined requirement, FinCEN has added 31 CFR 1010.380(a)(2)(v) to the final rule to clarify that reporting companies are required to update the image of the identification document from which the unique identification number is obtained only when there is a change in information to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D) on the identification document. Other changes in the information contained in the identification document—for example, with respect to expiration dates or personal characteristics other than the information enumerated in 31 CFR 1010.380(b)(1)(ii)(A–D)—do not require the submission of an updated image. Because the image is used to corroborate the information required to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D), the image only needs to be updated when such information changes. FinCEN highlights this clarification to ensure that reporting companies avoid additional burdens of obtaining images of identification documents in circumstances that are not relevant for the purposes of the final rule.

31 U.S.C. 5336(h)(3)(C) provides a safe harbor to any person that has reason to believe that any report submitted by the person contains inaccurate information and voluntarily and promptly, and consistent with FinCEN regulations, submits a report containing corrected information no later than 90 days after the date on which the person submitted the inaccurate report. The CTA is clear that the safe harbor is only available to reporting companies that file corrected reports no later than 90 days after submission of an inaccurate report, and does not extend to reports corrected more than 90 days after they are filed, even if a reporting company files a correction promptly after becoming aware or having reason to know that a correction is needed.

In addition, the final rule does not adopt a good faith or other standard regarding the requirements to update or correct reports. The CTA places the reporting responsibility on reporting companies, and this responsibility includes the obligation to report accurately. The CTA also requires reporting companies to update information when it changes.

[113] *See* Financial Action Task Force, *Best practices on beneficial ownership for legal persons* (October 2019) (p. 43), available at *https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf.*

[114] *See* Financial Action Task Force, *Germany Mutual Evaluation Report* (August 2022) (p. 285), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Germany-2022.pdf* (noting that ''[t]here is no detail on the timeframes in which basic and BO information should be updated which means that registry information may not always be up-to-date.''); *See* Financial Action Task Force, *Hong Kong, China Mutual Evaluation Report* (September 2019) (p. 210–211), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-2019.pdf* (noting that ''a company has two months to update changes in shareholding, especially for subsequent changes, in its register (s.627 CO), which means that shareholder information may not always be accurate and up-to-date even when the intention of the underlying parties are.''). *See generally* FATF Recommendations (updated March 2022), *Interpretive Note to Recommendation 24* (p. 94), available at *https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf* (''Up-to-date [beneficial ownership] information is information which is as current and up-to-date as possible, and is updated within a reasonable period (*e.g.* within one month) following any change.'').

[115] 31 U.S.C. 5336(b)(1)(D).

[116] 31 U.S.C. 5336(b)(1)(E)(iii).

[117] *See* 31 U.S.C. 5336(b)(1)(E)(ii), (iii).

[118] *See* 31 U.S.C. 5336(b)(1)(E).

Lastly, with respect to questions regarding the treatment of company termination or dissolution, FinCEN does not expect a reporting company to file an updated report upon company termination or dissolution. FinCEN will consider appropriate guidance or FAQs to address any other specific questions that may arise about application of the final rule to particular facts and circumstances.

B. Content, Form, and Manner of Reports

Proposed 31 CFR 1010.380(b) specified that each report or application under that section must be filed with FinCEN in the form and manner FinCEN prescribes, and each person filing such report shall certify that the report is accurate and complete. It then set forth specific types of identifying information that reporting companies are required to report about themselves, their beneficial owners, and their company applicants, and identified certain additional information that a reporting company may choose to submit. Next, it outlined certain special rules for the contents of reports and specified the contents of updated or corrected reports. Finally, it set forth requirements for obtaining and using a FinCEN identifier. The final rule in large part adopts the requirements of the proposed rule, but with certain changes explained in this section.

i. Certification

Proposed Rule. Proposed 31 CFR 1010.380(b) specified that each person filing a report under that section must certify that the report is accurate and complete. This approach was based on comments to the ANPRM that discussed the potential for FinCEN to require an attestation of accuracy or other certification on either a one-time or periodic basis, including comments that argued that such a requirement would encourage reporting companies to keep their information up to date. FinCEN invited further comment on the proposal that a person filing a report pursuant to proposed 31 CFR 1010.380(b) must certify that the report is accurate and complete.

Comments Received. Commenters generally supported the certification requirement in proposed 31 CFR 1010.380(b), stating that such a requirement is consistent with the purposes of the CTA and ensures that information in the BOSS is accurate and up to date, and thus highly useful to authorized users. Commenters who opposed the requirement stated that it exceeded the scope of FinCEN's authority. They noted that the CTA already established that it was unlawful for any person to willfully provide false information, and that the certification requirement could expand a person's liability for providing inaccurate information even if the information was provided in good faith. Commenters who opposed the proposed requirement also argued that the certification ignored the standards of practice in other areas such as federal income tax returns.

Commenters generally questioned what level of due diligence was required of the person certifying the report, and observed that it would be burdensome, if not impossible, for a reporting company to certify the accuracy of the beneficial owner's or company applicant's personally identifiable information (PII). Commenters suggested changing the certification language to include various knowledge standards (*i.e.,* ''to the best of their knowledge'' or ''to the best of their knowledge after reasonable and diligent inquiry''), and one commenter urged FinCEN to decrease the penalties for certifiers who act in good faith after diligent inquiry. Commenters also recommended that third parties submitting information on behalf of a beneficial owner or reporting company should have the option to make a declaration if unable to gather information, or if information provided to the third party was incorrect. Finally, one commenter urged FinCEN to clarify which person filing the report will have the certification obligation, and to define what certification of accuracy and completeness means.

Final Rule. The final rule retains the certification requirement set out in the proposed rule, but clarifies the language to be consistent with other certification language that FinCEN uses elsewhere, which requires a certification that the reported information is ''true, correct, and complete.'' The amended certification requirement mirrors that in the Form 8300 (''Report of Cash Payments Over $10,000 in a Trade or Business'') [119] required by FinCEN and IRS. The revisions will help to ensure a consistent information certification standard for information required to be reported to FinCEN. The final rule also clarifies that the certification requirement applies to any report or application submitted to FinCEN pursuant to 31 CFR 1010.380(b), such as an application for a FinCEN ID, not just to a BOI report submitted by a reporting company.

Under the final rule, each reporting company will certify that its report or application is true, correct, and complete. FinCEN recognizes that much of the information required to be reported about beneficial owners and applicants will be provided to reporting companies by those other individuals. However, the structure of the CTA reflects a deliberate choice to place the responsibility for reporting this information on the reporting company itself. The fundamental premise of the CTA is that the reporting company is responsible for identifying and reporting its beneficial owners and applicants.[120] Inherent in that responsibility is the obligation to do so truthfully and accurately. Accordingly, FinCEN believes that it is reasonable to require reporting companies to certify the accuracy and completeness of their own reports, and it is appropriate to expect that reporting companies will take care to verify the information they receive from their beneficial owners and applicants before they report it to FinCEN. Requiring such a certification is within FinCEN's authority, which under the CTA extends to prescribing procedures and standards governing reports, and it is consistent with the CTA's direction that those procedures and standards ensure the beneficial ownership information reported to FinCEN be ''accurate'' and ''complete.'' [121]

While an individual may file a report on behalf of a reporting company, the reporting company is ultimately responsible for the filing. The same is true of the certification. The reporting company will be required to make the certification, and any individual who files the report as an agent of the reporting company will certify on the reporting company's behalf.

The final rule does not adopt standards that apply to practitioners filing tax forms on a client's behalf, as these practices are dissimilar. Different roles, duties, and capacities can be subject to different requirements and different legal duties. For example, certified public accountants who practice before the IRS are subject not only to Treasury Department Circular No. 230 (Rev. 6–2014), ''Regulations Governing Practice before the Internal Revenue Service'',[122] (''Circular 230''),

[119] Form 8300 (Rev. August 2014) (*irs.gov*). The IRS and FinCEN jointly administer the Form 8300 pursuant to companion statutory authorities, and regulations issued by both agencies. For the IRS' authority, *see* 26 U.S.C. 6050I and 26 CFR 1.6050I–1; for FinCEN's authority, *see* 31 U.S.C. 5331 and 31 CFR 1010.330.

[120] 31 U.S.C. 5336(b)(1)(A).

[121] 31 U.S.C. 5336(b)(4).

[122] Treasury Department Circular No. 230 (Rev. 6–2014), ''Regulations Governing Practice before the Internal Revenue Service,'' Catalog Number 16586R, 31 CFR Subtitle A, Part 10, published (Jun. 12, 2014).

but also to applicable state laws and board of accountancy rules or regulations, which may be more exacting or stringent in some respects than Circular 230. Furthermore, legal requirements for audit work are different from those for tax return preparation and other accounting services. Similarly, lawyers are subject to the Model Rules of Professional Conduct as adopted in their licensing jurisdiction, but those rules do not fully align with Circular 230. Accordingly, FinCEN considers the standard established by the certification requirement to be the appropriate standard for beneficial ownership filings under this rule.

FinCEN considered applying a knowledge or due diligence standard to the certification as recommended by certain commenters. Given that the CTA places the responsibility on reporting companies to identify their beneficial owners, however, the final rule retains a version of the standard articulated in the proposed rule. Some commenters expressed concern about the certification in light of the civil and criminal penalties for willfully providing false or fraudulent beneficial ownership information.[123] Any assessment as to whether false information was willfully filed would depend on all of the facts and circumstances surrounding the certification and reporting of the BOI, but as a general matter, FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation.

ii. Information To Be Reported Regarding Reporting Companies

In order to ensure that each reporting company can be identified, proposed 31 CFR 1010.380(b)(1)(i) required each reporting company to provide: (1) the full name of the reporting company, (2) any trade name or ''doing business as'' name of the reporting company, (3) the business street address of the reporting company, (4) the state or Tribal jurisdiction of formation of the reporting company (or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers), and (5) an IRS TIN of the reporting company (or, where a reporting company has not yet been issued a TIN, either a Dun & Bradstreet Data Universal Numbering System (DUNS) Number or a Legal Entity Identifier (LEI)).

While the CTA specifies the information required to be reported to ''identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company,'' the CTA does not specify what, if any, information a reporting company must report about itself. Nevertheless, the CTA's express requirement to identify beneficial owners and applicants ''with respect to'' each reporting company clearly implies a requirement to identify the associated company. That implicit requirement is confirmed by the structure and overriding objective of the CTA, which is to identify the individuals who own, control, and register each particular entity, as well as by the CTA's direction to ''ensure that information is collected in a form and manner that is highly useful.'' Without a reporting company's identifying information, the users of the database could not determine what entities an individual owns or controls. For example, the database might show that a known drug trafficker is a beneficial owner, but it would not identify the specific entities that he owns and uses to launder money. Conversely, an investigator who knows an entity is being used to launder money would be unable to query the database to identify who owns and controls the entity. This would frustrate Congress's express purposes in enacting the CTA and would amount to an absurd result.[124] The statutory authority to prescribe regulations for identifying the beneficial owners and applicants of reporting companies thus must necessarily include the authority to require identifying information about the reporting companies themselves.

This argument was stated in the NPRM. While some commenters questioned the statutory basis for requiring such information, many expressly agreed with the proposed approach, recognizing that some basic identifying information about a reporting company would be necessary for the database to be useful. Nevertheless, FinCEN recognizes that this authority has limits. In this vein, some commenters noted that FinCEN should minimize the information reporting companies must disclose about themselves. Other commenters suggested that FinCEN require additional information, including details about company formation and reporting companies' corporate structure and chain of ownership. This type of information, however, is not needed to reliably identify a reporting company or associate a beneficial owner or company applicant with a reporting company.

a. Company Name

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(A)–(B) required a reporting company to report the full name of the reporting company, as well as any trade or d/b/a names of the reporting company.

Comments Received. Commenters generally supported the proposed requirement but asked for additional clarification regarding the scope of the requirement. A number of commenters requested that FinCEN require the submission of the full ''legal'' name to avoid confusion between similarly named entities or with operational names. Other commenters expressed concerns about the requirement that reporting companies also submit d/b/a or trade names and the potential burdens associated with reporting a large number of related names. To minimize this burden, commenters suggested that this reporting requirement be narrowed to d/b/a or trade names that a reporting company would file or register with a relevant government authority.

Final Rule. FinCEN adopts the proposed rule, but clarifies the ambiguity in the proposed rule regarding the meaning of ''full name'' and adopts the use of ''full legal name'' to ensure that reporting companies submit the legal name used to establish the entity. As noted in the NPRM, companies with similar names may be mistaken for each other due to misspellings or other errors and FinCEN must have enough specific information about a reporting company to enable accurate searching of the BOI database. FinCEN considered requiring reporting companies to report only trade or d/b/a names that are filed or registered with a relevant government authority. However, FinCEN believes such a limitation would be insufficient to identify reporting companies that do business under names that they do not register with government authorities. Requiring all trade or d/b/a names, regardless of whether they are registered, will ensure that law

[123] 31 U.S.C. 5336(h)(1).

[124] *See, e.g., Griffin* v. *Oceanic Contractors, Inc.,* 458 U.S. 564, 575 (1982) (noting that ''interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available''); *Arkansas Dairy Co-op Ass'n, Inc.* v. *Dep't of Agr.,* 573 F.3d 815, 829 (D.C. Cir. 2009) (rejecting a reading of a statute that would produce a ''glaring loophole'' in Congress's instruction to an agency); *Ass'n of Admin. L. Judges* v. *FLRA,* 397 F.3d 957, 962 (D.C. Cir. 2005) (''Unless it has been extraordinarily rigid in expressing itself to the contrary . . . the Congress is always presumed to intend that pointless expenditures of effort be avoided.''); *Pub. Citizen* v. *Young,* 831 F.2d 1108, 1112 (D.C. Cir. 1987) (explaining that ''a court must look beyond the words to the purpose of the act where its literal terms lead to absurd or futile results'').

enforcement and national security agencies are able to associate businesses with their legal entities and beneficial owners, while also helping to avoid confusion between different entities.

b. Company Address

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(C) required a reporting company to report the business street address of the reporting company.

Comments Received. In the proposed rule, FinCEN recognized comments to the ANPRM that raised concerns that a reporting company might list the address of a formation agent or other third party as its ''business street address,'' rather than its principal place of business or the business entity's actual physical location, and sought comment on these concerns. A number of comments stated the importance of disclosing the street address or physical location of a reporting company, and offered suggestions to provide greater precision to the concept of business street address. One commenter suggested, for example, ''street address of the reporting company's principal place of business'' in lieu of ''business street address'' because an entity might have multiple business street addresses. Some commenters also noted that FinCEN should not permit the use of P.O. boxes because it would increase ambiguity about the location of a reporting company and could allow it to hide its location and activities.

Other commenters noted challenges, particularly during the COVID pandemic, to limiting reporting to a business street address. Some commenters noted that businesses often operate from a residential address or that many internet companies have no established physical presence. Along these lines, some commenters indicated that businesses often use P.O. boxes where there is no fixed business to report or where a business is newly formed. Additional comments provided variations and asked to permit disclosure of the company formation agent's address, a physical street address where records are located, or a care of address. In addition, one commenter asked that the reporting requirement align with the Customer Identification Program (CIP) reporting requirements. Lastly, a number of commenters noted the need for clarification regarding the disclosure of business street address for foreign reporting companies, including whether such companies needed to report a U.S. address, a foreign address, or both.

Final Rule. FinCEN adopts the proposed rule with certain changes that clarify the business street address to be reported. In particular, the final rule clarifies that for a reporting company with a principal place of business in the United States, the reporting company should provide the street address of that principal place of business. FinCEN is adopting the suggestion made by many commenters to require the address of the ''principal place of business'' given the potential ambiguity of ''business street address'' in cases in which a business may have multiple locations. For a reporting company with a principal place of business outside of the United States, the final rule specifies that the reporting company should provide the street address of the primary location in the United States where the reporting company conducts business. This requirement to provide a U.S. address will help to ensure that law enforcement and national security agencies are able to associate a reporting company that operates principally outside of the United States with the location where it operates in the United States. FinCEN considered comments suggesting that in such instances, FinCEN should either require or allow for voluntary reporting of a foreign address, in addition to a U.S. address, but determined that limiting the address requirement to a street address in the United States would be sufficient for identifying reporting companies and would minimize burdens associated with this reporting requirement. FinCEN believes that having a U.S. address for a reporting company would also enable law enforcement to reach a point of contact more effectively in case of an inquiry or investigation.

As noted in the proposed rule, the requirement to report the street address of a business is not satisfied by reporting a P.O. box or the address of a company formation agent or other third party. FinCEN believes that reporting such third-party addresses would create opportunities for illicit actors to create ambiguities or confusion regarding the location and activities of a reporting company and thereby undermine the objectives of the beneficial ownership reporting regime.

The comments, however, indicate that there are likely to be a variety of situations in which there may be questions about the principal place of business of a reporting company, and FinCEN will consider future guidance or FAQs to address such questions.

c. Jurisdiction of Formation and Registration

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(D) required the reporting company to report its state or Tribal jurisdiction of formation, or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers.

Comments Received. A number of commenters noted that this information would provide clarity about the entity and create opportunities for federal, state, and local law enforcement collaboration. With respect to foreign reporting companies, a few commenters suggested that FinCEN also require the jurisdiction of formation, noting that this information would be valuable for cross-border investigations and would help facilitate mutual legal assistance requests.

Final Rule. The final rule adopts and expands the proposed rule in order to ensure that the information in the beneficial ownership database can be used to reliably identify a reporting company. The final rule requires foreign reporting companies, in addition to domestic reporting companies, to report their jurisdiction of formation. This jurisdiction may be a State, Tribal, or foreign jurisdiction of formation. For foreign reporting companies, the final rule retains the requirement that the company report the State or Tribal jurisdiction where it first registers. In the case of foreign reporting companies, the jurisdiction of formation and the place of registration in the United States are necessary to ensure that reporting companies can be accurately identified, as different companies with similar names may be formed or registered in different jurisdictions. FinCEN also believes the jurisdiction of formation for foreign reporting companies will be highly useful for law enforcement and national security agencies in conducting cross-border investigations, and that there will be no additional burden associated with this reporting requirement since companies typically know their jurisdiction of formation.

d. Company Identification Numbers

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(E) required the reporting company to submit a TIN (including an Employer Identification Number (EIN)), or where a reporting company has not yet been issued a TIN, a DUNS number or an LEI. The proposed rule recognized that a TIN is furnished on all tax returns, statements, and other tax-related documents filed with the IRS and stated an expectation that the requirement would entail limited burdens. At the same time, FinCEN recognized that an entity may not be able to provide a TIN, such as in the case of a newly formed entity that does not yet have a TIN when it submits a report to FinCEN at the time of formation or registration, and so

provided for the use of a DUNS or LEI number as an alternative. FinCEN also asked if there was additional information FinCEN should collect to identify a reporting company.

Comments Received. Commenters expressed a range of views about the requirement to report a TIN, or in the alternative, a DUNS or LEI identifier. A number of commenters supported the requirement to report a TIN, and suggested that a reporting company be required to report a TIN later, if it initially reports a DUNS or LEI but subsequently receives a TIN. One commenter asked that the final rule be made consistent with the CIP Rule, and therefore the 2016 CDD Rule, and proposed as an alternative allowing reporting companies to provide evidence of an application by a reporting company for a TIN, permitting the disclosure of a DUNS or LEI on a voluntary basis. A couple of commenters suggested either requiring a state identification number (*i.e.,* a unique identification number provided by the State of formation or registration) or accepting this number in lieu of a TIN, DUNS, or LEI; one of these commenters noted that a state identification number would be more easily accessible than a DUNS or LEI. Other commenters opposed this requirement entirely, stating that FinCEN either lacks the authority to require such identification information or that submission of this information would be too burdensome. One commenter expressed support for collecting this information on a voluntary basis only.

Final Rule. The final rule adopts the requirement in the proposed rule to provide a TIN, but it simplifies the alternatives. Reporting companies will not be allowed to report a DUNS or LEI in lieu of a TIN; foreign reporting companies without a TIN will be required to provide a foreign tax identification number.

While there may be some situations in which a company that is created or registered to do business in the United States will not have a TIN, the vast majority of reporting companies will have a TIN or will easily be able to obtain one. Although there may be a short lapse in time between the time of formation and the time it takes for a reporting company to apply for and receive a TIN, online applications for a TIN are returned almost immediately. Because FinCEN is extending the time for filing of an initial report under 31 CFR 1010.380(a)(1) to 30 days, FinCEN expects that reporting companies will have sufficient time to obtain a TIN before filing. FinCEN believes that a single identification number for reporting companies is necessary to ensure that the beneficial ownership registry is administrable and useful for law enforcement, to limit opportunities for evasion or avoidance, and to ensure that users of the database are able to reliably distinguish between reporting companies.[125]

While domestic companies can easily obtain a TIN, there may be situations in which a foreign company that registers in the United States is not subject to U.S. corporate income tax and has no reason to obtain a TIN. In such cases, FinCEN has modified 31 CFR 1010.380(b)(1)(i)(F) to permit a reporting company to provide a foreign tax identification number and the name of the relevant jurisdiction as an alternative. Companies operating in most foreign countries are issued a tax identification number by the authorities of that country for tax purposes. In the event that unusual situations arise in which a foreign reporting company is not able to obtain a foreign tax identification number, FinCEN will consider appropriate guidance or relief depending on the circumstances.

Finally, with respect to comments suggesting that FinCEN require reporting companies to provide a registration or similar number associated with the corporate formation application, FinCEN considered a range of options and factors on whether to include such a number, but determined that there were practical challenges. For example, it is unclear whether states issue comparable registration numbers with similar formats and therefore whether FinCEN could reliably use such a registration number due to the differences in state practices. In addition, mindful of the burdens for small companies, FinCEN was not convinced that those registration numbers are readily accessible to most companies in a manner similar to TINs.

iii. Information To Be Reported Regarding Beneficial Owners and Company Applicants

Proposed 31 CFR 1010.380(b)(1)(ii) specified the particular information required to be reported regarding beneficial owners and company applicants. Proposed 31 CFR 1010.380(b)(1)(ii) required reporting companies to identify each beneficial owner of the reporting company and each company applicant by: full legal name, date of birth, current residential or business street address, and unique identifying number from an acceptable identification document, and to provide an image of the identifying document.

Some commenters suggested that FinCEN require a wide variety of additional information to be reported about beneficial owners and applicants, such as details of an individual's ownership or control relationship with the company (*e.g.,* percentage of ownership interests, whether the relationship is through direct or indirect means) and total number of persons holding shares or interests in a company. Other commenters suggested that FinCEN require less information to be reported. Some proposed that FinCEN obtain certain information from other federal agencies such as the IRS, Citizen and Immigration Services (USCIS), or Social Security Administration (SSA), or from state and local government agencies, instead of from reporting companies. Some questioned FinCEN's authority to collect certain information not expressly specified in the statute. In addition, commenters suggested a range of modifications to the proposed rules to reduce burdens or address practical complications for reporting companies.

In general, the CTA limits the types of information FinCEN can require reporting companies to report, and the commenters suggesting that FinCEN collect many additional types of information did not identify the authority by which FinCEN could do so. As explained in the NPRM, however, FinCEN has authority to collect certain limited types of information that are not expressly specified in the statute, and FinCEN disagrees with the commenters who questioned that authority. Moreover, while FinCEN has considered the suggestion to seek information from other government agencies, the CTA requires reporting companies to submit reports to FinCEN and there are specific legal and regulatory frameworks that limit FinCEN's ability to obtain information from other agencies.[126] The discussion that follows addresses considerations relating to the specific types of information to be reported.

a. Name, DOB, and Address

Proposed Rule. For every individual who is a beneficial owner or company applicant, proposed 31 CFR 1010.380(b)(1)(ii) required the reporting company to report each individual's full legal name, date of birth, and complete current address. In the case of a company applicant who files a document to create or register a

[125] *See* note 124, *supra.*

[126] For example, 26 U.S.C. 6103 restricts the disclosure of federal tax information by the IRS to other federal agencies for other than tax purposes.

reporting company in the course of such individual's business, the proposed rule required the address to be the business street address of such business. In any other case, the proposed rule required the address to be the residential address that the individual uses for tax residency purposes.

Comments Received. With respect to the residential address, many commenters supported clarifying that the residential address should be the address an individual uses for tax purposes. Other commenters stated that such clarification was unnecessary, pointing out that FinCEN did not include it in the 2016 CDD Rule when requiring a residential address. Some commenters claimed that FinCEN does not have the authority to specify a particular type of residential address. Some commenters asserted that the concept of a residential address ''for tax residency purposes'' is not widely understood and may lead to confusion, including for foreign nationals.

Several commenters asserted that FinCEN lacks statutory authority to prescribe the particular types of addresses that may be used by beneficial owners and company applicants, claiming that the statute provides reporting companies with the choice of identifying beneficial owners and company applicants by their residential or business street address. However, many commenters supported the requirement to report business addresses for company applicants who file documents in the course of their business. With respect to the requirement that a residential address be used for all other individuals, other commenters supported FinCEN's proposed bifurcated approach of requiring a residential street address used for tax residency purposes, noting that the rule provides clarity given that an individual may have multiple addresses but typically only one residential address for tax residency purposes.

Some commenters suggested that the rule should be more specific in a variety of ways. Some asserted that it should require the street address of the U.S. headquarters or principal place of business of company applicants who file documents in the course of their business. Other commenters laid out specific scenarios and asked for clarification on whether FinCEN would require reporting of a residential or business address for a company applicant. Commenters asked FinCEN to specify whether private mailboxes, GPS coordinates, and office addresses could be used, and asked whether FinCEN would provide workarounds for individuals who frequently move and/or do not have tax residency in any jurisdiction (so-called ''tax nomads''). Some commenters noted safety concerns for victims of domestic violence and other victims whose addresses would be required to be reported, and requested clarity regarding address confidentiality programs and the reporting of alternative addresses.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(b)(1)(ii) with two changes to the address-related requirements. First, the final rule omits the requirement that the reported residential street address be the address an individual uses for tax residency purposes. FinCEN agrees with the commenters who pointed out that ''tax residency purposes'' is not sufficiently clear, particularly in light of the fact that tax residency can be established by time in a jurisdiction without any fixed residential address. Second, the final rule revises the provision to provide additional clarity: a business address is required for a company applicant ''who forms or registers an entity in the course of such company applicant's business.''

The final rule adopts the bifurcated approach in the proposed rule that required a business address for company applicants who create or register companies in the course of their business, while requiring a residential address for all other individuals, including beneficial owners. As explained in the NPRM, the statute does not prescribe when or whether one type of address is to be used in preference to another. The statute instead provides that ''[i]n accordance with regulations prescribed by the Secretary,'' a report shall identify each beneficial owner and applicant by ''residential or business street address.'' [127] The statute thus requires either a residential or a business street address, but it leaves to FinCEN's discretion the authority to prescribe the appropriate rules for addresses within those limits.

In prescribing the rules governing addresses, FinCEN considered leaving to the reporting company the choice of which address to report, but FinCEN believes that this would unduly diminish the usefulness of the reported information for national security, intelligence, and law enforcement activity. Under most circumstances, a residential street address is of greater value both for establishing the identity of an individual and as a point of contact in an inquiry or investigation. By contrast, a business address could be used by some individuals to obscure their identity or location, and multiple persons may be associated with a business address. Business addresses may be of some investigative value as points of contact in the event that an investigation requires follow-up, but such addresses are less reliable guides to a beneficial owner's identity and location than a residential address. Most identifying documents for individuals, such as driver's licenses and passports, use residential addresses rather than business addresses.

A business address, however, may be more useful in instances where a company applicant provides a business service as a corporate formation agent. In such cases, the company applicant's business is directly relevant because it is the reason why the individual is a company applicant. Collecting the business addresses of such company applicants may also allow law enforcement to identify patterns of entity creation or registration by linking the business addresses of company applicants for different entities.

Some commenters raised questions about whether the reported address must be in the United States, and about alternative types of addresses. Under the final rule, the address must be the individual's current street address, but the final rule does not require that it be an address in the United States. Accordingly, in cases in which a beneficial owner or company applicant does not have a street address in the United States, the reporting company may report a street address in a foreign jurisdiction. Alternatives such as post office boxes, private mailboxes, and addresses of business agents or corporate agents are not residential street addresses, and such alternatives do not provide an adequate substitute for the residential street address to establish the identity of a beneficial owner.

In general, FinCEN recognizes the sensitivity inherent in collecting any personal identifying information and takes seriously the need to maintain the highest standards for information security protections for information reported to FinCEN to prevent the loss of confidentiality, integrity, and availability of information that may have a severe or catastrophic adverse effect.[128] In addition, commenters noted circumstances in which reporting residential street addresses may present unique challenges. In particular, FinCEN recognizes the importance of address confidentiality programs in ensuring the safety of victims of domestic violence and other crimes and will consider appropriate guidance or

[127] See 31 U.S.C. 5336(b)(4)(A).

[128] 31 U.S.C. 5336(c)(8).

relief to address those situations. As more information may be required regarding the specifics of these programs and the technical specifications of FinCEN's BOSS, FinCEN will address these matters at a later date.[129] If other unique circumstances arise that present challenges in reporting residential street addresses, FinCEN will consider those circumstances on a case-by-case basis.

b. Unique Identifying Number and Image From Identification Document

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(ii) specified that, for each individual who is a beneficial owner or company applicant, a unique identifying number must be reported from one of four types of acceptable identification documents: a nonexpired U.S. passport; a nonexpired state, local, or Tribal identification document; a nonexpired State-issued driver's license; or, if an individual lacks one of those other documents, a nonexpired foreign passport.[130] Proposed 31 CFR 1010.380(b)(1)(ii) also required the reporting company to provide an image of the identification document from which the unique identifying number was obtained.

Comments Received. With respect to the types of acceptable identification documents, commenters pointed out a number of situations in which a beneficial owner or company applicant may not have an acceptable identification document. For example, commenters noted that a person may not possess one of the permissible types of identification documents because of the difficulty in appearing in person at a State department of motor vehicles when required to secure or renew an ID due to, *e.g.,* incapacitation or other medical conditions. The comments included suggestions for alternatives in cases where an acceptable identification document is unavailable, such as social security numbers, other images, or a check-box indicating that an identification document is unavailable. Other commenters indicated that the requirement to submit a foreign passport number may have the unintended consequence of harming foreign small business owners who do not need to acquire a foreign passport for international travel. With respect to foreign passports, commenters also suggested that FinCEN clarify that a foreign passport number be used only as a last resort, *i.e.,* where the other enumerated forms of identification documents are unavailable.

With respect to the collection of images, some commenters concurred with the proposal to collect images because, among other things, that information would be valuable for law enforcement, allow easier verification of submitted information, and represent a modest increase in burden for most reporting companies. By contrast, a number of commenters questioned whether the CTA authorizes FinCEN to collect images, expressed concerns regarding privacy considerations, and noted that it would be burdensome for reporting companies to collect and store images of these sensitive documents. Some commenters also viewed this requirement as duplicative and unnecessary because law enforcement already has the ability to retrieve a driver's license or other identifying document using the unique identification number. Other commenters suggested an iterative approach, arguing that the collection of images should be considered at a later time after FinCEN gains experience with the implementation of the beneficial ownership database.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(b)(1)(ii) regarding the types of ''acceptable identification document'' that reporting companies may submit with respect to beneficial owners and company applicants, with minor clarifying edits. Specifically, FinCEN has clarified that reporting companies must specify what jurisdiction issued the identification document from which a beneficial owner's unique identifying number came. This information is necessary to ensure that the identifying number can be identified as unique and valid, and to avoid situations where two different individuals may have the same identifying number in documents issued by different jurisdictions.[131]

FinCEN considered comments regarding the potential for alternatives where an acceptable identification document is unavailable. However, the CTA is clear in identifying the four specific types of identification documents that are ''acceptable.'' While FinCEN recognizes that circumstances may arise where obtaining such documents may present burdens, the CTA does not contemplate alternatives to the four common and reliable forms of identification documents that are expressly enumerated in 31 U.S.C. 5336(a)(1). In addition, the statute is clear that a foreign passport may be used only if the other enumerated forms of identification documents are not available, and FinCEN is not making any changes in response to comments on this issue.

After careful consideration, FinCEN continues to believe that collecting images from a reporting company in connection with a specific beneficial owner or company applicant will contribute significantly to maintaining a BOI database that is highly useful in facilitating national security, intelligence, and law enforcement activities as required by the CTA. FinCEN appreciates that the requirement to provide images of identifying documents may impose some additional burden, and it has included a qualitative discussion of such costs in the regulatory impact analysis. However, FinCEN views the benefits associated with this requirement as outweighing the burdens.

As an initial matter, requiring the submission of an image will help confirm the accuracy of the reported unique identification number. In addition, as some commenters noted, the submission of a falsified image would require much more effort than submitting an incorrect identification number. Thus, the requirement to submit an image of an identification document will also make it harder to provide false identification information.

In addition, images of identification documents will assist law enforcement in accurately identifying individuals in the course of an investigation because those scans will contain a picture of the person associated with the identifying number. While law enforcement may be able to secure copies of driver's licenses or passport pages through alternative means, such as subpoenas, summonses, or access agreements with state departments of motor vehicles or other entities, the need for such efforts can result in delays in the investigative process. This is particularly the case for foreign identification documents that would likely be difficult to obtain and could be subject to procedures under mutual legal assistance treaties that are limited to criminal matters. For similar reasons, FinCEN expects that the images will assist financial institutions subject to customer due diligence requirements under the 2016 CDD Rule in the performance of those requirements.

FinCEN also notes that disclosures of this type already occur regularly in a variety of circumstances. The federal and state agencies that issue identification documents of course

[129] FinCEN also intends to issue guidance or relief regarding address confidentiality programs in the context of a request by an individual for a FinCEN identifier.

[130] *See* 31 U.S.C. 5336(b)(2)(A)(iv)(I) (unique identifying number requirement); 31 U.S.C. 5336(a)(1) (definition of ''acceptable identification document'').

[131] *See* note 124, *supra.*

retain the information those documents contain. Moreover, companies routinely review (and many retain images of) identification information in the course of verifying eligibility for employment in the United States to complete U.S. Citizenship and Immigration Services form I–9. Financial institutions subject to CIP obligations frequently require individuals to present identification documents when opening new accounts, and they routinely retain copies of those documents. Perhaps most telling, legal entities opening accounts at covered financial institutions in the United States should also already be accustomed to providing identification information and images of identifying documents to those financial institutions, which need the information in order to comply with the beneficial ownership requirements of the 2016 CDD Rule.[132] And beneficial owners of such legal entities should already be accustomed to providing that information to the entities they own—often in the form of actual identification documents or images of the same—in order to make possible the disclosures that are necessary for CDD purposes. Given the frequency and variety of the circumstances in which this information, including images, is disclosed, FinCEN does not think that its disclosure in this context is unreasonable.

At the same time, FinCEN appreciates the privacy concerns associated with disclosure and retention of identity information. FinCEN takes seriously its responsibility to protect such information and will ensure—including through a future rulemaking governing access to BOI—that BOI will be used only for statutorily authorized purposes and will be subject to stringent use and security protocols. Indeed, there are significant statutory restrictions on the sharing of BOI, and FinCEN is required to promulgate appropriate protocols for protecting the security and confidentiality of that information.[133] Those protocols must, for example, require requesting agencies to establish and maintain secure systems for storing BOI, provide a report on the procedures that will be used to ensure the confidentiality of the information, impose limits on who may access the information and training requirements for those authorized people, maintain a permanent system of standardized records and an auditable trail of each request, conduct an annual audit, and follow other necessary or appropriate safeguards.[134] Unauthorized use or disclosure of BOI may be subject to criminal and civil penalties.[135] Access within the Department will also be subject to procedures and safeguards.[136] Protecting the security and confidentiality of this information is a critical priority for FinCEN.

FinCEN is not persuaded by comments suggesting an iterative approach to the collection of images that would evaluate the need for the collection of images after operationalizing the beneficial ownership database. It could be more expensive for reporting companies to conduct additional due diligence and collect scanned images for beneficial owners or company applicants at a later time after already investing up front to collect and submit such persons' identifying information as part of an initial report. Moreover, particularly given the benefits in deterring fraud and enabling verification, the collection of such information from the outset would help ensure that the BOI database is highly useful for law enforcement and national security agencies at its inception.

Finally, FinCEN disagrees with the commenters who questioned FinCEN's statutory authority to collect images of identification documents. Although images are not expressly specified as information required to be reported in 31 U.S.C. 5336(b)(2)(A), another provision of the statute, 31 U.S.C. 5336(h)(1)(A), makes it unlawful to provide ''false or fraudulent beneficial ownership information, *including a false or fraudulent identifying photograph or document,* to FinCEN in accordance with subsection (b)'' (emphasis added). This provision clearly contemplates that identifying photographs or documents are among the beneficial ownership information FinCEN may require under 31 U.S.C. 5336(b). If FinCEN lacked authority to collect images of identifying documents, the express reference to such documents in the penalty provision would be superfluous. Moreover, the CTA authorizes FinCEN to prescribe procedures and standards for the reports required under subsection (b), and it specifies that the reports include a unique identifying number from an acceptable identification document. In prescribing those procedures and standards, the CTA directs FinCEN to ensure the reported BOI is ''accurate, complete, and highly useful.'' [137] Images of identifying documents will further that objective. Accordingly, in prescribing how reporting companies are to identify individuals by a unique identifying number from an acceptable identification document, FinCEN may require that an image of the document be provided along with the number.

As discussed in detail in Section II.ii related to updated or corrected reports, reporting companies will need to provide updates to information reported under 31 CFR 1010.380(b)—including images of an identifying document—only where there is ''any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.'' Changes in expiration dates or personally identifiable information other than the data specified in 31 CFR 1010.380(b)(1)(ii)(A–D) do not require the submission of an updated image.

c. Voluntary TIN

Proposed Rule. Proposed 31 CFR 1010.38(b)(2) permitted a reporting company to report the TIN of its beneficial owners and company applicants on a voluntary basis, solely with the prior consent of each individual whose TIN would be reported and with such consent to be recorded on a form that FinCEN would provide. FinCEN proposed this voluntary reporting option because such information, if reported, would help ensure that the BOI database is highly useful for authorized users, in furtherance of the CTA's purpose and mandate. For example, it was anticipated that having access to a TIN would allow authorized users such as law enforcement, the IRS, and financial institutions to cross-reference other databases and more easily verify the information of an individual. FinCEN proposed to require consent from individuals whose TINs are reported because TINs in most cases are an individual's social security number, and such numbers are subject to special protections under the Privacy Act.

Comments Received. Commenters both supported and opposed the submission of TINs on a voluntary basis. Those that supported the collection of TINs on a voluntary basis indicated it would provide useful information for authorized users of the BOI database—including law enforcement, investigators, and financial institutions—for accuracy-enhancing, identification, and verification purposes. Certain commenters stated that it was unnecessary to require a reporting company to obtain an individual's consent, while others said

[132] 31 CFR 1010.230(b)(2).

[133] *See* 31 U.S.C. 5336(c).

[134] *See* 31 U.S.C. 5336(c)(3)(A)–(K).

[135] *See* 31 U.S.C. 5336(h)(2).

[136] *See* 31 U.S.C. 5336(c)(5), (8).

[137] 31 U.S.C. 5336(b)(4)(B)(ii).

that consent should be based on an opt-out framework rather than having a prior-consent requirement. Some of these commenters also suggested that the collection of TINs be made mandatory.

Other commenters maintained that the CTA does not provide FinCEN with the authority to collect TINs, even on a voluntary basis. One commenter in particular argued that FinCEN may not collect such information on a voluntary basis absent a specific statutory authorization, and that, in any event, agencies collecting information provided on a voluntary basis need to satisfy other legal requirements, such as those imposed by the Privacy Act [138] and the Paperwork Reduction Act.[139] Other commenters stated that a voluntary reporting option would be ineffective because reporting companies would lack incentives to undertake the effort to collect TINs, obtain consent, and report the TINs to FinCEN, if there were no requirement to do so. In addition, commenters raised concerns about any collection of TINs given the risk of data leaks and data privacy considerations.

Final Rule. FinCEN has eliminated proposed 31 CFR 1010.38(b)(2) in the final rule. FinCEN assesses that the benefits to be gained from such voluntary collection (such as benefits to law enforcement, the IRS, and financial institutions) are likely to be limited given that the reporting is voluntary, and many reporting companies will likely decline to provide such information, particularly given the need to obtain affirmative consent from each individual prior to reporting their TIN. Moreover, FinCEN acknowledges the views of some commenters that TINs are subject to heightened privacy concerns because they are typically an individual's social security number, and that the collection of such information could entail greater cybersecurity and operational risks. Accordingly, FinCEN believes that at this time the benefits of implementing the voluntary reporting provision do not outweigh the additional burden, complication, and risks associated with the collection of TINs on a voluntary basis.

iv. Special Rules

Proposed 31 CFR 1010.380(b)(3) set forth special rules for the information required to be reported regarding ownership interests held by exempt entities, minor children, foreign pooled investment vehicles, and deceased company applicants. The following discusses these special rules, with the exception of the special rule applicable to minor children in 31 CFR 1010.380(b)(3)(ii), which is discussed in connection with the exceptions to the definition of beneficial owner.

a. Reporting Company Owned by Exempt Entity

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(i) set forth a special rule for reporting companies with ownership interests held by exempt entities. The proposed rule provided that if an exempt entity under 31 CFR 1010.380(c)(2) has, or will have, a direct or indirect ownership interest in a reporting company, and an individual is a beneficial owner of the reporting company by virtue of such ownership interest, the report filed by the reporting company shall include the name of the exempt entity rather than the information required with respect to such beneficial owner. This proposed rule was intended to implement the special rule for exempt entities set forth at 31 U.S.C. 5336(b)(2)(B).

Comments Received. Commenters noted a number of considerations in the application of the special reporting rule for exempt entities. Some commenters observed that the proposed rule treated ownership through an exempt entity differently from substantial control exercised through an exempt entity. These commenters suggested that FinCEN should extend the special rule to permit a reporting company to report an exempt entity in situations in which the exempt entity is a beneficial owner by virtue of its ''substantial control'' over the reporting company. Other commenters suggested that individuals appointed by an exempt entity to manage a reporting company, *e.g.,* as a board member or a senior officer to guide or constrain the reporting company, should be considered an intermediary or agent of the reporting company rather than a beneficial owner of the reporting company. One commenter expressed concerns about the burdens that the special rule would impose on reporting companies to investigate and understand the ownership structure of upstream exempt entities in order to identify ultimate beneficial owners of the reporting company. To simplify reporting in such cases, the commenter suggested, among other things, a limiting principle to allow the reporting company to report an exempt entity nearest in the chain of ownership that itself owns 25% of the reporting company, regardless of individual ownership of that exempt entity.

Final Rule. The final rule clarifies proposed 31 CFR 1010.380(b)(3)(i) to address practical challenges identified in the operation of the proposed rule. First, the final rule clarifies that the special rule may apply where an individual holds ownership interests in a reporting company through ''one or more'' exempt entities. An individual may be a beneficial owner of a reporting company by indirectly holding 25 percent or more of the ownership interests of the reporting company through multiple exempt entities.

Second, the final rule clarifies that it applies only when an individual is a beneficial owner of a reporting company ''exclusively'' by virtue of the individual's ownership interest in exempt entities. Without this clarification, the proposed rule could have been read to enable beneficial owners who hold ownership interests through both exempt and non-exempt entities to obscure their standing as beneficial owners of a reporting company. For example, it would not have been necessary to report an individual who holds a 24 percent interest in a reporting company through a non-exempt entity and a one percent interest in the same reporting company through an exempt entity (for a total, otherwise reportable, ownership interest of 25 percent) as a beneficial owner under the proposed rule. The proposed special rule therefore could have provided a means through which beneficial owners of a reporting company could have avoided being reported by electing to hold even a small portion of their ownership interests through an exempt entity and keeping their ownership interests through non-exempt entities under 25 percent. The final rule language precludes this outcome. FinCEN believes that this special rule will contribute to maintaining an accurate database and minimize inaccuracies and confusion.

FinCEN has considered the comments requesting expansion of the special rule to include beneficial owners who exercise substantial control through an exempt entity. However, FinCEN does not believe such an expansion is warranted. The statutory provision that this special rule implements is focused on an exempt entity ''hav[ing] a direct or indirect ownership interest in a reporting company.'' [140] This focus reflects an effort to relieve reporting burdens associated with ownership of exempt entities. But substantial control raises different concerns in light of the variety of ways in which such control

[138] 5 U.S.C. 552a.

[139] 44 U.S.C. 3501 *et seq.*

[140] 31 U.S.C. 5336(b)(2)(B).

may be exercised over a reporting company. FinCEN believes that it would limit the usefulness of the database and create opportunities for evasion if beneficial owners who have substantial control over reporting companies through exempt entities do not need to be reported.

Third, the final rule makes the use of this special rule optional, rather than mandatory, using ''may'' instead of ''shall.'' A reporting company would therefore have the option to provide information about individuals who are beneficial owners of the reporting company by virtue of their interests in the exempt entity, rather than providing information about the exempt entity itself. This enables an exempt entity to avoid being identified, a concern expressed by a commenter, and instead provide information about a beneficial owner directly if the reporting company wishes to do so. Although the CTA specifies that the reporting company ''shall . . . only'' list the name of the exempt entity, that language is reasonably read to mean that the reporting company shall only be required to do so—*i.e.,* that the requirement is optional.[141] This interpretation harmonizes that language with other language providing that the reporting company ''shall not be required'' to report information about beneficial owners.

b. Company Applicant for Existing Companies

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(iv) contained a special rule for situations where a reporting company is created before the effective date of the regulations and the company applicant died before the reporting obligation became effective. The NPRM explained that the requirement to report identifying information about company applicants may present challenges for a longstanding company (*e.g.,* one that was formed decades ago). To minimize burdens when the applicant has died and information about the applicant may not be readily available, the NPRM therefore proposed to allow a reporting company whose company applicant died before the reporting company had an obligation to obtain identifying information from a company applicant to report that fact along with whatever identifying information the reporting company actually knows about the company applicant.

The NPRM sought comment on whether there are any significant alternatives to the proposed rules that would minimize their impact on small entities while accomplishing the objectives of the CTA. The NPRM also sought comment on whether the one-year timeline for a preexisting reporting company to file its initial report imposes undue burdens on reporting companies, in light of the need to conduct due diligence to determine beneficial owners and company applicants and collect relevant information.

Comments Received. Numerous comments highlighted the difficulties in obtaining company applicant information for reporting companies formed before the effective date of the regulations, even if the company applicant is not known to be deceased. Commenters explained that the rationale for relieving companies of the burden to report information about deceased applicants extended to all company applicants of reporting companies formed or registered before the effective date. Commenters from the small business community characterized the challenges of undertaking a lookback to ascertain company applicant information for preexisting companies as a ''nightmare'' and a ''wild goose chase.'' Even if a preexisting reporting company were able to identify the particular individuals who previously formed or registered the company, these commenters noted that there would be significant challenges in tracking down those individuals and obtaining the reportable information from them. Commenters stated that collecting such information for existing entities would be burdensome if not impossible in many cases, because the reporting company may have no contact information for the company applicant and the company applicant may be incapacitated or impossible to contact for other reasons.

Some commenters suggested that FinCEN should create differentiated rules for the reporting of company applicant information for entities existing prior to the effective date of these regulations and for company applicant information for reporting companies created after the effective date. Commenters most frequently suggested that the deceased company applicant special rule be expanded to apply to any reporting company created more than a specific time period before the effective date of the regulation, *e.g.,* before January 1, 2000, or ten years before the effective date of this regulation. For example, one commenter suggested that if a reporting company was created or registered before the effective date of the final rule, the company applicant reporting requirement should be limited to information about the company applicant of which the reporting company has actual knowledge. Other commenters recommended expanding the special rule for deceased company applicants to other situations, such as where the company applicant's location and information is unknown or the company applicant is disabled, incapacitated, or otherwise unable to provide the required identification information.

Final Rule. The final rule addresses these concerns by expanding the proposed 31 CFR 1010.380(b)(3)(iv) (renumbered in the final rule as 31 CFR 1010.380(b)(2)(iv)) into a more general rule that reporting companies created or registered before the effective date of the regulation do not need to report information about their company applicants. FinCEN has considered the numerous comments that identified practical challenges in identifying company applicants and company applicant information for reporting companies that were in existence prior to the effective date of the regulation. In large part, these practical challenges are likely to arise because the reporting company often does not have a direct or ongoing relationship with a company applicant, particularly if that company applicant is associated with a corporate formation service provider. FinCEN agrees with commenters that there are substantial and unique burdens associated with identifying company applicants and obtaining company applicant information for companies that have been in existence for some time.

At the same time, FinCEN has considered the law enforcement value of company applicant information for entities existing prior to the effective date of the regulation, and FinCEN believes such value is limited. The value of such information becomes increasingly attenuated over time, given that an individual company applicant may have limited recollection of the facts and circumstances that gave rise to the creation or formation of an existing reporting company, and no ongoing relationship with the company.

FinCEN considered various alternatives, including a specific time period (*e.g.,* ten years) for reporting past company applicants or an ''actual knowledge'' standard. However, a specific time period would impose greater burdens on reporting companies by requiring them to obtain information about company applicants used in the past, and an ''actual knowledge'' standard would be more complicated to administer and enforce. Moreover,

[141] 31 U.S.C. 5336(b)(2)(B)(ii).

neither alternative would entail significantly greater benefits for law enforcement. Ultimately, FinCEN believes the effective date of the regulation provides an appropriate balance to ensure the availability of useful information to law enforcement for new or ongoing investigations while also providing a reasonable date for which reporting companies can reasonably identify company applicants and company applicant information, particularly because company applicants and reporting companies will be on notice of the requirements of the final rule by the effective date and will file their reports shortly after new companies are formed or registered.

This approach is also consistent with the plain language of the CTA. Although the CTA requires reporting companies to ''identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company,'' the statute defines ''applicant'' in the present tense as any individual who ''files'' or ''registers'' an application to form or register an entity.[142] At the time of the effective date of the final rule, when this obligation is imposed, entities that were formed or registered prior to the effective date will have no individual who *files* or *registers* the application because such filing or registration will have occurred in the past.[143] Such entities will thus have no company applicant to report.

In light of all these considerations, the final rule specifies that existing entities formed or registered before the effective date of the final rule are not required to report company applicant information.

c. Foreign Pooled Investment Vehicles

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(iii) contained a special rule for foreign pooled investment vehicles, which implements 31 U.S.C. 5336(b)(2)(C). Under proposed 31 CFR 1010.380(b)(3)(iii), a foreign legal entity that is formed under the laws of a foreign country, and that would be a reporting company but for the pooled investment vehicle exemption in 31 CFR 1010.380(c)(2)(xviii), must report to FinCEN the BOI of the individual who exercises substantial control over the legal entity.

Comments Received. A few commenters representing industry groups who sought clarity on this issue during the ANPRM comment process expressed the view that the revised text presented in the NPRM addressed their concerns about the scope of this special rule, and urged its adoption as proposed. One commenter found the proposed rule to be unclear and requested additional language stating that a foreign pooled investment vehicle registered to do business in a state or Tribal jurisdiction could be required to submit BOI to FinCEN. Another commenter suggested that because foreign pooled investment vehicles are designed to aggregate funds from investors, addressing the risks of such entities requires collecting information on the individuals who control the funding of the vehicle. The commenter proposed language mandating disclosure of ''the individual who has the greatest authority to collect, invest, distribute, return, and otherwise direct the funds of the [foreign pooled investment vehicle].''

Final Rule. FinCEN is adopting 31 CFR 1010.380(b)(3)(iii) as proposed (renumbered as 31 CFR 1010.380(b)(2)(iii)) and believes that the commenters' suggested changes are unnecessary. With regard to clarifying that only foreign pooled investment vehicles that are registered with states or Tribal jurisdictions may be required to report BOI, FinCEN believes that this point is inherent in the definition of reporting company. An entity formed under the law of a foreign country is only a reporting company and required to report BOI if it is registered to do business in a state or Tribal jurisdiction.

Similarly, FinCEN believes that the suggested change regarding reporting of individuals who control the funding of foreign pooled investment vehicles is already contained in the substantial control definition. Substantial control may consist of directing, determining, or having substantial influence over important decisions made by the reporting company. These include, for example, ''major expenditures or investments'' and ''the selection or termination of business lines or ventures'' of the reporting company, among other things. Any person that can exercise control over the funding of foreign pooled investment vehicles would fall within the definition of substantial control, and therefore, FinCEN believes that further clarification is unnecessary.

v. Contents of Updated or Corrected Reports

Proposed Rule. Proposed 31 CFR 1010.380(b)(4) specified the content of updated and corrected reports, providing that if any required information in an initial report is inaccurate or there is a change with respect to required information, an updated or corrected report shall include all information necessary to make the report accurate and complete at the time it is filed. Proposed 31 CFR 1010.380(b)(4) also provided that if a reporting company meets the criteria for any exemption from the definition of reporting company subsequent to the filing of an initial report, its updated report shall include a notification that the entity is no longer a reporting company.

The NPRM sought comment on whether there are any significant alternatives to the proposed rules that would minimize their impact on small entities while accomplishing the objectives of the CTA, and also on whether the burden of the 30-day update requirement is justified.

Comments Received. A number of commenters emphasized the burden associated with having to update the information they report about company applicants whenever it changes, in light of the fact that a reporting company often has no ongoing relationship with such individuals. Commenters noted that in such instances, a reporting company would not have visibility into changes to company applicant information, and a company applicant would have no obligation to provide updated information to the reporting company. Given these practical challenges, some commenters suggested that the requirement for updated reports be limited to beneficial owners and reporting companies, and exclude company applicants. Other commenters suggested that the responsibility for reporting changes to company applicant information should rest with the company applicant, not the reporting company. In other words, FinCEN should require company applicants to either (1) provide updated information to the reporting company, or (2) obtain a FinCEN identifier and provide this to the reporting company, so that that there is no need for a reporting company to report updated information regarding company applicants.[144] A couple of

[142] *See* 31 U.S.C. 5336(b)(2)(A), (a)(2).

[143] Such present-tense language in a statute generally does not include the past. *See Carr* v. *United States,* 130 S. Ct. 2229, 2236 (2010); 1 U.S.C. 1 (''[U]nless the context indicates otherwise . . . words used in the present tense include the future as well as the present.''). In any event, FinCEN also has authority under 31 U.S.C. 5318(a)(7) to ''prescribe an appropriate exemption from a requirement under this subchapter,'' which includes the CTA in section 5336. To the extent the CTA can be read to require existing companies to report company applicants, FinCEN has determined that an exemption from such requirement is appropriate.

[144] At least one commenter made a similar point with respect to updated or corrected reports related to beneficial owners, suggesting that where a reporting company has disclosed a beneficial owner's FinCEN identifier, liability associated with

Continued

commenters also suggested that if a reporting company makes a reasonable and good faith effort to obtain company applicant information for updated reports and provides proof of such efforts, the reporting company should be deemed to have satisfied the requirements and not be subject to penalties if that information is later determined to be inaccurate or incomplete. Finally, at least one commenter suggested that, in general, a reporting company should only have to report updates or corrections to material information.

Final Rule. FinCEN is adopting 31 CFR 1010.380(b)(4), renumbered as 31 CFR 1010.380(b)(3), with certain modifications. First, the final rule clarifies the reporting requirements by separating 31 CFR 1010.380(b)(3) into three paragraphs; adding cross-references to 31 CFR 1010.380(a), which contains the timing requirements for updated and corrected reports; and adding certain other clarifying language. Second, as an additional measure to minimize the impact of the final rule on small businesses, the final rule specifies that reporting companies need only update information concerning the reporting company or its beneficial owners. Reporting companies therefore will not be required to update previously reported information about their company applicants. This change in reporting requirements only applies to updated reports; reporting companies will still be required to correct any inaccurate information previously reported about their company applicants.

As explained in Section III.B.iv.b. above, the final rule eliminates the company applicant reporting requirement for existing reporting companies, but not for companies created or registered after the effective date of the final rule. Those companies must report company applicant information, and the CTA requires this information to be updated when it changes.[145] However, FinCEN has authority to prescribe an appropriate exemption from the statutory updating requirement, and FinCEN has determined that it is appropriate to do so.[146] FinCEN is persuaded by comments that reporting companies would face significant challenges in updating previously reported information about their company applicants. FinCEN agrees that because a reporting company and its company applicant may not have an ongoing relationship, it would often be difficult for a reporting company to ascertain when there has been a change to company applicant information and to require such company applicant to provide updated information for reporting. Further, FinCEN believes that updated information about a company applicant would be of limited value for law enforcement over time for the same reasons that initial reports of company applicant information by pre-existing reporting companies would be of limited value to law enforcement. Therefore, the benefits of this information would not outweigh the burdens that the requirement would impose on small businesses.

FinCEN also considered comments that highlighted the utility of the FinCEN identifier with respect to updating previously reported information, and that suggested the requirement for updated and corrected reports be limited to material information only. With respect to the former, FinCEN notes that the statute does not authorize FinCEN to require that individuals obtain and report their FinCEN identifier. The statute is also clear that reporting companies are to report changes with respect to *any* required information, not just material changes.[147]

vi. FinCEN Identifier

The CTA requires that FinCEN provide a unique identifier (FinCEN ID) upon request to: (1) an individual who provides FinCEN with the same information as is required from a beneficial owner or company applicant, and (2) any reporting company that has provided its BOI to FinCEN. In certain instances, beneficial owners, company applicants, and reporting companies may provide a FinCEN ID to a reporting company in lieu of providing required BOI.

Proposed Rule. Proposed 31 CFR 1010.380(b)(5) set forth rules regarding obtaining and using a FinCEN ID. Consistent with the CTA, proposed 31 CFR 1010.380(b)(5)(i) provided that an individual may obtain a FinCEN ID by submitting to FinCEN an application containing the information that the individual would otherwise have to provide to a reporting company if the individual were a beneficial owner or company applicant of the reporting company. It also provided that a reporting company can obtain a FinCEN ID from FinCEN when it submits a filing as a reporting company or any time thereafter, and it specified that each FinCEN ID shall be specific to each individual or company.

Proposed 31 CFR 1010.380(b)(5)(ii) outlined the permissible uses of the FinCEN ID. Specifically, after an individual has provided information to FinCEN to obtain a FinCEN ID, the individual may provide the FinCEN ID to a reporting company and the reporting company may report the FinCEN ID in lieu of the identifying information required to be reported about that individual. For instance, a beneficial owner can provide his or her FinCEN ID to the reporting company, and the reporting company can report the FinCEN ID to FinCEN in lieu of reporting that individual's name, date of birth, address, unique identifying number, and image of the identification document. As noted in the proposed rule, the underlying information associated with a FinCEN ID would still be available to FinCEN. Proposed 31 CFR 1010.380(b)(5)(ii) also provided that those who obtain a FinCEN ID are required to update or correct the information they submit in their application, and proposed 31 CFR 1010.380(f)(2) retained the statutory definition and defined ''FinCEN identifier'' as the unique identifying number assigned by FinCEN to an individual or legal entity under this section.

In addition, proposed 31 CFR 1010.380(b)(5)(ii)(C) incorporated the language of 31 U.S.C. 5336(b)(3)(C), which specifies how a reporting company's FinCEN ID is to be used. The proposed rule provided that if an individual is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that holds an interest in the reporting company, then the reporting company can report the FinCEN ID of that intermediary entity in lieu of reporting the company's beneficial owner.

Comments Received. Commenters requested clarity regarding various aspects of the FinCEN ID, including the application process, responsibility for updates, and whether reporting the FinCEN ID would be mandatory. Some commenters expressed concerns about misuse of the FinCEN ID, including whether a reporting company might use FinCEN IDs for intermediary companies in a manner that might result in greater secrecy, or incomplete or misleading disclosures. Various commenters requested examples to illustrate how the FinCEN ID would be used. Others asked

updating information linked to that FinCEN identifier should rest solely with the individual to whom the FinCEN identifier relates, not with the reporting company.

[145] *See* 31 U.S.C. 5336(b)(1)(D).

[146] Under 31 U.S.C. 5318(a)(7), FinCEN may ''prescribe an appropriate exemption from a requirement under this subchapter,'' which includes the CTA in section 5336.

[147] *See* 31 U.S.C. 5336(b)(1)(D).

what the purpose of the FinCEN ID was, and whether it was needed given the security of the information in the database. Some commenters asked about the applicability of the FinCEN ID to company applicants and entities such as law firms and corporate service providers. Some commenters encouraged FinCEN to provide requested FinCEN IDs in a prompt manner and to also provide a draft application for public comment and training. Multiple commenters emphasized that the underlying information behind the FinCEN ID should be available to all authorized users, including financial institutions.

Final Rule. The final rule adopts proposed 1010.380(b)(5)(i) (renumbered as 1010.380(b)(4)(i)) with minor clarifying edits, and proposed 1010.380(b)(5)(ii)(A)–(C) (renumbered as 1010.380(b)(4)(ii)(A)–(C)) and 1010.380(f)(2) as proposed. The final rule adopts proposed 1010.380(b)(5)(ii)(D) with additional clarifying edits regarding the requirements to update and correct FinCEN ID information, set forth as a separate paragraph at final 1010.380(b)(4)(iii).

FinCEN intends to provide individuals and reporting companies that choose to request a FinCEN ID with information about the application process, the processing time, the procedure for updating a FinCEN ID, and other procedural questions. FinCEN will also consider the request to provide examples of how individuals and reporting companies may use the FinCEN ID as it considers future guidance and FAQs. With respect to company applicants, FinCEN believes the statutory text and final rule are clear that the definition of company applicant is an individual, which further supports the goal of the CTA to populate the database with highly useful information that assists law enforcement and others in identifying those individuals associated with reporting company formation or registration. FinCEN also believes the statutory text is clear that the underlying BOI is available to authorized users, and the FinCEN ID is available to those who request it for the purposes identified in the statute and final rule.

With respect to the additional clarifying edits to proposed 1010.380(b)(5)(ii)(D) (now set forth as a separate paragraph at final 1010.380(b)(4)(iii)), FinCEN has clarified that individuals with a FinCEN ID shall make updates or corrections to their information by submitting an updated application for a FinCEN ID to FinCEN, subject to the same timelines and terms as updates or corrections to a BOI report by a reporting company.

The final rule does not adopt proposed 31 CFR 1010.380(b)(5)(ii)(B) and (C) regarding use of FinCEN IDs for entities. Commenters have identified concerns about how these parts of the proposed rule could be applied in ways that result in incomplete or misleading disclosures. Several commenters noted that the proposed language may be confusing and may pose problems when a reporting company's ownership structure involves multiple beneficial owners and/or intermediate entities. FinCEN is continuing to consider these issues and intends to address them before the effective date. Accordingly, FinCEN has reserved 31 CFR 1010.380(b)(5)(ii)(B) in this final rule.

C. Beneficial Owners

Consistent with the CTA, the final rule defines a ''beneficial owner,'' with respect to a reporting company, as ''any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.'' [148] Each reporting company will be required to identify as a beneficial owner any individual who satisfies either of these two components of the definition, unless the individual is subject to an exclusion from the definition of ''beneficial owner.'' FinCEN expects that a reporting company will always identify at least one beneficial owner under the ''substantial control'' component, even if all other individuals are subject to an exclusion or fail to satisfy the ''ownership interests'' component.

i. Substantial Control

Proposed Rule. Proposed 31 CFR 1010.380(d)(1) set forth three specific indicators of ''substantial control'': service as a senior officer of a reporting company; authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of a reporting company; and direction, determination, or decision of, or substantial influence over, important matters affecting a reporting company. The proposed rule also included a catch-all provision to ensure consideration of any other forms that substantial control might take beyond the criteria specifically listed. Consistent with the CTA, proposed 31 CFR 1010.380(d)(2) also made clear that an individual can exercise substantial control directly or indirectly through a variety of means. It included an illustrative, non-exhaustive list of examples of how substantial control could be exercised.

Comments Received. A number of commenters supported the proposed rule's definition of ''substantial control.'' In particular, they noted that the broad and flexible definition appropriately accounts for the fact that substantial control might take many forms, including forms that are not specifically listed, and they supported a definition that does not arbitrarily limit the number of individuals who may be reported as having substantial control, which would help prevent bad actors from evading identification.

Other commenters raised concerns about the practicality of implementing this definition. They maintained that this definition of the term ''substantial control'' would be inconsistent with other federal statutory and regulatory definitions, potentially confusing, or overly broad. These commenters reiterated concerns about burdens in applying the definition of ''substantial control'' and expressed the view that the definition was not rooted in state corporate-formation law or other federal statutes and regulations that use ''control'' concepts. Some commenters stated that the indicators of substantial control in the proposed definition focused on the potential to exercise substantial control rather than on the actual exercise of it. A few commenters suggested adding an express indicator regarding control over funds or assets of a company. Multiple commenters requested clarification on applying the definition to specific circumstances, including indirect control, agency relationships, and substantial control through trust arrangements.

Commenters suggested alternative approaches. One commenter suggested that FinCEN leave the term ''substantial control'' undefined. Other commenters urged FinCEN to adopt the approach reflected in the ''control'' prong of the 2016 CDD Rule, which required that new legal entity customers of a financial institution provide beneficial ownership information for any one individual ''with significant responsibility to control'' the entity. These commenters argued that such an approach would be more efficient and simplify compliance. Commenters also suggested that FinCEN take an iterative approach, starting with the approach reflected in the 2016 CDD Rule and then expanding the types of persons that may have substantial control over a reporting company if strong evidence emerged that supported such expansion.

[148] *See* 31 U.S.C. 5336(a)(3)(A).

More general concerns were raised as well. Some commenters argued that the CTA limits FinCEN to collecting beneficial ownership information on a single person because 31 U.S.C. 5336(a)(3)(A) defines ''beneficial owner'' as, ''with respect to an entity, *an* individual who . . . exercises substantial control or owns or controls not less than 25 percent of the ownership interests of the entity'' (emphasis added). Commenters also contended that FinCEN's proposed definition would impose significant burdens on financial institutions that spent years updating systems, procedures, and controls to implement the 2016 CDD Rule.

Multiple commenters raised concerns with the first indicator—service as a senior officer of a reporting company. In particular, commenters expressed the view that the definition of ''senior officer'' in proposed 31 CFR 1010.380(f)(8) may be overinclusive, particularly in the context of small corporations and LLCs. These commenters recommended either deleting the indicator or limiting the definition of ''senior officer'' to the chief executive officer, chief operating officer, or chief financial officer of a reporting company (or persons exercising similar functions). Some commenters asserted that secretaries and general counsels often have ministerial or advisory functions with very little control of the company. Other commenters stated that it was difficult to reconcile the inclusion of senior officers as an indicator in light of the employee exception to the definition of ''beneficial owner'' at proposed 31 CFR 1010.380(d)(4)(iii). Those commenters asserted that a senior officer is normally an employee and would fall within the scope of the exception. One commenter noted that the proposed rule defined ''employee'' using federal tax rules, which specifically provide that that term includes officers.

Multiple commenters requested that the second indicator be clarified. As proposed, the second indicator provided that an individual exercises substantial control if the individual has authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of a reporting company. Some commenters expressed confusion about the meaning of ''dominant minority,'' and questioned why the authority to appoint a dominant minority of the board of directors would constitute substantial control.

Some commenters supported the third indicator, which would treat as a beneficial owner an individual who can direct, determine, decide, or have substantial influence over important matters affecting a reporting company. These commenters supported the third indicator because it represents a comprehensive and flexible approach that applies to a broad range of circumstances. Other commenters either requested clarity or opposed the use of this indicator, because they believed it could significantly widen the definition of substantial control, encompass day-to-day business decisions that do not meet an adequate threshold of substantial control, and sweep in silent investors, employees, or contractual counterparties. Commenters noted concerns about the inclusion of ''substantial influence'' as a factor and the implications for minority shareholder protections that are defined rights intended to protect minority investors.

As to the catch-all provision, some commenters supported it as essential to enable consideration, and require reporting, of improper means of control, which might include economic pressure on company shareholders or employees, coercion, bribery, or threats of bodily harm. Others argued that the catch-all provision is too vague, renders the overall definition circular, or introduces greater compliance uncertainty, and accordingly that it should be removed.

With respect to proposed 31 CFR 1010.380(d)(2), one commenter indicated that this paragraph could lead to confusion because the principle of indirect control is already found in proposed paragraph (d)(1). This commenter suggested that paragraphs (d)(1) and (d)(2) be consolidated and simplified to remove the reference to ''direct or indirect'' control. Another commenter suggested that FinCEN provide guidance or examples to explain further the concept of indirect substantial control. Yet another commenter urged FinCEN not to extend that concept to the particular circumstance of control through a trust arrangement, at least not until the review process set forth in AML Act section 6502(d) has a chance to reach conclusions about the advisability of reporting requirements in connection with trusts.

Final Rule. The final 31 CFR 1010.380(d)(1) adopts the proposed rule largely as proposed, but with modifications to clarify and streamline application of the rule in general, to focus the applicability of the senior officer element of the definition of ''substantial control,'' and to clarify the issue of substantial control through trust arrangements. FinCEN believes that the definition of substantial control in the final rule strikes the appropriate overall balance: it is based on established legal principles and usages of this term in a range of contexts (as explained in the NPRM) and provides specificity that should assist with compliance, while at the same time being flexible enough to account for the wide variety of ways that individuals can exercise substantial control over an entity.

The final rule makes organizational changes to 31 CFR 1010.380(d)(1) and (d)(2) and creates a new paragraph (d)(1)(i), entitled ''Definition of Substantial Control,'' which lists the indicators previously located in paragraph (d)(1). Each of these indicators supports the basic goal of requiring a reporting company to identify the key individuals who stand behind the reporting company and direct its actions. The first indicator identifies the individuals with nominal or *de jure* authority, and the second and third indicators identify the individuals with functional or *de facto* authority.

As to the first indicator (*i.e.,* service as a senior officer of a reporting company), the final rule adopts the proposed language.[149] This indicator provides clear, bright-line guidance on one category of persons who exercise a significant degree of control over the operations of a reporting company through executive functions. This approach is intended to streamline the determination of persons who might also exercise substantial control through the other indicators in the definition, and thereby reduce burden for reporting companies.

In addition, FinCEN has evaluated concerns raised about the scope of the definition of ''senior officer'' in proposed 31 CFR 1010.380(f)(8) and agrees with commenters that the roles of corporate secretary and treasurer tend to entail ministerial functions with little control of the company. FinCEN has therefore omitted those roles from the definition of ''senior officer.'' FinCEN considers the role of general counsel to be ordinarily more substantial, and has therefore retained this role as part of the definition of ''senior officer.'' FinCEN notes that the title of the officer ultimately is not dispositive, as the definition of ''senior officer'' and other indicators of substantial control make clear. Rather, the underlying question is whether the individual is exercising the authority or performing the functions of a senior officer, or otherwise has authority indicative of substantial

[149] Proposed 31 CFR 1010.380(d)(1) was also revised to enhance clarity by rephrasing the introduction (''An individual exercises substantial control . . . if . . .'') and making conforming changes to each indicator.

control. The final rule also incorporates changes to the ''employee'' exception to the definition of ''beneficial owner'' at proposed 31 CFR 1010.380(d)(4)(iii) to make more clear that persons who are senior officers are not subject to this exception, as discussed in Section III.C.iii.c. below.

As to the second indicator (*i.e.,* authority to appoint or remove certain individuals), the final rule adopts the proposed language with the deletion of the reference to authority to appoint or remove a ''dominant minority'' of the board of directors. A number of commenters raised questions about what constitutes a ''dominant minority,'' including whether such a dominant minority has the ability to exercise substantial control over a reporting company. FinCEN agrees with the concerns about ambiguities in the term ''dominant minority.'' Commenters also asked about the role of minority shareholder protections. In view of these comments, and with the objective of ensuring clarity and simplicity to the extent possible, FinCEN is deleting the reference to authority over a dominant minority from the final rule.

As to the third indicator (*i.e.,* directing, determining, or having substantial influence over decisions), the final rule adopts the proposed rule with amendments to enhance clarity. FinCEN considered a range of comments that requested changes to further define certain terms or to limit the scope of the indicator overall, as well as those that noted concerns about the meaning of terms such as ''substantial influence'' and ''important matters affecting'' the reporting company.

The final rule incorporates changes to the third indicator to clarify that it applies to individuals who ''direct, determine, or have substantial influence over important decisions made by the reporting company.'' FinCEN replaced the phrase ''important matters affecting'' the reporting company (which had been drawn from regulations implementing laws governing the Committee on Foreign Investment in the United States [150]) with ''important decisions made by'' the reporting company in order to address uncertainty identified by commenters that external events, actions of customers or suppliers, or other actions beyond a reporting company's control could ''affect'' a reporting company. FinCEN does not believe these types of external actions are a form of substantial control for which reporting is warranted. Instead, the final rule focuses on important internal decisions made by the reporting company, which is consistent with the illustrative list of examples of types of important decisions in 31 CFR 1010.380(d)(1)(i)(C)(*1*)–(*7*).

The final rule also retains the ''substantial influence'' language in the third indicator, because FinCEN envisions situations in which individuals may not have the power to direct or determine important decisions made by the reporting company, but may play a significant role in the decision-making process and outcomes with respect to those important decisions. For example, a sanctioned individual may direct an advisor to form a company to engage in business activities, with instructions to omit the sanctioned individual from any corporate-formation documents. The sanctioned individual, through the adviser, may continue to have substantial influence over important decisions of the reporting company, even if the individual does not direct or determine those decisions. A reporting company may also be structured such that multiple individuals exercise essentially equal authority over the entity's decisions—in which case each individual would likely be considered to have substantial influence over the decisions even though no single individual directs or determines them. This approach is consistent with the other prong of the CTA's ''beneficial owner'' definition (*i.e.,* ownership or control of at least 25 percent of the entity's ownership interests), which recognizes that something short of majority ownership can still be indicative of beneficial ownership of a reporting company.

Some commenters inquired about the treatment of tax professionals and other similarly situated professionals with an agency relationship to a reporting company who may exercise substantial influence in practical terms when they perform services within the scope of their duties. In particular, some tax and legal professionals may be formally designated as agents under IRS Form 2848 (Power of Attorney and Declaration of Representative). FinCEN does not envision that the performance of ordinary, arms-length advisory or other third-party professional services to a reporting company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a reporting company. In such a case, the senior officers or board members of a reporting company would remain primarily responsible for making the decisions based on the external input provided by such third-party service providers. Moreover, if a tax or legal professional is designated as an agent of the reporting company, the exception to the ''beneficial owner'' definition provided in 31 CFR 1010.380(d)(3)(ii) with respect to nominees, intermediaries, custodians, and agents would apply.

In addition, the final rule does not modify the substance of proposed 31 CFR 1010.380(d)(1)(iii)(A)–(F), which provided specific examples of indicators that relate broadly to substantial control over important financial, structural, or organizational matters of the reporting company. This non-exhaustive list of examples is intended to clarify the types of company decisions FinCEN considers important, and thus relevant to an analysis of whether an individual has substantial control over a reporting company under the third indicator. Reporting companies should be guided by these specific examples, but they should also consider how individuals could exercise substantial control in other ways as well.

Fourth, the final rule also retains the catch-all provision of the ''substantial control'' definition in proposed 31 CFR 1010.380(d)(1)(iv). This provision recognizes that control exercised in novel and less conventional ways can still be substantial. It also could apply to the existence or emergence of varying and flexible governance structures, such as series limited liability companies and decentralized autonomous organizations, for which different indicators of control may be more relevant. As noted by commenters, paragraph (iv) also operates to address any efforts to evade or circumvent FinCEN's requirements and is intended to prevent sophisticated bad actors from structuring their relationships to exercise substantial control of reporting companies without the formalities typically associated with such control in ordinary companies. Such anti-evasion and anti-circumvention provisions are common in other regulatory frameworks that have proven administrable over time,[151] and, viewed in such a context, paragraph (iv) serves an important purpose to disincentivize unusual structures that may only serve to

[150] *See* 31 CFR 800.208.

[151] *Cf., e.g.,* 31 CFR 800.208(a) (Committee on Foreign Investment in the United States) (defining ''control'' to include, *inter alia,* ''formal or informal arrangements to act in concert, *or other means,* to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following [listed] matters, *or any other similarly important matters* affecting an entity'' (emphases added)); 17 CFR 230.405 (Securities and Exchange Commission) (defining ''control'' to include ''the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, *or otherwise*'' (emphasis added)).

facilitate illegal activities. FinCEN recognizes that, as one commenter noted, additional guidance or FAQs may help to provide additional clarity to reporting companies in specific circumstances. As it implements and ensures compliance with the final rule, FinCEN expects to gain greater experience with the spectrum of arrangements or relationships that bad actors may establish to circumvent reporting requirements and engage in illegal activity. FinCEN will assess the need for additional guidance, notices, or FAQs accordingly.

Lastly, FinCEN considered the comments that stated a preference for a definition of substantial control comparable to the approach laid out in the 2016 CDD Rule. Under the ''control'' prong of the 2016 CDD Rule, new legal entity customers of a financial institution must provide BOI for ''[a] single individual with significant responsibility to control, manage, or direct a legal entity customer.'' [152] Several comments noted that the approach described in the 2016 CDD Rule could simplify compliance for reporting companies.

FinCEN has concluded that incorporating the 2016 CDD Rule's numerical limitation for identifying beneficial owners via substantial control is inconsistent with the CTA's objective of establishing a comprehensive BOI database for all beneficial owners of reporting companies.[153] FinCEN believes that limiting reporting of individuals in substantial control to one person, as in the 2016 CDD Rule—or indeed imposing any other numerical limit—would artificially restrict the reporting of beneficial owners who may exercise substantial control over an entity, and any such artificial ceiling could become a means of evasion or circumvention. Requiring reporting companies to identify all individuals who exercise substantial control would—as the CTA envisions—provide law enforcement and others a much more complete picture of who makes important decisions at a reporting company.[154]

Some comments maintained that the CTA prohibits FinCEN from requiring the identification of more than a single person as a beneficial owner by virtue of being in substantial control of the reporting company because the statute defines ''beneficial owner'' as ''*an* individual'' who exercises substantial control or owns or controls at least 25% of a reporting company's ownership interests.[155] But the CTA does not mandate a single-individual reporting approach with respect to substantial control. The statute's reporting requirement specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' not just one.[156] Many definitional provisions in the U.S. Code use formulations comparable to the CTA's reference to ''an individual'' in contexts where the plural is clearly indicated by the overall structure of the statute.[157]

Moreover, the phrase ''an individual'' precedes *both* the ''substantial control'' prong of the definition *and* the 25 percent ownership prong. If the phrase limited the reporting requirement to a single individual, that would mean either that a reporting company would only be required to report a single 25 percent owner as well as a single person in substantial control of the reporting company, or would only be required to report a single beneficial owner—either one person in substantial control or one person that is a 25 percent owner. This would not serve the CTA's fundamental objective of identifying each beneficial owner of a reporting company.[158] FinCEN therefore believes that requiring the identification of all individuals in substantial control of a reporting company is both permitted by the CTA and consistent with its purpose and with FinCEN's objective to create a highly useful database.

Relatedly, FinCEN considered the comments maintaining that the definition of ''substantial control'' might be inconsistent with other federal statutes and regulations that use ''control'' concepts. While definitions of ''control'' found elsewhere in the United States Code and the Code of Federal Regulations can be informative, they are not dispositive here. FinCEN is charged with clarifying the meaning of ''substantial control'' as used in 31 U.S.C. 5336(a)(3)(A)(i) to define what constitutes a ''beneficial owner'' for purposes of implementing the CTA. ''*Substantial* control'' in the context of beneficial ownership is not necessarily identical to ''control'' in other contexts. Through the use of the term ''substantial control'' and the statutory structure built around it, the CTA clearly manifests an expectation of a reporting requirement that accounts for a wide array of avenues of control.[159] FinCEN reviewed a regulatory definition of ''control'' used by the Securities and Exchange Commission,[160] for example, but found that particular definition to be too narrowly focused for this purpose. Even so, it bears noting that the final rule's definition of ''substantial control'' overlaps in certain respects with some of the federal ''control'' provisions raised in the comments.[161]

FinCEN also considered a comment that suggested adopting an iterative approach in which the rule would initially start with an approach comparable to the 2016 CDD Rule, with an expectation of amendments over time to expand the number of individuals that could be reported as beneficial owners under the ''substantial control'' definition. In addition to the threshold issue that the CTA mandates the identification of ''*each* beneficial owner,'' [162] FinCEN believes that such an approach would ultimately lead to greater burdens and confusion for reporting companies, which would need

[152] 31 CFR 1010.230(d)(2).

[153] *See, e.g.,* 31 U.S.C. 5336(b)(1)(F)(iv)(I)–(II) (''In promulgating the [BOI] regulations . . . , the Secretary of the Treasury shall, to the greatest extent practicable[,] . . . collect [BOI] . . . in a form and manner that ensures the information is *highly useful* in—(I) facilitating important national security, intelligence, and law enforcement activities; and (II) confirming beneficial ownership information provided to financial institutions to facilitate . . . compliance . . . .'' (emphasis added)); 31 U.S.C. 5336(b)(4)(B)(ii) (''The Secretary of the Treasury shall . . . in promulgating the regulations[,] . . . to the extent practicable, . . . ensure the beneficial ownership information reported to FinCEN is *accurate, complete, and highly useful.* ''(emphasis added)).

[154] *See, e.g.,* 5 U.S.C. 8471(1), (3), (4) (defining ''beneficiary,'' ''participant,'' and ''person'' each as ''an individual . . .''); 12 U.S.C. 3423(a)(1)(A), (J), (L)–(N) (defining ''Bank Secrecy officer,'' ''insurance producer,'' ''investment adviser representative,'' ''registered representative,'' and ''senior citizen'' each as ''an individual . . .''); 31 U.S.C. 3730(e)(4)(B) (defining ''original source'' as ''an individual . . .''); 31 U.S.C. 3801(a)(4) (defining ''investigating official'' as ''an individual . . .''); 42 U.S.C. 12713(b)(1)–(3) (defining ''displaced homemaker,'' ''first-time homebuyer,'' and ''single parent'' each as ''an individual . . .'').

[155] 31 U.S.C. 5336(a)(3)(A) (emphasis added).

[156] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

[157] *See, e.g.,* 5 U.S.C. 8471(1), (3), (4) (defining ''beneficiary,'' ''participant,'' and ''person'' each as ''an individual . . .''); 12 U.S.C. 3423(a)(1)(A), (J), (L)–(N) (defining ''Bank Secrecy officer,'' ''insurance producer,'' ''investment adviser representative,'' ''registered representative,'' and ''senior citizen'' each as ''an individual . . .''); 31 U.S.C. 3730(e)(4)(B) (defining ''original source'' as ''an individual . . .''); 31 U.S.C. 3801(a)(4) (defining ''investigating official'' as ''an individual . . .''); 42 U.S.C. 12713(b)(1)–(3) (defining ''displaced homemaker,'' ''first-time homebuyer,'' and ''single parent'' each as ''an individual . . .'').

[158] *See* Public Law 116–283, Section 6402(2)–(4).

[159] *See, e.g.,* 31 U.S.C. 5336(a)(3)(A), (b)(1)(F)(iv), (b)(4)(B)(ii).

[160] 17 CFR 230.405 (defining ''control'' as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise'').

[161] *E.g.,* 50 U.S.C. 4565(a)(3) (''direct or indirect,'' ''exercised or not exercised,'' ''to determine, direct, or decide important matters affecting an entity''); 17 CFR 230.405 (''direct or indirect,'' ''possession . . . of the power to direct or cause the direction of the management and policies,'' ''or otherwise'').

[162] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

to repeatedly commit additional resources to understand the changing regulatory landscape. Moreover, it would lead to a less effective database. One shortcoming of the 2016 CDD Rule is that it omits persons that have substantial control of a reporting company, but are not reported because another party has already been reported as having substantial control. Furthermore, FinCEN notes that the definition of reporting company applies only to legal entities that have 20 or fewer employees and less than $5 million in gross receipts or sales as reflected in the previous year's federal tax returns, and that do not otherwise benefit from the exemptions described in the regulations. While size and complexity do not have to go hand in hand, FinCEN assesses that in general smaller entities have less complex ownership and control structures, so the definition of reporting company tends to limit the potential number of beneficial owners who would exercise substantial control at a given reporting company.

The final rule also renumbers 31 CFR 1010.380(d)(2), ''Direct or Indirect Exercise of Substantial Control,'' as 31 CFR 1010.380(d)(1)(ii) and makes certain modifications to the paragraph. First, the final rule inserts the clause ''including as a trustee of a trust or similar arrangement'' into the introductory text in paragraph (d)(1)(ii). This addition underscores that the trustee of a trust or similar arrangement can exercise substantial control over a reporting company through the types of relationships outlined in the paragraph. Depending on the particular facts and circumstances, trusts may serve as a mechanism for the exercise of substantial control. Furthermore, ''trusts or similar arrangements'' can take a wide range of forms. Accordingly, FinCEN finds it appropriate—and directly responsive to comments that requested clarification on this point—to specify that a trustee of a trust can, in fact, exercise substantial control over a reporting company through the exercise of his or her powers as a trustee over the corpus of the trust, for example, by exercising control rights associated with shares held in trust.

Second, the final rule individually enumerates the non-exclusive list of means of exercising substantial control described in final paragraph (d)(1)(ii)(A)–(F) (rather than listing them in a single block of text, as in the proposed paragraph (d)(2)), without making additional substantive changes. The final rule also deletes the phrase ''dominant minority'' in subparagraph (d)(1)(ii)(B) to conform to the same deletion made in paragraph (d)(1)(i)(C). In the interests of clarity, the provision now refers to ''a majority of the voting power or voting rights of the reporting company.'' The final rule also removes as redundant the last sentence in proposed 31 CFR 1010.380(d)(2), which stated that having the right or ability to exercise substantial control was equivalent to the exercise of such substantial control.

Finally, a number of comments expressed concern that the perceived complexity of the ''substantial control'' definition (as well as the definition of ''ownership interest'') would make it difficult and burdensome for reporting companies to apply that definition to their own circumstances and determine who their beneficial owners are. FinCEN assesses, however, that applying the beneficial owner rules will be a straightforward exercise for many reporting companies. Most reporting companies will have relatively small numbers of (or no) employees or simple management and ownership structures. The exemptions from the definition of ''reporting company,'' particularly the exemption for large operating companies, tend to exclude larger and more complex entities from the beneficial ownership reporting requirements. While some smaller entities may have similarly complex management and ownership structures, FinCEN expects that most smaller entities with conventional structures will be able to readily identify their beneficial owners. The final rule was carefully drafted with the objective of minimizing potential burden on reporting entities while also pursuing the other goals mandated by the CTA.[163]

More broadly, the definition of ''beneficial owner'' under final 31 CFR 1010.380(d) specifies multiple ways in which an individual may be a beneficial owner of a reporting company, in order to encompass a wide range of possible scenarios where substantial control may be exercised, or where ownership interests may be owned or controlled directly or indirectly through complex arrangements. However, in cases where a reporting company has straightforward operations and a simple and direct ownership structure, the application of paragraph (d) is similarly straightforward. For example, suppose that George and Winona, husband and wife, and their son Sam each directly own one-third of Farragut Co., a corporation through which they run their small family farm. Sam serves as the president, Winona is the chief operating officer, and George is the general counsel. There are no other individuals who serve as senior officers or exercise substantial control through any other arrangement. Here, George, Winona, and Sam would be the only beneficial owners of the reporting company. If Sam steps down from his role as president but maintains his ownership interest, and his brother James is named president of Farragut Co., then James would also be a beneficial owner.

As another example, suppose Sarah and Skyler each directly own fifty percent of Adelaide's Cement, Inc., a small, closely held construction supply company. Sarah is the president, Skyler is chief executive officer, and Adelaide's Cement has no other officers. Nathan has been manager and chief clerk for forty years, responsible for the day-to-day operations and staffing of the company. Nathan has the authority to hire floor staff, but not senior officers. He controls the petty cash and payroll disbursements and is authorized to be the sole signatory for checks under the amount of $5,000. He does not have authority to make major expenditures or substantially influence the overall direction of the company. In this scenario, Sarah and Skyler are beneficial owners, and Nathan is *not* a beneficial owner.

While the final rule should be straightforward to apply in a wide range of similar cases, FinCEN recognizes that there will be circumstances in which reporting companies are structured or managed in a way that generates more complexity or uncertainty regarding the scope of the application of the rule. Exercising substantial control or owning ownership interests through an intermediate entity,[164] conferring special rights in connection with a financing arrangement,[165] issuing puts, calls, straddles, or other options,[166] and other circumstances may make it harder to determine beneficial owners. In such circumstances, however, reporting companies or their beneficial owners ordinarily seek the advice of tax and legal professionals to assess the advantages and disadvantages of such business choices and choose to enter into those arrangements despite the additional complexity they entail because they confer benefits that more than compensate. In these cases, FinCEN expects that the reporting requirements under the final rule will impose some additional burdens, but that these additional burdens should not be unusual for businesses that make decisions which increase the

[163] *See* 31 U.S.C. 5336(b)(1)(F), (b)(4)(B).

[164] 31 CFR 1010.380(d)(1)(ii)(D), (2)(ii)(D).

[165] 31 CFR 1010.380(d)(1)(ii)(C).

[166] 31 CFR 1010.380(d)(2)(i)(D).

complexity of a company's operations, management, or financing. While FinCEN has worked to avoid unnecessary burdens on reporting companies, fulfilling the CTA's directives to report all beneficial owners means that certain compliance burdens may rise with the increasing structural complexity of a given entity.

ii. Ownership Interests

Proposed Rule. The CTA defines a beneficial owner to include ''an individual who . . . owns or controls not less than 25 percent of the ownership interests of the entity.'' [167] The proposed rule incorporated that definition and further specified its meaning in 31 CFR 1010.380(d)(3). Proposed 31 CFR 1010.380(d)(3)(i) provided that ''ownership interests,'' for the purposes of this rule, would include both equity in the reporting company and other types of interests, such as capital or profit interests (including partnership interests) or convertible instruments, warrants or rights, or other options or privileges to acquire equity, capital, or other interests in a reporting company. Debt instruments would be included if they enable the holder to exercise the same rights as one of the specified types of equity or other interests, including if they enable the holder to convert the instrument into one of the specified types of equity or other interests.

Proposed 31 CFR 1010.380(d)(3)(ii) also identified ways in which an individual may ''own or control'' such ownership interests. It restated statutory language that an individual may own or control an ownership interest directly or indirectly. It also gave a non-exhaustive list of examples to further specify how an individual can own or control ownership interests through a variety of means. In particular, proposed 31 CFR 1010.380(d)(3)(ii)(C) specified how an individual may directly or indirectly own or control an ownership interest that is held in a trust or similar arrangement.

Proposed 31 CFR 1010.380(d)(3)(iii) concluded the ownership interest section with guidance on determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company.

Comments Received. Some commenters supported the proposed definition of ownership interests, noting that it is broader than mere equity ownership and provides a comprehensive list of forms of ownership interest. Other commenters expressed a preference for the 25 percent equity interest threshold reflected in the 2016 CDD Rule to promote consistency with existing requirements. Commenters expressed concerns with the various considerations, such as debt and contingent interests, reflected in the proposed rule for the calculation of ownership interests and asserted that these considerations were unnecessarily complicated. Some of these commenters suggested that some (or all) types of convertible instruments should be excluded from the definition of ownership interests or that only immediately convertible interests should be included within the meaning of the term.

Some commenters also noted technical concerns or suggested technical changes to the proposed definition. At least one commenter, for example, noted that the inclusion in proposed 31 CFR 1010.380(d)(3)(i)(A) of a ''certificate of interest or participation in any profit sharing agreement'' in the calculation of ownership interests could sweep in a company's bonus, profit-sharing, or 401(k) plan contributions in ways that could be complex to calculate over time and are not typically thought of as ownership interests. Other commenters suggested including statutory language specifying that an individual can own or control an ownership interest ''through any contract, arrangement, understanding, relationship or otherwise,'' adding a catch-all provision to capture unanticipated ownership structures, addressing a number of specific trust scenarios, and clarifying the meaning of ''indirect'' interests and attribution rules for spouses, relatives, and others.

A number of other comments took issue with aspects of the mechanisms that the proposed rule set forth for calculating percentage of ownership interest. These comments are summarized in connection with the specific provisions of the final rule that address the issues they raise.

Final Rule. The final 31 CFR 1010.380(d)(2) adopts in large part the proposed provisions regarding ownership interests, with certain clarifications. Among the clarifying changes to the proposed rule, the final rule includes subject headings for each of the subparagraphs of 31 CFR 1010.380(d)(2) to clarify the scope of each subparagraph.

First, 31 CFR 1010.380(d)(2)(i), now entitled ''Definition of Ownership Interest,'' has been revised to focus solely on types of arrangements that convey ownership interests (*e.g.,* equity, convertible instruments, stocks, etc.), rather than by reference to legal entities in which ownership interests are held. This reflects the wide variety of potential reporting company structures and the potential for evasion inherent in specifying detailed rules for each structure. FinCEN has also amended the final clause of 31 CFR 1010.380(d)(2)(i)(A) to make clearer, as suggested by some commenters, that the listed forms of ownership (like equity or stocks) are independent of voting power or voting rights (which may be relevant to the related but conceptually distinct concept of substantial control). While often associated with ownership, these rights are not necessary to ownership and are better addressed through the substantial control prong of the definition of beneficial owner.

FinCEN has also deleted the reference to proprietorship interests in the proposed 31 CFR 1010.380(d)(2)(i)(C), as the reference is superfluous and commenters found the term to be unclear. The final rule also deletes the clause ''certificate of interest or participation in any profit sharing agreement'' in 31 CFR 1010.380(d)(2)(i)(A). Although this term has been part of securities law since the Securities Act of 1933, applying it to particular facts can be complex and could make the task of identifying ownership interests significantly more difficult without producing a corresponding increase in useful information about beneficial ownership.[168] FinCEN believes that the clause ''capital and profit interest'' adequately covers the concepts of ownership interests reflected in such profit-sharing agreements, and a specific reference to certificates of interest will not add sufficient clarity to outweigh the complexity of applying the term.

Commenters also asked FinCEN to exclude convertible instruments, particularly those that are not immediately convertible, or whose conversion is subject to a range of conditions. FinCEN is declining to make this change. Convertible instruments are widely used and, particularly when the holder may convert the interest at will,

[167] 31 U.S.C. 5336(a)(3)(A)(ii).

[168] *See, e.g., Tchrepnin* v. *Knight,* 389 U.S. 332, 338 (1967) (finding investment could constitute certificates of interest and noting that ''the reach of the [Securities] Act [of 1933] does not stop with the obvious and commonplace'') (internal quotation marks omitted); *Foxfield Villa Assocs.* v. *Robben,* 967 F.3d 1082, 1090–1100 (10th Cir. 2020) (complex litigation requiring three part test, with one part requiring six control-related factors, to determine whether certain LLC interests met the definition); *Simon* v. *Fribourg,* 650 F. Supp. 319, 321 (D. Minn. 1986) (''[T]here is little authority to suggest that a 'certificate of interest or participation in a profit-sharing agreement' is a term so commonly understood and an agreement so easy to identify that it should be 'provable by its name and characteristics.'' (internal citations omitted)).

they are tantamount to equity ownership. Even if the instrument is not immediately convertible, the potential conversion of the instrument at a later time provides significant opportunities for exerting influence and maintaining an economic interest tantamount to ownership. Excluding these instruments would create significant room for potential evasion of reporting requirements.

Commenters raised further concerns about certain types of convertible interests where the amount of the equity that the holder will receive is difficult to calculate or depends on conditions at the precise time when the interest is converted. One commenter gave the example of limited partnership or limited liability company structures often referred to as a ''waterfall,'' where a variety of different classes of interests have varying entitlements to the capital and profit of the enterprise that may be difficult to calculate as a percentage of all ownership interests. Another commenter pointed to Simple Agreements for Future Equity (a ''SAFE''), in which an investor agrees to provide funding, typically to a start-up company, that will convert into equity according to a formula based upon conditions when a predetermined event occurs, such as an initial public offering. It may be difficult to calculate how much equity will be received when the relevant condition occurs, and if the condition does not occur, the investor may receive no equity at all. Although FinCEN recognizes that such structures may complicate the calculation of the percentage of ownership interests, investors and companies who establish such structures do so in the expectation that they will receive a certain level of capital and profit interests. Moreover, to aid this reporting, FinCEN is clarifying the calculation of ownership interests, and the timing of such calculations, and explains that clarification in connection with the discussion of the ''Calculation of the Total Ownership Interests of the Reporting Company'' in Section III.C.ii. below.

Lastly, the final rule modifies 31 CFR 1010.380(d)(2)(i)(D) to address concerns raised by commenters that a reporting company may be unaware of situations where a third party has created an option or derivative related to the stock or other ownership interests in the reporting company (sometimes for a very limited time period). Although most reporting companies are not likely to be affected, FinCEN recognizes that market makers can create options and derivatives without involvement by reporting companies and owners, and in such cases, reporting companies will not have knowledge of the options or derivatives, or any mechanism to track such options and derivatives. In such cases, it would impose an unwarranted burden on reporting companies that are not otherwise aware of such options and derivatives to identify all of them. The final rule makes clear, however, that reporting companies will be required to take into account such options and derivatives where they are aware that they exist.

The final rule also adds a new 31 CFR 1010.380(d)(2)(i)(E) to include a catch-all provision to the definition of ownership interest to include ''[a]ny other instrument, contract, arrangement, understanding, relationship, or other mechanism used to establish ownership.'' As commenters noted, such a provision is consistent with the statutory language in 31 U.S.C. 5336(a)(3)(A) and is designed to ensure that any individual or entity that establishes an ownership interest in a reporting company through a contractual or other relationship not described in subparagraphs (A) through (E) of 31 CFR 1010.380(d)(2)(i) is subject to the beneficial owner reporting requirements.

Second, the final rule amends several paragraphs in 31 CFR 1010.380(d)(2)(ii), now entitled ''Ownership or Control of Ownership Interest,'' to address means through which a beneficial owner can ''own or control'' an ownership interest. First, the final rule replaces the clause ''variety of means'' with the more specific clause ''contract, arrangement, understanding, or other relationship,'' as used in the CTA, to better reflect the full range of channels through which an individual or entity may be able to directly or indirectly have ownership of a reporting company. Second, the final rule replaces the clause in paragraph (ii)(B) that read ''through control of such ownership interest owned by another individual'' with the more straightforward clause, ''through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual,'' to describe the specific types of relationships through which ownership of ownership interests can occur. Third, the final rule identifies in a new paragraph (d)(2)(ii)(D) ownership or control of intermediary entities that own or control a reporting company as a specific means through which an individual may directly or indirectly own or control an ownership interest of a reporting company. Paragraph (D) was inadvertently listed in proposed 31 CFR 1010.380(d)(3)(ii)(C)(3)(i) as a means through which a grantor or settlor has the right to revoke the trust. The final rule also deletes proposed 31 CFR 1010.380(d)(3)(ii)(C)(*3*)(*ii*), which was also inadvertently listed in the trust paragraph; a similar clause is now included in the introductory paragraph of the final paragraph (d)(2) that identifies the variety of means or arrangements through which an individual may own or control ownership interests in a reporting company. In addition, FinCEN considered whether further clarity is needed with respect to constructive ownership, or attribution—for example, by spouses, children, or other relatives, by reference to other statutory or regulatory authorities such as the Internal Revenue Code or Office of Government Ethics rules—but determined that the terms ''ownership interest'' and ''substantial control'' are sufficiently comprehensive and other references were likely to be over-inclusive and create significant burdens on reporting companies.

The final rule does not change the provision in the proposed rule that identified specific individuals in trust and similar arrangements whom a reporting company could treat as owners of 25 percent of the ownership interests of the reporting company by virtue of their relationship to the trust that holds those ownership interests. FinCEN acknowledges the comments that objected to the proposed language on several grounds, particularly: that it is unclear whether the list of individuals who may own or control an ownership interest held in trust is illustrative or exhaustive; that the proposed language does not adequately address numerous types of trust arrangements; that it is unclear which parties in a trust arrangement should be reported as a beneficial owner when the regulatory language suggests that more than one individual could be considered to own or control the same ownership interests held in trust; and that the proposed language does not align with other sources of authority concerning trusts, such as tax law.[169]

[169] Commenters have criticized the proposed regulations for not covering a wider range of trust scenarios. For instance, at least one commenter noted that the regulatory language does not specifically address trust arrangements with multiple beneficiaries. One commenter provided several examples of trust arrangements in which individuals might have beneficial interests in trust assets but might not be required to report under the regulations. Another commenter asked if the language covered such persons as trust protectors and advisors, and requested clarification on how to apply the regulation to a trust in which decisions concerning distributions were made by committee. Further, one commenter suggested that FinCEN entirely exclude the language regarding individuals with the authority to dispose of trust assets from the

Continued

After considering these comments, however, FinCEN adopts the proposed rule without change. Assets, such as the ownership interests of a reporting company, can be held in trust. The final rule identifies the trustee as an individual who will be deemed to control trust assets for the purpose of determining which individuals own or control 25 percent of the ownership interests of the reporting company. In addition to trustees, the final rule specifies that other individuals with authority to control or dispose of trust assets are considered to own or control the ownership interests in a reporting company that are held in trust. The final rule identifies circumstances in which ownership interests held in trust will be considered as owned or controlled by a beneficiary: if the beneficiary is the sole permissible recipient of income and principal from the trust, or if the beneficiary has the right to demand a distribution of, or withdraw substantially all, of the assets in the trust. In addition, trust assets will be considered as owned or controlled by a grantor or settlor who has the right to revoke the trust or withdraw its assets. One consequence of this—to confirm the reading that one comment suggested was possible and requested clarification on—is that, depending on the specifics of the trust arrangement, the ownership interests held in trust could be considered simultaneously as owned or controlled by multiple parties in a trust arrangement.[170]

To provide clarity, FinCEN has sought to identify specific scenarios in which individuals can be considered to own or control ownership interests of a reporting company held in trust. FinCEN has also made clear that those are specific examples of the more general principle, stated in the introductory text in (d)(2)(ii), that an individual ''may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise.'' As one commenter noted, however, trusts arrangements can vary significantly in form, so the examples in the final rule do not address all applications of the general principle. The final rule is different, less specific, and less prescriptive than section 318(a)(2)(B) of the Internal Revenue Code (which some commenters have urged FinCEN to adopt and others have urged FinCEN to disclaim). FinCEN believes that the final regulatory language is more closely tailored to the purpose and language of the CTA than rules governing income tax liability.

Third, 31 CFR 1010.380(d)(3)(iii), now entitled ''Calculation of the Total Ownership Interests of the Reporting Company,'' has been revised in order to provide additional clarity and guidance. The NPRM required that the percentage of ownership interests owned or controlled by an individual be calculated by taking all of the individual's ownership interests, aggregated across all types of ownership interests that the individual may hold, and dividing them by the total undiluted ownership interests of the reporting company, also aggregated across all types of interests.

Commenters raised concerns about how to conduct this calculation. One commenter thought the term undiluted ownership interests was unclear and difficult to apply. Two commenters raised concerns about how to aggregate different types of ownership interests, particularly in the context of LLCs and start-up companies. This concern aligned with other commenters' concern about contingent interests that may depend upon future events to determine their value. Numerous commenters suggested alternatives, such as the formulation used in the 2016 CDD Rule, SEC rules, and clarifying changes to the NPRM definition.

The final rule addresses these concerns by providing specific guidance for certain types of entities and convertible interests. In all circumstances, the final rule clarifies that the individual's total ownership interests are compared to the outstanding ownership interests of the reporting company, as specified in the proposed rule. But more specifically for reporting companies that issue capital and profit interests, including entities taxed as partnerships, the final rule clarifies that the individual's total capital and profit interests are compared to the total outstanding capital and profit interests of the reporting company. For corporations, entities taxed as corporations, and other entities that issue shares, the final rule clarifies that a ''vote or value'' approach should be used. Under this approach, the individual's percentage of ownership interests is the greater of: (1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or (2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests. These rules are similar to rules used by entities for federal tax purposes. If neither the calculation for entities that issue capital and profit interests nor the calculation for entities that issue shares can be performed with reasonable certainty, the final rule contains a catch-all provision: the individual is deemed to hold 25 percent or more of the total ownership interests in the reporting company if the individual owns or controls 25 percent or more of any class or type of ownership interests. All of these calculations are performed on the ownership interests as they stand at the time of the calculation. Options and similar interests are treated as though exercised when the calculation is conducted.

The final rule balances commenters' concerns about uncertainty in applying the rule against the need for flexibility to accommodate a wide range of ownership structures while conducting the calculation required by the CTA's 25% threshold. With the wide diversity of ownership structures that reporting companies may have, FinCEN recognizes that it may be difficult to aggregate all of these interests in all circumstances. But this difficulty is inherent in the CTA's definition of a beneficial owner as an individual who owns or controls at least 25 percent of ''the ownership interests of the entity,'' a category that encompasses more than one type or class of interest. The final rule aims to minimize the burden on reporting companies by providing guidance for the most common manifestations of the most common structures—LLCs, partnerships, corporations, and similar entities—and providing a simplified catch-all for other structures or situations where the other calculations cannot easily be performed. While the catch-all may be potentially over- or under-inclusive depending upon how an entity structures its classes of ownership interests, it provides the most administrable rule for less common ownership structures. FinCEN believes that the final rule strikes the appropriate balance between clarity and flexibility for the wide range of potential ownership structures, and the final rule may be supplemented with additional FAQs and guidance to the extent greater clarity is needed on particular facts and circumstances.

Similarly, the final rule provides greater clarity for holders of contingent interests. Options and similar interests are treated as though exercised and

regulations, and one commenter supported the inclusion of this language in modified form.

[170] Such an outcome is not unique to the circumstance of trusts. For example, joint ownership of an undivided interest in ownership interests of a reporting company can result in the same assets being attributed to all of the joint owners. *See* 31 CFR 1010.380(d)(2)(ii)(A).

added to the calculation of an individual's total ownership interests, and if this calculation cannot be conducted with reasonable certainty, the options and similar interests are treated as exercised for purposes of the catch-all rule. It should be noted that the present value of a contingent interest is irrelevant to the calculation of percentage of ownership interests. For example, if the exercise of an option or similar interest at the present time would result in an individual holding 26 percent of the profit interests in an entity, the individual would be deemed to own or control 25 percent or more of the ownership interests in the reporting company even if the value of those profit interests is indeterminate or negligible at the present time. While commenters have raised concerns about the burden involved in updating such calculations, such updates are necessary to ensure the accuracy of the information reported to FinCEN. Moreover, these challenges should be relatively infrequent because only a change that results in the individual moving above or below 25 percent of total ownership interests will change the reporting obligation. The particular percentage of any individual's ownership interest need not be reported.

While other means of assessing ownership interests suggested by commenters such as the 2016 CDD Rule or SEC rules may be more familiar to some, FinCEN does not believe that any of these definitions both meet the requirement of the CTA for a calculation of total ownership interests for each reporting company and adequately balance the need for guidance and flexibility in conducting that calculation. The final rule does not include changes proposed by commenters to conform the definition of ownership interests to the 2016 CDD Rule. In the 2016 CDD Rule, only ''equity interests'' are relevant, joint ownership is not explicitly addressed, and assets in trust are deemed to be owned by their trustees.[171]

Many commenters urged FinCEN to adopt the 2016 CDD Rule approach to trusts. As the agency explained in the NPRM, the CTA departs from the 2016 CDD Rule in meaningful ways. For example, the CTA's definition of a beneficial owner, unlike the 2016 CDD Rule, does not create a numerical limit on the beneficial owners that a reporting company must report.[172] Rather, the CTA mandates that FinCEN collect information on ''*each* beneficial owner'' of a reporting company. The CTA also has the objective of establishing a comprehensive BOI database of the beneficial owners of reporting companies.[173] By contrast, the 2016 CDD Rule requires financial institutions to identify for their legal entity accountholders one control person (functionally a representative of all control persons, most of whom are therefore not named) and no more than four equity owners. Additionally, Congress's decision to require FinCEN to revise the 2016 CDD Rule to bring it into conformance with the CTA suggests Congress intentionally departed from the 2016 CDD Rule's requirements.[174] Commenters have not offered persuasive reasons to believe this is not the case. FinCEN therefore has decided not to follow the 2016 CDD Rule approach.

iii. Exceptions to Definition of Beneficial Owner

31 U.S.C. 5336(a)(3)(B) includes five exceptions to the definition of beneficial owner, for: a minor child, provided that a parent or guardian's information is reported; an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; an individual acting solely as an employee of a reporting company in specified circumstances; an individual whose only interest in a reporting company is a future interest through a right of inheritance; and a creditor of a reporting company. Proposed 31 CFR 1010.380(d)(4) incorporated the statutory exceptions with minor clarifications and sought comments on whether the proposed rules implementing these statutory exceptions are sufficiently clear, and whether any of these rules require further clarification.

A number of commenters sought clarification or proposed changes to each of the exceptions. These comments are discussed in connection with each exception in this section. In addition, commenters proposed the following additional exclusions to the ''beneficial owner'' definition: trust beneficiaries, particularly those that might be unaware of their beneficiary status; trustees for employee stock ownership plans; and agents declared to the IRS. However, the CTA specifies the specific exceptions to the definition of ''beneficial owner'' and does not provide for the addition of others. FinCEN accordingly does not extend the list. Nevertheless, some of the specific concerns raised by the commenters are addressed in the final rule and this discussion, and FinCEN will consider the need for guidance or FAQs to evaluate particular circumstances as they arise.

a. Minor Children

Proposed Rule. In the case of minor children, consistent with the CTA,[175] proposed 31 CFR 1010.380(d)(4)(i) stated that the term ''beneficial owner'' does not include a minor child, provided that the reporting company reports the required information of the minor child's parent or legal guardian. It also clarified that ''minor child'' is defined under the law of the state or Indian tribe in which a domestic reporting company is created or in which a foreign reporting company is first registered. Proposed 31 CFR 1010.380(b)(3)(ii) included an additional clarification that a reporting company would need to indicate when the information provided relates to a parent or legal guardian.

Comments Received. One commenter questioned whether information about a parent or guardian is necessary and questioned the value of such information to law enforcement. The commenter also noted that other legal authorities, including fiduciary laws, as well as the underlying legal instrument, would govern whether and to what extent a parent or guardian can control funds that may belong to a minor child as a beneficial owner.

Final Rule. FinCEN is adopting the requirement as proposed. The CTA specifically exempts a minor child from the definition of ''beneficial owner'' provided that the information of the minor child's parent or guardian is reported.[176] In view of this statutory direction, FinCEN does not eliminate the requirement that information of the parent or guardian of the minor child must be reported in the event a minor child's information is not reported.

In addition, FinCEN emphasizes that a reporting company must submit an updated report when a minor child reaches the age of majority (again, as defined under the law of the state or Indian tribe in which a domestic reporting company is created or a foreign reporting company is first registered), given that such an event would constitute a change with respect to information submitted to FinCEN requiring an updated report. For the sake of clarity, FinCEN has spelled out this requirement by adding 31 CFR 1010.380(a)(2)(iv), which notes that the

[171] *See* 31 CFR 1010.230(d)(3).

[172] 31 U.S.C. 5336(a)(3)(A).

[173] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

[174] *See* CTA, Section 6403(d).

[175] 31 U.S.C. 5336(a)(3)(B)(i).

[176] *See id.* (''The term 'beneficial owner' . . . does not include . . . a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section . . . .'').

date on which the minor child attains the age of majority is the triggering date for purposes of the requirements for filing an updated report under 31 CFR 1010.380(a)(2).

b. Nominees, Intermediaries, Custodians, and Agents

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(ii) reflected the exception provided in the CTA for an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual.[177] Under this exception, reporting companies must report real parties in interest who exercise control indirectly, but not those who merely act on another individual's behalf in one of the specified capacities.

Comments Received. Multiple commenters expressed support for the proposed rule, and commenters generally did not oppose or seek clarification of this provision. However, under the rubric of proposed 31 CFR 1010.380(d)(1) (concerning what it means to exercise ''substantial control'' such that an individual qualifies as a beneficial owner), some commenters inquired about the treatment of certain retained professionals with an agency relationship, such as tax and legal professionals who have been designated as an agent under IRS Form 2848 (Power of Attorney and Declaration of Representative), whom these commenters viewed as exercising substantial influence in practical terms when they perform services within the scope of their duties.

Final Rule. FinCEN is adopting 31 CFR 1010.380(d)(4)(ii) as proposed but renumbered as 31 CFR 1010.380(d)(3)(ii). FinCEN emphasizes the obligation of a reporting company to report identifying information of the individual on whose behalf a nominee, intermediary, custodian, or agent is acting. However, as explained in Section III.C.i regarding the treatment of tax professionals and other similarly situated professionals, such a professional would not need to be reported if the individual is acting as a nominee, intermediary, custodian, or agent of an individual who is reported. Moreover, as explained in Section III.C.i regarding the application of final 31 CFR 1010.380(d)(1)(i)(C), FinCEN does not envision that the performance of ordinary, arms-length advisory or other contractual services to a reporting company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a reporting company.

c. Employees

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(iii) implemented the statutory exemption from the definition of ''beneficial owner'' for an employee of a reporting company, ''acting solely as an employee,'' whose ''control over or economic benefits from'' a reporting company are derived solely from that person's employment status.[178] The proposed rule adopted the CTA's language and supplemented it in two respects: (1) the proposed rule added the word ''substantial'' to modify ''control,'' to clarify that the control referenced in the exception is the same type of ''substantial control'' over a reporting company used in the definition of ''beneficial owner'' and defined in the regulations; and (2) the proposed rule clarified that a person acting as a senior officer of a reporting company would not qualify for the exception.

Comments Received. Some commenters expressed concern that the employee exception could erase any differences between the treatment of senior officers in the proposed definition of ''substantial control'' and the treatment of officers under the 2016 CDD Rule. Proposed 31 CFR 1010.380(d)(1) would classify a ''senior officer'' (defined in proposed 31 CFR 1010.380(f)(8) as an individual holding various senior positions, exercising such authority, or performing a similar function) as having substantial control over an entity. Similarly, the 2016 CDD Rule requires customers to identify one individual that directs the business of the entity, such as a chief executive officer, chief financial officer, or chief operating officer.[179] The commenters expressed the view that such officers would also constitute employees and could be covered by the employee exception, which would render the beneficial ownership registry under-inclusive.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(d)(4)(iii) with minor clarifications to minimize the potential confusion noted by commenters. The CTA makes clear that individuals who benefit from this exception must be acting ''*solely* as an employee'' and derive control or economic benefits ''*solely* from the[ir] employment status.'' [180] Accordingly, the final rule specifically provides that individuals can be treated as falling within the employee exception where they are ''acting solely as an employee'' and where their ''control over or economic benefits from'' a reporting company are derived ''solely'' from their employment status—but only if they are not senior officers of a company exercising substantial control under 31 CFR 1010.380(d)(1)(i)(A). Senior officers, as defined in 31 CFR 1010.380(f)(8), perform functions that inherently involve substantial control and go beyond mere employee status. As the CTA makes clear, the employee exception is intended to reach employees who might otherwise meet the criteria for a ''beneficial owner'' based *solely* on their limited, ordinary employment activities. But if senior officers were considered to be employees in this sense, it would swallow the substantial control provision for senior officers who exercise a great deal of control over a reporting company, and thus undermine FinCEN's ability to determine who in fact exercises substantial control over an entity.

d. Inheritance

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(iv) clarified that the inheritor exception in the CTA refers to a ''future'' interest associated with a right of inheritance, not a present interest that a person may acquire as a result of exercising such a right. The CTA's definition of ''beneficial owner'' excludes ''an individual whose only interest'' in the entity ''is through a right of inheritance.'' [181] In proposing this clarification to the inheritor exception, FinCEN sought to clarify that individuals who may in the future come to own ownership interests in an entity through a right of inheritance do not have ownership until the inheritance occurs. But once an ownership interest is inherited and comes to be owned by an individual, that individual has the same relationship to an entity as any other individual who has acquired an ownership interest through another means.

Comments Received. Commenters asked that FinCEN provide more clarity with respect to the application of the inheritor exception. One commenter suggested providing a specific definition of a ''right of inheritance,'' which could, for example, describe situations in which the inheritor exception would apply in the probate process. Another commenter suggested outlining the mechanisms that would constitute ''inheritance'' under this exception.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(d)(4)(iv) without change, other than renumbering as 31 CFR 1010.380(d)(3)(iv). As stated

[177] *See* 31 U.S.C. 5336(a)(3)(B)(ii).

[178] 31 U.S.C. 5336(a)(3)(B)(iii).

[179] 31 CFR 1010.230(d).

[180] 31 U.S.C. 5336(a)(3)(B)(iii) (emphases added).

[181] 31 U.S.C. 5336(a)(3)(B)(iv).

in the proposed rule, FinCEN emphasizes that once an individual has acquired an ownership interest in an entity through inheritance, that individual owns that ownership interest and is potentially subject to the beneficial-owner reporting requirements. Individuals who may in the future come to own ownership interests in an entity through a right of inheritance do not have ownership interests until the inheritance occurs. Such a future or contingent interest may exist through wills or other probate mechanisms that solely provide a future interest in an entity. But once an ownership interest is inherited and comes to be owned by an individual, that individual has the same relationship to an entity as any other individual who acquires an ownership interest through another means.

The precise moment at which an individual acquires an ownership interest in an entity through inheritance may be subject to a variety of existing legal authorities, such as the terms of a will, the terms of a trust, applicable state laws, and other valid instruments and rules. FinCEN intends the application of the inheritor exception, and the meaning of a ''right of inheritance'' in this paragraph (d)(3)(iv), to conform to the governing legal authorities. Should those authorities not provide sufficient direction for purposes of this inheritor exception, FinCEN is prepared to consider supplemental guidance or FAQs.

e. Creditors

Proposed Rule. The CTA's definition of beneficial owner excludes a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the overall definition of beneficial owner by exercising substantial control over the entity or owning or controlling 25 percent or more of the entity's ownership interests.[182] FinCEN believes that the ''unless'' clause in the CTA language intends to create a distinction between two groups: (1) creditors exempted from reporting obligations because they are individuals who qualify as beneficial owners solely because of their status as creditors; and (2) individuals who are creditors in the sense that they hold a debt but remain obligated to report because they have additional rights or interests that render them a beneficial owner. Accordingly, as it explained in the NPRM, FinCEN proposed regulatory language intended to identify individuals who are beneficial owners solely because they are creditors. Specifically, proposed 31 CFR 1010.380(d)(4)(v) stated that an excepted creditor is an individual who meets the definition of beneficial owner in proposed 31 CFR 1010.380(d) solely through rights or interests in the reporting company for the payment of a predetermined sum of money, such as a debt and the interest on such debt. FinCEN also explained that any capital interest in the reporting company, or any right or interest in the value of the reporting company or its profits, would not be considered rights or interests for payment of a predetermined sum, regardless of whether they took the form of a debt instrument. Accordingly, if an individual has a right or ability to convert the right to payment of a predetermined sum to any form of ownership interest in the company, that would preclude that individual from claiming the creditor exception under the proposed rule's approach.

Comments Received. No commenter objected to FinCEN's reading of the CTA under which the creditor exception is only intended to apply to individuals who would otherwise be beneficial owners *solely* because of their status as a creditor. While some commenters generally supported the proposed interpretation of the creditor exception, certain commenters requested clarification as to how it would apply in specific circumstances. In particular, commenters asked FinCEN to clarify whether the exemption would cover loans to a reporting company that included provisions requiring the pledging of assets as collateral, the ability to require the voting of shares in certain circumstances, or negative covenants. Other commenters asserted that this exception as proposed would apply very rarely because it did not match commercial realities, and therefore would result in over-reporting of beneficial owners. According to these commenters, many commercial loan agreements and other forms of financing contain negative covenants and additional creditor protections that go beyond the payment of a predetermined sum of money, but these protections are not commonly thought of as ownership interests. These commentators worried that, if loans containing such protections are not included within the creditor exception, many creditors who do not regard themselves as beneficial owners might be viewed as having substantial control over their reporting-company debtors. Consequently, those reporting companies might be required to report as beneficial owners those creditors (or the beneficial owners of those creditors, if the creditors are entities).

Final Rule. The final rule revises proposed 31 CFR 1010.380(d)(4)(v) to clarify that an individual would qualify for the creditor exception based on the individual's entitlement to payment of a reporting company's indebtedness, even if there are loan covenants or other similar obligations associated with that indebtedness that are intended to secure repayment or enhance the likelihood of repayment. The rule language continues to reflect FinCEN's view that the overarching intent of the CTA was to exclude from the definition of beneficial owner an individual whose sole interest in a reporting company is as a creditor. The revisions are intended to address the point made by commenters that the interests of a creditor routinely include rights or obligations—such as the right to require the debtor to adhere to specific covenants with respect to the management of the debtor's business or the obligation to maintain the collateral securing a loan—that go significantly beyond the bare right to receive a sum of money, but are not commonly considered to amount to ownership or control of a company.

FinCEN considered a number of options for creating regulatory language that would make this point administrable, and ultimately concluded that it would be fruitless to attempt to enumerate, or even describe, the universe of creditor rights that do not amount to ownership or control. Conditioning the creditor exception on whether debt documentation is consistent with a laundry list of acceptable provisions would require a reporting company to minutely examine every debt agreement or forego any attempt to apply the creditor exception. Instead, FinCEN has chosen to describe the key characteristic of an acceptable provision: that it is intended to secure the right to receive payment or enhance the likelihood of repayment. This description encompasses the range of terms that may be reasonable for creditors to seek in different commercial contexts, while carving out attempts to evade reporting by characterizing ownership interests or unjustified control rights in a debt instrument. FinCEN understands that terms in credit agreements have not been a significant vehicle for concealing beneficial ownership interests in the past. Nevertheless, whether a term crosses the line into substantial control or ownership, and is therefore inconsistent with this exception, will depend upon the facts and circumstances of a

[182] 31 U.S.C. 5336(a)(3)(B)(v) (definition does not include ''a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A)'').

particular situation. FinCEN will consider additional guidance or FAQs, as appropriate, if there is a need to clarify how the final rule applies to specific factual circumstances.

FinCEN also considered options for regulatory language that would enumerate or describe the types of creditor rights that *do* amount to assertions of ownership or substantial control in the guise of a debt agreement. In this regard, FinCEN concluded that it would be equally challenging to try to identify specific rights that would be categorically inconsistent with the creditor exception from the definition of beneficial owner, and thus has not done so.

D. Definition of Company Applicant

Proposed Rule. Proposed 31 CFR 1010.380(e) defined the term company applicant, in the case of a domestic reporting company, as an individual who files the document that forms the entity. In the case of a foreign reporting company, it defined company applicant as an individual who files the document that first registers the entity to do business in the United States. The proposed rule further specified that a company applicant includes anyone who directs or controls the filing of the document by another.

The proposed rule took a broad approach to company applicants in order to ensure that the reporting company provides information on individuals that are responsible for the filing to form a reporting company. The proposed rule contemplated that, in many cases, the company applicant might be an employee of a business formation service or law firm, or an associate, agent, or family member who is filing the document on behalf of another individual. FinCEN believed that this additional information about persons directing or controlling the formation or registration of the reporting company would be highly useful to law enforcement, which might be able to draw connections between and among seemingly unrelated reporting companies, beneficial owners, and company applicants based on this additional information. FinCEN sought comments on this approach.

Comments Received. Some commenters expressed support for the proposed definition of company applicant and agreed that it would be useful to law enforcement. However, most commenters generally expressed confusion about the scope and intent of the company applicant definition. Many commenters stated that the definition was overly broad, vague, hard to administer, and burdensome. Some commenters noted that the ''directs or controls'' prong could be read to include a wide range of employees in a company formation business or a law firm, and others asked for clarification regarding how many individuals should be reported. Some commenters asked for clarity on whether paralegals, secretaries, legal assistants, lawyers, or law firms were expected to be reported. Other commenters interpreted those that ''direct or control'' the filing with a secretary of state or other similar offices to potentially include State government employees who processed the filings.

Some commenters noted that the definition does not account for modern incorporation practices, and one commenter pointed out that automated incorporation services do not require companies to interact with individuals for corporate filings or registrations. Commercial corporate service providers also requested clarification, and many suggested that employees of such entities not be reported, but rather the entity or its record liaison. Many commenters suggested alternatives. Multiple commenters proposed exemptions to the definition, such as state employees, lawyers, and those who perform ministerial functions. A few commenters suggested that the ''directs or controls'' prong be removed, noting practical challenges, including filers being unaware of whether multiple persons ''directed'' such a filing.

Final Rule. The final rule modifies 31 CFR 1010.380(e) and adds paragraph (e)(3) to further clarify the definition of company applicant and reduce unnecessary burdens. The final rule specifies that the term company applicant means the individual who directly files the document to create or register the reporting company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing. This definition is designed to identify the individual who is responsible for the creation of a reporting company through the filing of formation documents, and the individual that directly submits the formation documents, if that function is performed by a different person, but it reduces potential burdens by limiting the definition of company applicant to only one or two individuals.

In many cases, company applicants may be employed by a business formation service or law firm. For example, there may be an attorney primarily responsible for overseeing the preparation and filing of incorporation documents and a paralegal who directly files them with a state office to create the reporting company. In this example, this reporting company would report two company applicants—the attorney and the paralegal—but additional individuals who may be indirectly involved in the filing would not need to be reported.

In other cases, a person who controls a reporting company may create the reporting company and file its formation documents without the assistance of a business formation service, law firm, or similar service. For example, an individual may prepare and self-file documents to create the individual's own reporting company. In this case, this reporting company would report one company applicant—the individual—who would also be reported as a beneficial owner. In another example, without the assistance of a business formation service, an individual may prepare formation documents for the individual's own reporting company, and a family member, agent, or other individual may directly file the documents with the state office. In this example, this reporting company would report two company applicants—the individual who prepares the documents and the individual who directly files them. State filing office employees who process formation documents in the ordinary course of their state employment are not the filers of the documents they process, and therefore do not need to be reported. Where business formation services provide software, online tools, or generally applicable written guidance, the employees of such services are not company applicants. However, employees of such services may be company applicants if they are personally involved in the filing of a document to form a particular company.

E. Reporting Company

Consistent with the CTA, proposed 31 CFR 1010.380(c)(1) defined two terms, ''domestic reporting company'' and ''foreign reporting company,'' which are the companies subject to the CTA's reporting requirements.[183] Commenters had a broad range of questions about whether particular types of entities fall within the scope of these definitions. In view of the number of fact-specific questions and the varying state practices on corporate formation and registration, FinCEN recognizes that further guidance and FAQs may be needed to provide guidance in specific factual circumstances. Proposed 31 CFR 1010.380(c)(2) specified several exemptions from the definitions.

[183] 31 U.S.C. 5336(a)(11)(A)(i)–(ii).

i. Domestic Reporting Company

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(i) defined a domestic reporting company to include: a corporation; a limited liability company; or other entity that is created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.[184] Because corporate formation is governed by state or Tribal law, and because the CTA does not provide independent definitions of the terms ''corporation'' and ''limited liability company,'' FinCEN proposed to interpret these terms by reference to the governing law of the domestic jurisdiction in which a reporting company that is a corporation or limited liability company is formed.

Comments Received. While comments were generally supportive of the definition reflected in the proposed rule, at least one commenter stated that the definition of reporting company should align with the legal entity customer definition in the 2016 CDD Rule. This commenter noted that if the definition does not conform with the 2016 CDD Rule's definition, depository institutions would not be able use and rely on the BOSS to fulfill their CDD Rule obligations. A number of comments noted that the proposed rule effectuated the broad scope of the CTA and defined ''other similar entity'' by reference to whether it was created under the laws of the state or Indian tribe, or registered to do business in the state or Tribal jurisdiction, by filing a document with a secretary of state or similar office.

Commenters, however, sought a range of clarifications to the proposed definition of domestic reporting company. Commenters asked whether particular types of legal entities were included or excluded within the proposed definition. Some commenters asked for an enumeration of the types of legal entities included within the scope of ''other similar entity.'' One commenter, for example, requested that the list of entities qualifying as a domestic reporting company include limited partnerships, limited liability partnerships, limited liability limited partnerships, and statutory trusts. Four commenters also asked whether insurance company separate accounts, certain special purpose vehicles, series LLCs, single-member LLCs, or entities that voluntarily file with secretaries of state or similar offices would or would not be reporting companies. Multiple comments requested additional clarification about how to apply the proposed rule to different kinds of trusts, including business trusts, common law trusts, irrevocable trusts, and statutorily mandated trust entities. Numerous comments, including some comments from secretaries of state, supported expressly excluding sole proprietorships and general partnerships. These commenters opined that not doing so might cause confusion: in most jurisdictions, general partnerships and sole proprietorships do not generally have to file anything with a secretary of state or other similar office, but many do elect to file certain forms in certain cases, such as d/b/a certificates, with a state or local government office. Other commenters asked about various situations in which a filing might create a reporting company, *e.g.,* through a voluntary filing, through conversions or reorganizations, or in the context of a delayed effective date. One commenter noted that the way to determine whether an entity is a reporting company is to focus on the act of filing to create the entity as the determinative factor. Another commenter agreed that this process-oriented definition of reporting company provides flexibility that accounts for the filing practice unique to each state.

Commenters also requested clarification of the term ''similar office.'' One commenter suggested, for example, that ''similar office'' should be construed to include any state or local government authority, including a state, local, regional, or Tribal court, in order to bring certain trusts that voluntarily register with such authorities under certain states' laws into the definition of reporting company and subject them to the rule's reporting requirements.

Lastly, some commenters expressed concern that reliance on state law requirements could provide opportunities for evasion and avoidance given differences between state law requirements. One commenter also suggested that the term ''created'' be interpreted to focus on the activities that the entity could perform, *e.g.,* the ability to conduct business, in order the prevent states from being able to re-label the formation or registration activity for purposes of evasion.

Final Rule. The final rule adopts proposed 31 CFR 1010.380(c)(1)(i) without significant change. The final rule incorporates the CTA's definition of domestic reporting company, which broadly captures corporations, LLCs, and other similar entities created by a filing with a secretary of state or similar office. Notably, despite requests that FinCEN align the reporting company definition with the 2016 CDD Rule, the final rule does not make that change because the CTA's definition of reporting company is distinct from the definition in the 2016 CDD Rule.

FinCEN considered whether to further define ''other similar entity'' as used in 31 U.S.C. 5336(a)(11)(A) or to list the types of entities that are either subject to the rule or not subject to the rule. The numerous comments in response to questions on this issue in the NPRM made clear that state law corporate formation practices and nomenclature vary among states and with respect to particular types of entities. Many secretaries of state, for example, provided some clarification regarding situations in which certain types of entities are required to file a formation document and other types of entities generally are permitted to submit certification or other documents, but the details of these situations varied. This variety makes it difficult to identify types of entities that are or are not categorically covered by the definition in every state or scenario.

The CTA itself provides a reasonably clear principle to apply to the variety of specific scenarios, *i.e.,* that a domestic reporting company is an entity created by the filing of a document with a secretary of state or other similar office. In general, FinCEN believes that sole proprietorships, certain types of trusts, and general partnerships in many, if not most, circumstances are not created through the filing of a document with a secretary of state or similar office. In such cases, the sole proprietorship, trust, or general partnership would not be a reporting company under the final rule. Moreover, where such an entity registers for a business license or similar permit, FinCEN believes that such registration would not generally ''create'' the entity, and thus the entity would not be created by a filing with a secretary of state or similar office. However, the particular context and details of a state's registration and filing practices may be relevant to determining whether an entity is created by a filing, and based on the range of responses regarding state law corporate formation practices, there may be varying practices that make a categorical rule that includes or exclude specific types of entities impracticable. It is similarly difficult to craft a generally applicable rule for conversions or reorganizations of entities, given the range of possible scenarios for conversions or reorganizations under state law and the variety of outcomes in terms of an entity retaining certain attributes of its predecessor entity. In such cases, the touchstone is whether the successor entity is created by the

[184] *Id.*

filing of a document with a secretary of state or similar office. Given the potential range of relevant facts, FinCEN will consider issuing guidance as necessary to resolve questions on whether entities of particular types in particular circumstances are created by the filing of a document with the relevant authority.

One commenter suggested that sole proprietorships that file a document with a state or Tribal agency to obtain a d/b/a or other trade name should be considered to be reporting companies and subject to the rule's reporting requirements. FinCEN does not address this issue in the final rule, but notes that the core consideration for the purposes of the CTA's statutory text and the final rule is whether an ''entity'' is ''created'' by the filing of the document with the relevant authority. In light of the potential for varying state law practices, FinCEN may consider guidance in the future to address considerations relevant to entities that register to use a d/b/a or other trade name.

Some of the comments raise the issue of the difference between ''mandatory'' and ''voluntary'' filings, asserting that FinCEN should make no distinction between the two. We emphasize again that the only relevant issue for the purposes of the CTA and the final rule is whether the filing ''creates'' the entity. Whether the ''filing'' is deemed mandatory or voluntary, whether such a filing is pursuant to a conversion or reorganization, whether it is made for tax, dissolution, or other purposes, or any other such consideration, is not necessarily dispositive. FinCEN is prepared to issue guidance if necessary to further clarify which situations may cause a newly formed entity to be subject to the reporting company definition.

Some commenters identified states in which a department or agency other than the secretary of state handled business entity filings. These commenters asked for greater clarity regarding the term ''similar office.'' FinCEN notes that some states call the state agency that has primary responsibility for handling filings that create legal entities under state law something other than a ''secretary of state.'' [185] FinCEN also notes a similar office may include a department or agency that has functions similar to a secretary of state to the extent they receive filings that create new entities. But a determination as to whether an office is ''similar'' depends on context. One commenter noted that in some states entities such as trusts file relevant documents with state courts for certain purposes and asked that FinCEN expressly include state courts within the meaning of the term ''similar office.'' As with types of entities, FinCEN declines to incorporate into the final rule either a one-size-fits-all definition or a list of qualifying offices that create entities by filing with the state office, given the varying state practices. FinCEN, however, will consider additional guidance as appropriate.

Lastly, FinCEN considered whether reliance on state law corporate formation practices for the purposes of the definition of a reporting company would create opportunities for avoidance or evasion of the reporting requirements. At least one commenter stated that the word ''created'' should be interpreted by reference to a type of activity, *e.g.,* the ability to conduct business, in order to avoid the potential for evasion based on differing state law corporate formation practices. FinCEN does not adopt this suggestion because the standard specified by the CTA is whether an entity is created by a filing, and that standard should not be confused with other types of filings for other purposes or to satisfy other state requirements. While potential differences in state law practices could provide opportunities for forum shopping, FinCEN does not make any changes in response to this comment. The CTA is clear that state corporate formation law and practices dictate whether an entity is a reporting company.

ii. Foreign Reporting Company

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(ii) defines a foreign reporting company as any entity that is a corporation, limited liability company, or other entity that is formed under the law of a foreign country and that is registered to do business in the United States by the filing of a document with a secretary of state or equivalent office under the law of a state or Indian tribe. As explained in the proposed rule, FinCEN would interpret these terms by reference to the requirement to register to do business in the United States by the filing of a document in a State or Tribal jurisdiction. The proposed rule otherwise tracked the statutory text except to clarify that registration to do business in any state or Tribal jurisdiction suffices as registration to do business in the United States.

Comments Received. As with the definition of domestic reporting company, comments were generally supportive of the definition reflected in the proposed rule but sought additional specificity about scope of the definition. Some commenters proposed clarifications to the foreign reporting company definition and noted that entities may not be required to file with a secretary of state or similar office depending on their activities within the state. For example, one secretary of state explained that state law regarding corporations and LLCs specifies that certain activities of a foreign entity in that state do not constitute transacting business there, and thus do not trigger a filing requirement with the state. Multiple commenters expressed the concern that the requirement that a foreign entity that registers to do business in a state or Tribal jurisdiction by the ''filing of a document'' with the relevant state or Tribal authority will require small businesses to employ tax or legal professionals to advise them on how to comply with the proposed regulation. Additionally, some state authorities highlighted potential confusion surrounding the term ''foreign,'' given the common state practice of referring to all entities organized outside of the state—including those organized in other states within the United States—as ''foreign'' entities; these state authorities suggested the reporting rule use the term ''international foreign.'' Some commenters noted that the proposed definition is underinclusive and will not achieve an appropriate level of transparency. Lastly, some commenters asked FinCEN to require State and Tribal agencies to inform FinCEN of laws and regulations that allow a non-U.S. entity to conduct activities within the United States in order to enhance transparency.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(c)(1)(ii) without change. As with the definition of domestic reporting company, the final rule incorporates the CTA's definition of foreign reporting company, which broadly captures corporations, limited liability companies, and other entities formed in a foreign country when they are registered to do business in the United States by the filling of a document with the secretary of state or similar office.

The final rule does not make any changes in response to requests from commenters to clarify the meaning of ''foreign'' based on state law convention. By referring to an entity ''formed under the law of a foreign country,'' 31 CFR 1010.380(c)(1)(ii)(B) makes clear that the *country* of origin is relevant for the purposes of the definition of a foreign reporting

[185] In the District of Columbia, for example, the office with that function is the Department of Consumer and Regulatory Affairs; in Virginia, it is the State Corporation Commission.

company, rather than state law convention.

The final rule does not impose a requirement on state and Tribal agencies to inform FinCEN of laws and regulations that allow a non-U.S. entity to conduct activities within the United States. The CTA does not provide for general information collection from states or Indian tribes regarding the laws or other rules governing the ability of foreign entities to do business in a state or Tribal jurisdiction.

Lastly, with respect to cost burdens, FinCEN recognizes the direction in the CTA to create a highly useful database while taking into account the costs to small businesses in a manner consistent with the statute. The regulatory impact analysis in Section V. below clarifies cost estimates based on comments received with respect to the proposed rule.

iii. Exemptions

The CTA exempts from the definition of ''reporting company'' twenty-three specific types of entities.[186] Many of these exempt entities are already subject to substantial federal and/or state regulation or already have to provide their beneficial ownership information to a governmental authority. The statute also authorizes the Secretary to exempt, by regulation, additional types of entities for which collecting BOI would neither serve the public interest nor be highly useful in national security, intelligence, and law enforcement agency efforts.[187]

a. General Matters

Proposed Rule. Proposed 31 CFR 1010.380(c)(2) clarified ambiguous phrases in statutory exemptions to the definition of reporting company, notably in the exemptions for public utilities, large operating companies, subsidiaries of certain other types of exempt entities, and dormant entities. The proposed rule also made minor alterations to paragraph structure to enhance clarity and added short titles.

Comments Received. Comments concerning exemptions as a general subject[188] typically fell into two groups: those that wanted exemptions to be construed narrowly and thought new exemptions should not be created, and those that wanted existing exemptions to be broadened and/or thought more exemptions should be created. These comments also discussed filing requirements in connection with exemptions, the overall clarity of the exemptions, and the alignment of exemptions in the CTA and those in the 2016 CDD Rule.[189]

Numerous comments discussed filing obligations for exempt entities. Some commenters asserted that entities should have to file a form in order to claim an exemption. Others suggested that exempt entities should be permitted to file their BOI, even if FinCEN did not have the authority to require them to. One commenter, for example, suggested that exempt entities be permitted to file exemption certificates voluntarily with FinCEN. This could give a financial institution accessing the BOSS for CDD purposes documentation to rely upon if the institution were concerned that the entity's BOI was not in the BOSS. Another commenter suggested entities be required to seek exemption certificates in order to help identify entities unlawfully claiming to be exempt.

Another commenter asked whether the regulation would preclude an exempt entity from filing a ''protective'' report, *i.e.,* an initial BOI report that an entity would file despite believing that it qualified for an exemption in order to avoid being penalized if it unwittingly lost its exemption later. Another commenter requested that the rule address situations in which a reporting entity becomes exempt after filing an initial BOI report, or when an exempt entity ceases to be exempt. Relatedly, one commenter asked that the rule expressly state that exempt entities have no BOI reporting obligations unless or until they cease to fall within one of the exemptions.

Concerning clarity, multiple state authorities indicated that they found the exemptions to be unclear; several urged FinCEN to develop and implement an online tool or ''wizard'' to help entities determine whether any specific exemptions would apply to their specific circumstances.

Final Rule. After considering all comments, FinCEN is adopting 31 CFR 1010.380(c)(2) largely as proposed, making small changes to improve clarity and without adding any additional exemptions, as explained in the next subsection.

FinCEN considers the rule to be clear with respect to when an entity's reporting obligation begins or ends relative to when it becomes or ceases to be exempt. Under 31 CFR 1010.380(a)(1), any entity that meets the definition of a ''reporting company'' must file a report of beneficial ownership with FinCEN. This applies to entities that have never been exempt and to those that were exempt but no longer are. Entities that are no longer exempt are subject to the special rule of 31 CFR 1010.380(a)(1)(iv), which requires them to file a report within 30 calendar days of ceasing to be exempt. FinCEN does not believe at this time that additional regulatory changes are needed to clarify these obligations. Nevertheless, FinCEN will monitor the application of each exemption and will assess the need for further guidance or FAQs accordingly. FinCEN will also consider issuing guidance to help the public understand and comply with CTA obligations.

FinCEN acknowledges the comments urging that exempt entities be permitted or required to obtain exemption certificates. However, these comments did not identify a basis in the CTA for imposing that obligation on exempt entities, and FinCEN does not believe that a voluntary process is needed for such filings at this time, though FinCEN will continue to consider it.

Finally, as a general matter, FinCEN believes it is appropriate to interpret ambiguities in those exemptions reasonably narrowly. The CTA's definition of ''reporting company'' is broad, the exemptions for twenty-three specific categories of entities are carefully circumscribed, and the expansion of these exempt categories

[186] *See* 31 U.S.C. 5336(a)(11)(B)(i)–(xxiii), exempting from beneficial ownership information reporting requirements securities issuers, domestic governmental authorities, banks, domestic credit unions, depository institution holding companies, money transmitting businesses, brokers or dealers in securities, securities exchange or clearing agencies, other entities registered pursuant to the Securities Exchange Act of 1934 entities, registered investment companies and advisers, venture capital fund advisers, insurance companies, state licensed insurance producers, entities registered pursuant to the Commodity Exchange Act, accounting firms, public utilities, financial market utilities, pooled investment vehicles, tax exempt entities, entities assisting tax exempt entities, large operating companies, subsidiaries of certain exempt entities, and inactive businesses.

[187] *See* 31 U.S.C. 5336(a)(11)(B)(xxiv).

[188] Comments concerning specific exemptions are discussed in more detail in the relevant subsections below.

[189] One commenter noted that the list of exempt entities set out in the CTA did not align with those entities covered by the 2016 CDD Rule, in particular by exempting charities and nonprofits, certain types of regulated non-bank financial institutions such as money services businesses (MSBs), and large operating companies. The comment observed that this would raise the issue of whether to conform the exemptions in the 2016 CDD Rule to those of the BOI reporting rule when FinCEN revised the 2016 CDD Rule as required by the CTA. The comment suggested that removing large operating companies would not be particularly problematic, but that other types of entities, such as charities, nonprofits and MSBs, would probably have to remain subject to the 2016 CDD Rule, even if not to the proposed BOI reporting rule. The comment stated that these discrepancies would potentially reduce the usefulness of the BOSS to financial institutions and law enforcement. FinCEN will address any larger issues that may arise from a disconnect between the 2016 CDD Rule and the final BOI reporting rule in the revisions to the 2016 CDD Rule, which FinCEN is required to finalize no later than one year after the effective date of the BOI reporting rule.

requires consultation and specific findings that BOI reporting would not be highly useful and serve the public interest. Those features of the CTA are consistent with its overall objective of enhancing financial transparency and making it more difficult for bad actors to conceal their illicit financial activities.[190] Broad exemptions risk undercutting those efforts by creating loopholes that can be used to evade the CTA's reporting requirements. Congress's concern regarding potential abuse of the exemptions is also apparent in its decision to require the Secretary to continuously review whether exemptions are being used by illicit actors.[191] As Senator Sherrod Brown, the then-Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs and one of the primary authors of the CTA, noted in his December 9, 2020, floor statement accompanying the CTA, the twenty-three exemptions are ''intended to be narrowly interpreted to prevent their use by entities that otherwise fail to disclose their beneficial owners to the federal government.'' [192]

b. Additional Exemptions

Proposed Rule. As discussed in Section III.E.iii, the CTA authorizes the Secretary to exempt additional entities or classes of entities from the definition of ''reporting company.'' [193] Before doing so, the Secretary must determine—by regulation and with the written concurrence of the Attorney General and the Secretary of Homeland Security—that requiring these entities to report their BOI would not serve the public interest and would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.[194] In the NPRM, FinCEN did not propose any additional exemptions beyond the twenty-three specified in the CTA.

Comments Received. Numerous commenters discussed whether or how FinCEN should use its statutory authority to add more exemptions to the definition of ''reporting company.'' Commenters offered a wide range of positions, the most common of which either expressed strong support for FinCEN's decision in the proposed rule not to include additional exemptions, or supported additional exemptions based upon existing regulatory requirements or commercial practices. A number of commenters asked that FinCEN exempt qualifying family offices, noting that such offices and their beneficial ownership are already known to federally regulated financial institutions and financial regulators, and are routinely reviewed and audited by the IRS and state tax authorities. A few commenters also urged FinCEN to exempt commodity pools that are operated by CFTC-registered commodity pool operators (CPOs) or advised by CFTC-registered commodity trading advisors (CTAs). These commenters noted that the CTA already exempts the CPOs and commodity trading advisors themselves. In addition, multiple commenters expressed support for exempting highly regulated entities that provide professional services, such as law firms and certain accounting firms, because they already provide beneficial ownership information to regulatory authorities. One commenter proposed that all money services businesses registered with a state should be exempted, whether or not registered with FinCEN, apparently on a similar theory.[195] Commenters also suggested FinCEN consider exempting entities that already report BOI to the IRS or foreign authorities. For example, one commenter proposed that FinCEN exempt entities registered in jurisdictions where beneficial ownership information is public, semi-public, or otherwise accessible by the United States government. Other commenters proposed still other exemptions which are discussed throughout the rest of this section.

Final Rule. The final rule does not include any exemptions beyond the twenty-three specifically set out in the CTA. As discussed in the previous section, the CTA reflects Congress's concern that exemptions could create loopholes that illicit actors could exploit to evade reporting requirements. The CTA therefore sets a high bar for creating additional exemptions: the Secretary, the Attorney General, and the Secretary of Homeland Security must all agree that requiring BOI from such entities would neither serve the public interest nor help further key government objectives. While FinCEN has considered comments proposing additional exemptions, commenters generally did not provide enough information to support making those determinations at this time.

FinCEN will continue to consider potential exemptions, including the extent to which certain entities may already report their beneficial owners to the federal government through means other than the CTA, such that those entities could potentially be exempt from the BOI reporting requirement. In addition, FinCEN will continue to consider suggestions for additional exemptions and consider regulatory and other implications associated with a given discretionary exemption.

c. Depository Institution Holding Companies

Proposed Rule. The NPRM proposed to adopt the CTA exemption for a bank holding company verbatim in 31 CFR 1010.380(c)(2)(v), and added a short title to the exemption ''Depository institution holding company'' for clarity and ease of reference.

Comments Received. FinCEN received several comments urging that this exemption be expanded to take into account various other categories of holding companies, including holding companies of other types of financial institutions or of exempt entities. One of these comments urged FinCEN to consider exempting all corporate owners and affiliates of exempt companies where corporate ownership information is already disclosed to state or federal regulators (*e.g.,* insurance holding companies that must disclose the identity of their controlling shareholders to state insurance regulators).

Final Rule. After considering all comments, including suggestions for additional exemptions, FinCEN is adopting 31 CFR 1010.380(c)(2)(v) largely as proposed. Expanding this exemption to cover additional types of holding companies would require an additional exemption beyond the twenty-three specific ones provided for in the CTA.[196] As explained in Section

[190] *See generally* CTA, Section 6402.

[191] *See* 31 U.S.C. 5336(i).

[192] Senator Sherrod Brown, *National Defense Authorization Act,* Congressional Record 166:208 (Dec. 9, 2020), p. S7311, available at *https://www.govinfo.gov/content/pkg/CREC-2020-12-09/pdf/CREC-2020-12-09.pdf.*

[193] *See* 31 U.S.C. 5336(a)(11)(B)(xxiv).

[194] *See id.*

[195] As explained in greater detail in Section III.E.iii.b., FinCEN is not implementing any additional exemptions at this time. This comment, however, has prompted FinCEN to clarify the exemption that FinCEN had labeled the ''money transmitting business'' exemption. The commenter correctly read the statutory language, which the proposed rule had tracked verbatim, as exempting any ''money transmitting business registered . . . under [31 U.S.C.] 5330'' to apply to any money services businesses registered under 31 CFR 1022.380, the FinCEN regulation that implements the registration requirement of 31 U.S.C. 5330. However, the proposed language may require a level of familiarity with the BSA and FinCEN regulations that reporting companies may not necessarily have. To reduce the risk of confusion, FinCEN has renamed the exemption the ''money services business'' exemption and has inserted additional language making clear that the exemption applies to all money services businesses registered under 31 CFR 1022.380.

[196] *See* 31 U.S.C. 5336(a)(11)(B)(xxiv).

III.E.iii.b, FinCEN does not believe that creating such an exemption would be appropriate at this time. Critically, commenters did not provide enough information about what additional types of holding companies should be exempt or why exempting them would satisfy the factors the CTA requires FinCEN to consider. However, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by these commenters.

d. Insurance Companies

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(xii) adopted verbatim the statutory language describing an exemption from the definition of ''reporting company'' for insurance companies.

Comments Received. FinCEN received two comments on this exemption. One supported the retention of the statutory language. The other criticized that language for potentially applying to captive insurance companies, which would enable those entities to avoid reporting their beneficial owners.

Final Rule. The final rule adopts the language of the proposed rule without change. The commenter that disapproved of the fact that the insurance company exemption might apply to captive insurance companies was critical of captive insurance arrangements and argued that such companies are ''high-risk entities.'' The commenter pointed to enforcement actions taken by the IRS against certain ''abusive micro-captive'' insurance arrangements. While FinCEN acknowledges these concerns, the scope of this exemption was specified by Congress in the CTA.

FinCEN does not opine here on whether or to what extent certain captive insurance companies, which can vary significantly in structure and size, might be able to properly claim this exemption. FinCEN may further consider captive insurance companies in connection with the study of exempt entities required under CTA section 6502(c).

e. Insurance Producers

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(xiii) adopted verbatim the statutory language describing an exemption from the definition of ''reporting company'' for state-licensed insurance producers. Consistent with the CTA, this exemption applies to an entity that ''is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State'' and ''has an operating presence at a physical office within the United States.'' [197] The CTA did not provide a definition of the latter ''operating presence'' phrase, but proposed 31 CFR 1010.380(f)(6) defined this term to mean that ''an entity regularly conducts its business at a physical location in the United States that the entity owns or leases, that is not the place of residence of any individual, and that is physically distinct from the place of business of any other unaffiliated entity.''

Comments Received. FinCEN received one comment on the insurance-producer exemption, which accepted the exemption's basic framework but argued that FinCEN was adopting an unreasonably strict definition of the exemption's ''operating presence'' phrase in a way that would unduly burden certain producers that maintain a working office and residence at the same location. As noted, the CTA specifically limits this exemption to state-licensed insurance producers that have ''an operating presence at a physical office within the United States.'' [198] Because the CTA did not define this term, FinCEN interpreted it in an effort to make clear the circumstances under which this exemption applied (as well as the exemption for large operating companies, which also includes this phrase as one of its elements). FinCEN's proposed definition of the term ''has an operating presence at a physical office within the United States,'' among other things, limited physical offices to those that are ''not the place of residence of any individual.'' The commenter argued that this exclusion of home offices would operate to deny the exemption to a number of insurance producers who would otherwise qualify. The commenter went on to argue that, particularly at a time when the COVID–19 pandemic had shown the feasibility and potential of working from home, this disqualification would unfairly burden these entities.

Final Rule. FinCEN adopts the insurance-producer exemption as proposed, but modifies the definition of the term ''has an operating presence at a physical office within the United States'' to eliminate the limitation of physical offices to those that are ''not the place of residence of any individual.'' FinCEN is persuaded by the commenter's argument that this limitation did not advance the policy underlying this exemption and risked unduly burdening certain insurance producers.

f. Tax-Exempt Entities

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xix) adopted verbatim the CTA's language defining an exemption from the definition of ''reporting company'' for tax-exempt entities, apart from adding an explanatory label for the exemption and changing the introductory ''any'' to ''[a]ny entity that is.''

Comments Received. FinCEN received comments both supportive and critical of the proposed rule. Supportive commenters stressed that a broader reading could create loopholes that illicit actors could exploit. Critical commenters argued that the exemption should be read more broadly to cover ancillary circumstances. For example, some commenters asserted that the exemption should cover entities that had applied to the IRS for tax-exempt status but were still awaiting a determination. Others argued that it should cover all nonprofits, even those that did not qualify for tax-exempt status under section 501(c) of the Internal Revenue Code. Still others argued that, for entities that lose their tax-exempt status, the exemption should continue to apply beyond the 180 days that the CTA allows. These commenters generally argued that this is needed to avoid hardship, such as when an entity's tax-exempt status was retroactively revoked more than 180 days earlier, or to cover nonprofits that do not plan to seek federal tax-exempt status.

Final Rule. The final rule adopts the proposed exemption for tax-exempt entities as proposed. FinCEN believes the proposed rule, which is almost identical to the statutory language, sufficiently identifies the tax-exempt entities that are covered by the exemption. Additionally, FinCEN declines to adopt any additional exemptions at this time. The commenters seeking to expand this statutory exemption have not provided enough information to permit FinCEN to determine that BOI reporting would not be in the public interest or would not further key government efforts to protect national security and combat illicit activity. However, as discussed in Section III.E.iii.b, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by these commenters.

In addition, FinCEN recognizes the concerns raised about potential exploitation of this exemption as well as the following exemption for entities assisting tax-exempt entities. As one commenter highlighted, Senator Sherrod Brown stated on the Senate

[197] 31 U.S.C. 5336(a)(11)(B)(xiii)(I)–(II).

[198] 31 U.S.C. 5336(a)(11)(B)(xiii)(II).

floor shortly before passage: ''The exemption provided to certain charitable and nonprofit entities also merits narrow construction and careful review in light of past evidence of wrongdoers misusing charities, trusts, foundations, and other nonprofit entities to launder funds and advance criminal and civil misconduct.'' [199] Treasury has also noted instances where criminals and terrorist groups have abused charitable organizations.[200] FinCEN will monitor the application of these exemptions and assess the need for further guidance, notices, or FAQs accordingly.

g. Entity Assisting a Tax-Exempt Entity

Proposed Rule. Besides inserting a short title and incorporating several technical clarifications, 31 CFR 1010.380(c)(2)(xx) of the proposed rule tracks the relevant provision of the CTA.[201] The proposed rule specified that an entity assisting a tax-exempt entity, was one that (i) operates exclusively to provide financial assistance to, or hold governance rights over, a tax-exempt entity, (ii) is a U.S. person, (iii) is beneficially owned or controlled exclusively by one or more U.S. persons that are U.S. citizens or lawfully admitted for permanent residence, and (iv) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

Comments Received. One commenter recommended that the final rule change the title of this exemption to ''Entity exclusively providing financial assistance to or holding governance rights over a tax exempt entity,'' consistent with the statute and the defining language that immediately follows. The commenter noted that the exemption was unusual, unprecedented in the United States, and does not exist in any other beneficial ownership registry worldwide. The commenter argued, therefore, that the exemption requires a precise title description so that entities that do not qualify for it are not encouraged by the title to claim the exemption and attempt to broaden it.

Final Rule. FinCEN is adopting the text in 31 CFR 1010.380(c)(2)(xx) of the proposed rule, including the short title of the sub-section as proposed, ''Entity assisting a tax-exempt entity.'' FinCEN believes this short title succinctly describes the topic for ease of reference and encapsulates the provision of financial assistance to, or the holding of governance rights over tax-exempt entities described in 31 CFR 1010.380(c)(2)(xix). Additionally, FinCEN does not share the commenter's concern regarding the risk that entities may misunderstand or impermissibly broaden the exemption based solely upon the short title. The technical requirements of the exemption are clearly specified and the short title of the sub-section does not alter the operative regulatory language.[202]

h. Large Operating Companies

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xxi) clarified an exemption relating to what the proposed regulations have termed ''large operating companies.'' Under the CTA, an entity falls into this category, and therefore is not a reporting company, if it: (1) ''employs more than 20 employees on a full-time basis in the United States''; (2) ''filed in the previous year federal income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales in the aggregate,'' including the receipts or sales of other entities owned by the entity and through which the entity operates; and (3) ''has an operating presence at a physical office within the United States.'' [203]

The proposed rule offered clarifications to each of these three statutory elements. First, concerning who counts as a full-time employee, the proposed rule borrowed familiar IRS concepts widely used by employers in order to promote regulatory consistency and to make determining whether an entity passed the threshold of 20 full-time employees straightforward.[204] Second, concerning what counts as gross receipts or sales, the proposed rule focused on U.S. sources and also explained, again using well-known concepts in U.S. tax practice, how entities could use income reported on consolidated filings to determine whether the exemption applied.[205] And third, the proposed rule defined the phrase ''has an operating presence at a physical office within the United States'' to mean that ''an entity regularly conducts its business at a physical location in the United States that the entity owns or leases, that is not the place of residence of any individual, and that is physically distinct from the place of business of any other unaffiliated entity.'' [206]

Comments Received. Some commenters expressed concern as a general matter that the large operating company exemption will require ongoing monitoring, as it could be particularly susceptible to abuse.[207] Commenters also advocated for legislative changes to narrow the exemption, given their concerns that the exemption could too easily allow bad actors to avoid reporting beneficial ownership information.

Commenters also focused variously on the three factors in the large operating company exemption. Comments were particularly numerous and wide-ranging on the employee factor. Some commenters stated their support for the approach taken by the proposed rule, while other commenters asked FinCEN to either broaden or narrow its scope based on considerations involving the database's usefulness and potential burdens. Other commenters suggested that the employee count should be evaluated on a consolidated basis, rather than on an entity-by-entity basis, to the extent the entity is part of a consolidated group. These commenters noted that such an approach would conform the employee count with the approach taken in the gross receipts factor.

A few commenters focused on the gross receipts or sales factor. Some commenters supported the regulatory interpretation of limiting the exemption criteria to gross receipts or sales in the United States, while others stated that this factor should not be limited to U.S. activities.

Other commenters also addressed the physical presence factor. These commenters stated that the restrictiveness of the physical presence factor fails to reflect current business realities, and that the regulation should

[199] 166 Cong. Rec. S7311 (daily ed. Dec. 9, 2020) (statement of Senator Sherrod Brown).

[200] *See* Treasury, *National Money Laundering Risk Assessment,* (Feb. 2022), pp. 24, 38, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf; See* Treasury, ''National Terrorist Financing Risk Assessment,'' (Feb. 2022), pp. 23–35, available at *https://home.treasury.gov/system/files/136/2022-National-Terrorist-Financing-Risk-Assessment.pdf.*

[201] 31 U.S.C. 5336(a)(11)(B)(xx).

[202] *See e.g., Bhd. of R.R. Trainmen* v. *Balt. & Ohio R.R. Co.,* 331 U.S. 519, 528 (1947).

[203] 31 U.S.C. 5336(a)(11)(B)(xxi).

[204] Proposed 31 CFR 1010.380(c)(2)(xxi)(A).

[205] Proposed 31 CFR 1010.380(c)(2)(xxi)(C).

[206] Proposed 31 CFR 1010.380(c)(2)(xxi)(B), (f)(6).

[207] By ''abuse,'' these comments appear to mean that companies can easily manipulate aspects of their business to satisfy all three conditions, leading to more entities claiming the exemption than Congress may have intended or than is appropriate. FinCEN is not aware of any estimates that Congress or others made of the number of entities that this exemption was intended to cover, so it is difficult to evaluate how broad of an exemption is appropriate, other than by the qualitative method of comparing the regulatory text to the statutory text. So long as the regulatory text does not significantly change the reach of the exemption as set forth in the CTA, and so long as the tests laid out in regulation are not significantly easier or harder to satisfy than those laid out in the statute, FinCEN will consider that the exemption is operating as Congress intended.

reflect the widespread use of shared workspaces and home offices.

More broadly, several commenters noted that the exemption's criteria of 20 full-time employees and $5 million in gross receipts are difficult to prove or maintain over an indefinite period of time. Commenters suggested that the number of employees should be tied to a reference period, such as an average over the last year, or the year preceding a specific date, such as the date of an entity's federal income tax filing. Lastly, commenters raised a number of technical suggestions—for example, to clarify how entities should account for circumstances such as when a company undergoes a merger or acquisition.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(c)(2)(xxi) without change. The full-time employee factor expresses well-known and well-established general business tax principles and should not require further elaboration. FinCEN declines to permit companies to consolidate employee headcount across affiliated entities. Although the CTA specifies that gross receipts or sales are to be consolidated, the CTA contains no similar specification for employee headcount.[208] To the contrary, it provides that the exception applies to an ''*entity* that . . . employs'' more than 20 employees, indicating that the determination of the number of employees is to be made on an entity-by-entity basis.[209] In terms of assessing whether an entity has the requisite number of employees to qualify for the exemption, FinCEN expects that companies will regularly evaluate whether they qualify (or no longer qualify) for the exemption. FinCEN believes that such evaluations should be as simple as possible, and as consistent as possible from reporting company to reporting company, and for these reasons FinCEN rejects the suggestion of certain commenters that the employee number be calculated as an average of several numbers over a period of time. FinCEN will consider additional guidance or FAQs in order to clarify specific factual circumstances that arise in the course of evaluating the applicability of this exemption.

For similar reasons, FinCEN does not believe changes to the language of the gross receipts or sales factors are appropriate. In particular, FinCEN declines the suggestion by some commenters to expand the consideration of revenue to include non-U.S. sources. The text of this exemption focuses on activity occurring in the United States and revenue reported on U.S. income tax returns, and the attribution of revenue to a national source is well understood by businesses, particularly the larger businesses to which this exemption will apply. Similarly, FinCEN assesses that businesses covered by this exemption understand that events such as mergers and acquisitions can affect revenue calculations and payroll decisions. Therefore, FinCEN believes determining whether this exemption applies should be straightforward even in years when such events take place.

Because of the change to the definition of the term ''has an operating presence at a physical office within the United States,'' discussed in greater detail in connection with the insurance producer exemption in Section III.E.iii.e, the large operating company exemption may apply more broadly than it would have been under the proposed rule. However, the only additional entities that will now qualify for this exemption under the final rule are large operating companies whose physical presence in the United States consists exclusively of properties used as someone's residence. FinCEN assesses that entities of this type are likely to be few. Most companies of the size necessary to take advantage of this exemption are likely to have some operating presence in non-residential premises and would therefore have been able to take advantage of the exemption under the formulation of the proposed rule, as they will under the final rule. FinCEN therefore believes that the overall effect of this change will be insignificant for this exemption.

Finally, because these factors are established by statute, FinCEN lacks the authority to address concerns regarding their unfairness or inherent risk. Nevertheless, FinCEN takes seriously the need to ensure that no exemption is misused and will monitor the application of this exemption, remain vigilant against potential abuses, and evaluate the need for further guidance or FAQs.

i. Subsidiaries

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xxii) clarified the CTA's exemption for entities in which ''the ownership interests are owned or controlled, directly or indirectly, by one or more'' of certain exempt entities identified in the statute.[210] FinCEN called this the ''subsidiary exemption'' and interpreted the definite article ''the'' in the quoted statutory text as requiring an entity to be owned entirely by one or more specified exempt entities in order to qualify for it.

Comments Received. Commenters expressed concern about the scope of this exemption. Many commenters urged FinCEN to clarify that the exemption would apply only to ''*wholly* controlled or wholly owned'' subsidiaries (versus the proposed rule that reads ''controlled or wholly owned'') in order to make the exception as narrow as possible and avoid creating a loophole to evade reporting requirements. By contrast, several commenters suggested that the exemption should be widened to subsidiaries that are ''majority owned.'' In addition, one commenter recommended that this exemption be expanded to include holding companies owning only CTA-exempt entities.

Final Rule. FinCEN is adopting 31 CFR 1010.380(c)(2)(xxii) as proposed, with a minor grammatical edit. While hewing to the statutory language, the interpretation prevents entities that are only partially owned by exempt entities from shielding all of their ultimate beneficial owners—including those that beneficially own the entity through a non-exempt parent—from disclosure. FinCEN does not need to add ''wholly'' before ''controlled'' because FinCEN assesses that the latter covers the intended concept of control set out in the CTA.[211] FinCEN also determined that extending the exemption to majority-owned subsidiaries would include entities unintended by the language of the CTA. With respect to the recommendation to broadly interpret the subsidiary exemption to include holding companies owning only CTA-exempt entities, the CTA provision does not provide for such an expansion and the subsidiary exemption focuses on subsidiaries, not parents, of exempt entities. In addition, for the reasons discussed in ''Section III.E.iii.b—Additional Exemptions'' and ''Section III.E.iii.c—Depository Institution Holding Companies'' above, FinCEN is not implementing additional exemptions beyond the twenty-three specific statutory ones at this time, including to cover non-depository institution holding companies. However, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by commenters concerning this exemption.

j. Pooled Investment Vehicles

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xviii) implemented the

[208] *See* 31 U.S.C. 5336(a)(11)(B)(xxi)(II).

[209] 31 U.S.C. 5336(a)(11)(B)(xxi)(I) (emphasis added).

[210] 31 U.S.C. 5336(a)(11)(B)(xxii).

[211] *Id.*

exemption for pooled investment vehicles, and proposed 31 CFR 1010.380(f)(7) defined the term ''pooled investment vehicle.'' Both provisions used the applicable CTA language [212] verbatim. Proposed 31 CFR 1010.380(f)(7) defined a ''pooled investment vehicle'' as: (i) any investment company, as defined under the Investment Company Act of 1940,[213] or (ii) any company that would be an investment company under that authority but for the exclusion provided therein [214] and is identified by its legal name by the applicable investment adviser in the requisite Securities and Exchange Commission form. Proposed 31 CFR 1010.380(c)(2)(xviii) exempted any pooled investment vehicle that is operated or advised by certain other exempted entities, namely, a bank, credit union, broker-dealer in securities, investment company or investment adviser, or venture capital fund adviser.

Comments Received. A number of commenters, including most of those representing the investment industry, generally supported this exemption and sought clarifications as to its scope and applicability vis-à-vis specific scenarios (*e.g.,* its applicability to entities within the structure of a pooled investment vehicle, or to certain funds not denominated ''pooled investment vehicles'' but that otherwise satisfy the criteria for exemption). Certain commenters also proposed that additional types of investment vehicles, structured similarly to pooled investment vehicles but not expressly exempted by the CTA, also be exempted from the CTA's requirements.

Final Rule. The final rule adopts 31 CFR 1010.380(c)(2)(xviii) as proposed, as well as 31 CFR 1010.380(f)(7) with a clarifying modification. As an initial matter, FinCEN understands that the statutory exemption is the result of extensive consideration and reflects Congress's judgment as to the appropriate scope of the exemption. FinCEN accordingly views the statutory text of the exemption as a reflection of deliberate and considered decisions to include and exclude certain types of vehicles, from which FinCEN is reluctant to deviate.

FinCEN further notes that the term ''pooled investment vehicle'' encompasses a wide variety of investment products with a wide range of names and structures, which present a range of risk profiles. It is accordingly impracticable for FinCEN to prospectively opine on the applicability of the exemption to specific structures that may not carry the name ''pooled investment vehicle.'' However, as a general principle, FinCEN notes that a vehicle's eligibility for this exemption does not hinge on its nominal designation, but rather on whether the vehicle or entity satisfies the elements articulated in the final regulatory text.

A few commenters sought clarity as to how entities within the structure of a pooled investment vehicle would be treated, noting, among other things, that pooled investment vehicles will routinely create subsidiary legal entities for a variety of purposes related to the administration of the pooled investment vehicle, including to effect specific investments or acquisitions. While distinct legal entities that are wholly owned by exempted pooled investment vehicles may be integrally related to the administration of those pooled investment vehicles, whether they are exempt from the reporting requirements of the CTA depends on whether they themselves, in their own right, meet the criteria of an exemption. FinCEN declines to provide a blanket expansion of this exemption to include all entities related to a pooled investment vehicle or any subsidiary entity that would be used as a vehicle to onboard new outside capital or assets.

A few commenters noted that the timeframe between the creation of a pooled investment vehicle and its identification on the SEC's Form ADV often exceeds the beneficial ownership disclosure deadline that will apply to new companies because of the need to obtain licenses and regulatory approvals, among other things. These commenters contended that it would be unreasonable to apply the general disclosure deadline to an entity in the process of becoming exempt only because it had not concluded all of the requisite steps within this timeframe. These commenters also noted that it would be impracticable for an adviser to file an update to a Form ADV in a manner inconsistent with existing SEC filing requirements for the sole purpose of availing itself of this exemption. FinCEN agrees, and is accordingly modifying Section 1010.380(f)(7)(ii)(B) to read (new text emphasized):

(B) Is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission *or will be so identified in the next annual updating amendment Form ADV required to be filed by the applicable investment adviser pursuant to rule 204–1 under the Investment Advisers Act of 1940 (17 CFR 275.204–1).*

A number of commenters sought a variety of other exemptions for entities not specified, contending principally that nonexempt vehicles that were subject to regulation and supervision, similarly structured, and subject to disclosure requirements either via Form ADV or similar requirements should be deemed low risk and be able to avail themselves of this exemption. FinCEN declines to seek to expand the exemption at this time. As FinCEN has noted, in its view, the statute reflects deliberate decisions to exclude certain types of entities from the scope of the exemption, and to include others.[215]

k. Investment Company or Investment Adviser; Venture Capital Fund Advisers

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(x) was intended to implement the exemption for investment companies and investment advisers, and proposed 31 CFR 1010.380(c)(2)(xi) was intended to implement the exemption for venture capital fund advisers. Both provisions used the applicable CTA language [216] largely verbatim, with minor structural adjustments and the express addition of the term ''venture capital fund adviser'' for ease of reference. Like the CTA, proposed 31 CFR 1010.380(c)(2)(x) defined an ''investment company'' [217] and an ''investment adviser'' [218] by reference to their definitions in the Investment Company Act of 1940, and it required that they be registered with the SEC under one of two authorities.[219] Proposed 31 CFR 1010.380(c)(2)(xi) cross-referenced the exemption for a ''venture capital fund adviser'' under the Investment Company Act of 1940 [220] and required the adviser to have made a requisite filing with the Securities and Exchange Commission.

Comments Received. One commenter requested that FinCEN clarify that this exemption encompasses vehicles used by an investment adviser that serve as general partners or managing members of pooled investment vehicles advised by the investment adviser. Another commenter sought additional exemptions for state-registered investment advisers and other venture capital advisers not presently within the scope of the proposed exemption.

Final Rule. The final rule adopts 31 CFR 1010.380(c)(2)(x) and 31 CFR 1010.380(c)(2)(xi) as proposed. These exemptions are quite specific in the CTA, and Congress has further specified

[212] *See* 31 U.S.C. 5336(a)(10), (a)(11)(xviii).

[213] 15 U.S.C. 80a–3(a).

[214] 15 U.S.C. 80a–3(c).

[215] *See* 31 U.S.C. 5336(a)(11)(B)(xxiv).

[216] *See* 31 U.S.C. 5336(a)(11)(B)(x)–(xi).

[217] 15 U.S.C. 80a–3.

[218] 15 U.S.C. 80b–2.

[219] 15 U.S.C. 80a–1 *et seq.* (Investment Company Act of 1940); 15 U.S.C. 80b–1 *et seq.* (Investment Advisers Act of 1940).

[220] 15 U.S.C. 80b–3(*l*).

that the exemption for subsidiaries should apply to the subsidiaries of these defined venture capital fund advisers, investment companies, and investment advisers. It therefore appears to FinCEN that there is little scope for clarification here. If an entity used by an exempt adviser satisfies the criteria for one of these exemptions, it is exempt; if it does not satisfy any such criteria, for FinCEN to treat the entity as exempt would not be a clarification of this exemption, but rather the creation of a new exemption. FinCEN declines to create such an exemption at this time. Similar to the treatment of pooled investment vehicles, in FinCEN's view the statutory text reflects deliberate decisions to exclude and include certain types of entities from the scope of the exemption.

With respect to state-registered investment advisers, the extent of state supervision varies significantly, and FinCEN accordingly does not believe that seeking a blanket exemption for state-registered entities is warranted at this time. As for certain types of excluded venture capital advisers, FinCEN does not view disclosure obligations alone as sufficient to justify the expansion of this exemption, given Congress's choice to include only certain types of advisers in the exemption. As previously noted, any expansion beyond the enumerated statutory exemptions also requires the concurrence of the Departments of Justice and Homeland Security and is subject to an assessment of statutory criteria regarding the public interest and the information's usefulness.[221]

l. Inactive Entities

Proposed Rule. The CTA exempts inactive entities from the BOI reporting requirement.[222] In 31 CFR 1010.380(c)(2)(xxiii) of the NPRM, FinCEN reiterated the CTA's definition, proposed a title to the subsection for ease of reference, and proposed clarifications regarding the scope of the exemption. Specifically, FinCEN proposed to define an ''inactive entity'' as one that:

—was in existence on or before January 1, 2020 (*i.e.,* the date of enactment of the CTA),
—is not engaged in active business,
—is not owned by a foreign person, whether directly or indirectly, wholly or partially,
—has not experienced any change in ownership in the preceding 12-month period,
—has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period, and
—does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Comments Received. Commenters generally sought clarifications or proposed expanding this exemption. Some comments argued that the $1,000 limit in 31 CFR 1010.380(c)(2)(xxiii)(E) was low and suggested raising it to $3,000 to account for inactive fees (*e.g.,* annual expenses including state franchise taxes, registered agents, domain registration, attorney and accounting fees, etc.). Commenters also urged that 1010.380(c)(2)(xxiii)(F) should clarify that the exemption would apply even if an entity had a bank account or owned certain incidental assets, such as the rights to its business name or website domain. Another commenter asked FinCEN to clarify in the preamble that the phrase ''any change in ownership'' in proposed 31 CFR 1010.380(c)(2)(xxiii)(D) would cover any alteration of a nominal or beneficial owner of an entity, any addition or subtraction of an owner, and any change in the percentage or nature of ownership interests held by a specific person, including due to a purchase or transfer of a pre-existing entity. The same commenter urged FinCEN to strengthen 31 CFR 1010.380(c)(2)(xxiii)(D) and (E) by identifying the precise date from which the 12-month period would be measured.

Several commenters asked for clarity regarding the treatment of temporarily or permanently dissolved, or terminated entities, including whether an entity that closed down in 2021 would be required to report its BOI. One commenter suggested permitting entities that completed their legal dissolution by a specified date (*e.g.,* the enactment of the CTA, or the effective date of the BOI reporting regulations) did not have to report. One commenter requested that FinCEN clarify the phrase ''engaged in active business'' in 31 CFR 1010.380(c)(2)(xxiii)(B) in the context of a dissolved entity, noting that winding up activities could be considered ''active business.'' The same commenter noted that the statute and proposed rule were also unclear with respect to whether temporarily or administratively dissolved entities would be treated as reporting companies or exempt entities under this exemption.

Final Rule. FinCEN is adopting the rule as proposed. With respect to the recommendation that FinCEN specify the date that triggers the 12-month time period in both 31 CFR 1010.380(c)(2)(xxiii)(D) and (E), FinCEN has chosen not to identify a date because the agency believes the relevant statutory language is best read to cover any 12-month period. FinCEN believes that any effort to create specific rules for when an entity is or is not engaging in active business would be both over- and under-inclusive. For example, with respect to terminating an entity, FinCEN believes the variety in types of termination and degrees of finality under state laws would require numerous special rules for small variations, and would still result in confusion if any circumstance were inadvertently unaddressed. Moreover, such an attempt would undermine FinCEN's goal of creating a uniform framework capable of accommodating different state practices or factual circumstances. With respect to the meaning of ''any change in ownership,'' FinCEN believes the proposed regulation is sufficiently clear; it would cover any and all changes in an entity's ownership.

Although FinCEN believes the text of this provision is clear, the agency understands that specific factual scenarios may arise during implementation that warrant additional clarification. In those cases, the agency welcomes questions from stakeholders and anticipates addressing their concerns through guidance.

F. Reporting Violations

Proposed Rule. Proposed 31 CFR 1010.380(g) adopted the language of 31 U.S.C. 5336(h)(1) and clarified four potential ambiguities. First, the proposed regulations clarified that the term ''person'' includes any individual, reporting company, or other entity. Second, the proposed regulations clarified that the term ''beneficial ownership information'' includes any information provided to FinCEN pursuant to the CTA or the regulations implementing it. Third, the proposed regulations clarified that a person ''provides or attempts to provide beneficial ownership information to FinCEN,'' within the meaning of section 5336(h)(1), if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section. While only reporting companies are directly

[221] 31 U.S.C. 5336(a)(11)(B)(xxiv).
[222] 31 U.S.C. 5336(a)(11)(B)(xxiii).

required to file reports with FinCEN, individual beneficial owners and company applicants may provide information about themselves to reporting companies in order for the reporting companies to comply with their obligations under the CTA. The accuracy of the database may therefore depend on the accuracy of the information supplied by individuals as well as reporting companies, making it essential that such individuals be liable if they willfully provide false or fraudulent information to be filed with FinCEN by a reporting company.

Finally, the proposed regulation 1010.380(g)(5) clarified that a person ''fails to report'' complete or updated beneficial ownership information to FinCEN, within the meaning of 31 U.S.C. 5336(h)(1), if such person directs or controls another person with respect to any such failure to report, or is in substantial control of a reporting company when it fails to report. While the CTA requires reporting companies to file reports and prohibits failures to report, it does not appear to specify who may be liable if required information is not reported. Because section 5336(h)(1) makes it unlawful for ''*any* person'' to fail to report, and not just a reporting company, this obligation may be interpreted as applying to responsible individuals in addition to the reporting companies themselves. To the extent an individual willfully directs a reporting company not to report or willfully fails to report while in substantial control of a reporting company, individual liability is necessary to ensure that companies comply with their obligations. This is essential to achieving the CTA's primary objective of preventing illicit actors from using legal entities to conceal their ownership and activities. Illicit actors who form entities and fail to report required beneficial ownership information may not be deterred by liability applicable only to such entities. Absent individual liability, illicit actors might seek to create new entities to replace old ones whenever an entity is subject to liability, or might otherwise attempt to use the corporate form to insulate themselves from the consequences of their willful conduct.

Comments Received. Commenters generally sought clarification regarding the applicability of the reporting violations provisions. Some commenters encouraged FinCEN to minimize the potential for evasion or other related criminal behavior. One commenter asked that FinCEN coordinate with state and Tribal agencies to include a checkbox on existing state forms confirming that the filer has filed with FinCEN. One commenter asked that FinCEN provide examples of reporting violations.

Some commenters suggested that FinCEN prioritize education and focus on promoting compliance, reserving enforcement for those acting in bad faith, and noted that many businesses may not be aware of their reporting obligations at the outset. One commenter suggested that FinCEN establish a compliance hotline system to assist reporting companies. Others expressed concern about the breadth of the penalty structure. A number of commenters suggested that small businesses acting in good faith should be given a reasonable opportunity to remediate violations and come into compliance, consistent with the limited statutory safe harbor for correcting inaccurate information.[223] Many commenters asked for relief or a safe harbor for various situations where a reporting company may not be able to report the required information, where a beneficial owner or company applicant refuses to provide the required information, or where the filer of the report is relying on information provided by the reporting company or another individual, such as a trustee. One commenter asked FinCEN, before pursuing an enforcement case or action, to consider whether a filer has correctly filed other forms with another government agency with similar information, such as the IRS, and provide an exemption when those forms are accurately filed. Another suggested that U.S. citizens be exempted from penalties.

A number of commenters sought clarity on the applicability of the violations provisions. One asked whether both civil and criminal penalties could apply to the same conduct, and another asked whether a company applicant could be held liable. One commenter asked FinCEN to exclude senior officers and others without a management role in the reporting company. Another asked FinCEN to limit liability only to beneficial owners and reporting companies.

Many commenters sought clarity on the ''willful'' standard and what constitutes willfulness. One commenter suggested that ''reasonable cause'' be the standard for violations. Another expressed concern regarding uniform application of the standard by FinCEN investigators.

Final Rule. The final rule adopts the proposed rule in large part, with a clarifying modification to proposed 31 CFR 1010.380(g)(5) (renumbered 31 CFR 1010.380(g)(4) in the final rule). FinCEN views the statutory text to be sufficient regarding the availability of both civil and criminal penalties for the identified willful reporting violations, and it believes this approach satisfies the congressional intent to hold individuals accountable for such violations. In addition, the statute is clear regarding who may be held liable for willful violations, and for this reason FinCEN also declines to exclude specific categories of individuals from liability, as requested by some commenters. Willfulness is a legal concept that is well established in existing caselaw, and FinCEN will consider all facts relevant to a determination of willfulness when deciding whether to pursue enforcement actions. With regard to the availability of other penalties, FinCEN notes that nothing in the statute prohibits the application of other available criminal or civil provisions to the extent they are applicable.

With respect to compliance, as stated in this final rule, FinCEN intends to prioritize education and outreach to ensure that all reporting companies and individuals are aware of and on notice regarding their reporting obligations. FinCEN notes that the effective date of January 1, 2024 and the one-year compliance period essentially give existing reporting companies over two years from the publication of this rule to prepare to come into compliance with their reporting obligations. FinCEN will take into consideration the request to add examples of reporting violations in any future guidance or FAQs.

The final rule modifies proposed 31 CFR 1010.380(g)(5) to clarify the role of an individual in a reporting company's failure to satisfy a reporting obligation. The final rule states that a person is considered to have failed to report complete or updated beneficial ownership information if the person causes the failure or is a senior officer of the entity at the time of the failure. In eliminating the reference to substantial control and incorporating the existing definition of ''senior officer'' in 31 CFR 1010.380(f)(8), FinCEN believes that this revised provision reduces potential confusion and provides clarity as to who may be liable for a reporting company's failure to file updates and corrections. FinCEN hopes that this clarity, in turn, will ensure that the information in the database remains as complete and accurate as possible. FinCEN considered other alternatives in defining the category of individual that should be held responsible for willful violations,

[223] *See* 31 U.S.C. 5336(h)(3)(C).

including those in the substantial control definition. Ultimately, FinCEN believes that the approach of holding individuals in these specific positions of authority responsible for ensuring that the information filed with FinCEN is correct and up to date provides additional clarity and certainty and appropriately rests that obligation with those in charge of an entity.

G. Effective Date

Proposed Rule. The CTA authorizes FinCEN to determine when the regulations implementing BOI reporting obligations take effect.[224] FinCEN did not include an effective date in the proposed regulation. Rather, it sought comment on the timing of the effective date and any potential factors it should consider.

Comments Received. Commenters largely focused on the need for FinCEN to provide notice and guidance to the public about the BOI reporting requirements and the relationships between this final rule and both the access rule and the 2016 CDD Rule revisions. Some commenters noted that FinCEN should first staff and train its call center, conduct extensive outreach, and deliver educational materials to secretaries of state, Tribal offices, and the registered agent and legal communities. Others noted that the effective date should be sufficiently far out to allow for adequate notification to all affected persons. Other commenters proposed that the effective date of the reporting requirements should be the same as the effective date of the revised CDD Rule. Some commenters stated that all three rulemakings should be completed before any of the rules take effect, while others noted that the 2016 CDD Rule should be rescinded immediately upon the effective date of the final reporting rule.

Additional commenters requested the opportunity to comment on the three rulemakings contemporaneously. They argued that their views of the reporting requirements may be affected by how the reported information would be accessed and disclosed, and how it would be accounted for in the revision of the 2016 CDD Rule. Some of these comments addressed anticipated aspects of the access and revised CDD rules.

Final Rule. The final rule sets an effective date of January 1, 2024. FinCEN recognizes that collecting complete and accurate BOI is critical to protecting U.S. national security and other interests and will advance efforts to counter money laundering, terrorist financing, and other illicit activity. It will also help bring the United States into compliance with international AML/CFT standards and support U.S. leadership in combatting corruption and other illicit finance. A timely effective date will help to achieve these national security and law enforcement objectives and support Congress' goals in enacting the CTA.

FinCEN has adopted the effective date for this final rule based on several practical factors, including, for example, the time needed for secretaries of state and Tribal authorities to understand the new requirements and to update their websites and other documentation to notify reporting companies of their obligations under the CTA; allowing reporting companies, and small businesses in particular, sufficient time to receive notice of and comply with the new rules; and the need for FinCEN to take steps to design and build the BOSS and to work with secretaries of state, Tribal authorities, industry groups and small business, and other stakeholders to ensure a thorough and complete understanding of the rules.

Moreover, aligning the effective date with the beginning of the calendar year may help to align this reporting obligation with other reporting and compliance obligations. FinCEN recognizes the need to ensure that reporting companies, secretaries of state and Tribal offices, and other stakeholders have a thorough understanding of the final rule and its requirements, both before and after the effective date. Accordingly, as discussed in Section B.i, implementation efforts include, as many commenters have stressed, the drafting of guidance and FAQs for reporting companies and third parties, help desk training, and a comprehensive communications and outreach strategy, among other things. FinCEN also intends to implement an outreach strategy with key stakeholders, and in particular, secretaries of state, to ensure a thorough understanding of the final rule requirements. In addition to these efforts, as will be described in the access rule NPRM, FinCEN will need to engage intensively with authorized users of the BOSS that will have access to BOI, such as federal, state, local, and Tribal law enforcement authorities, to draft and negotiate memoranda of understanding and access and security agreements for authorized users and to develop standard operating procedures and internal protocols for the adjudication of inquiries relating to reporting and disclosure.

In addition, FinCEN recognizes that a fully operational BOSS that is ready to receive reports from reporting companies is necessary to implement the reporting rule. FinCEN is working expeditiously to complete steps to design and build the BOSS so that it can collect and provide access to BOI. Upon the CTA's enactment, FinCEN began a process for BOSS program initiation and acquisition planning that has led to the development of a detailed development and implementation plan for the initial BOSS release. Based on this plan, FinCEN has moved expeditiously into the execution phase of the project, which includes several technology projects that will be executed in parallel. The access rule will provide a high-level description of how the BOSS will operate.

The selected effective date is intended to provide adequate time to complete the BOSS design and development and to secure the necessary appropriations to operate and maintain the BOSS on an ongoing basis. Assuming adequate funding, FinCEN intends for the BOSS to be ready to receive reports and provide access to authorized users by the January 1, 2024, effective date. FinCEN also intends to propose and finalize the rulemaking governing access to BOI by this date.

Importantly, FinCEN continues to seek appropriated funds to hire the necessary staff to implement the final rules, conduct outreach to stakeholders, and design and build the BOSS. FinCEN has requested a budget increase in its FY23 budget request to support BOSS operations and maintenance and to hire CTA staff. Absent additional appropriations, FinCEN may need to adjust its implementation and outreach plans.

H. Other Comments

i. Outreach and the Need To Educate the Public About Reporting Requirements

Comments Received. Some commenters recommended that FinCEN set an effective date that provides sufficient time for reporting and non-reporting entities to understand the final rule and implement appropriate compliance processes, and for FinCEN to conduct adequate outreach to the public. In addition, commenters asked whether FinCEN would assist reporting companies, beneficial owners, and company applicants by responding to questions regarding specific fact patterns relating to regulatory interpretations and exemptions. One commenter also requested that FinCEN be authorized to issue advisory opinions when requested by reporting companies,

[224] The requirement for reporting companies to submit BOI takes effect ''on the effective date of the regulations prescribed by the Secretary of the Treasury under [31 U.S.C. 5336].'' 31 U.S.C. 5336(b)(5).

beneficial owners, or company applicants that they could rely on as authoritative for purposes of complying with the BOI reporting requirements.

Response. FinCEN envisions committing significant resources upon publication of the final rule to prepare for and enable the rule's successful implementation by stakeholders. FinCEN anticipates that these resources will be dedicated to outreach; the drafting and issuance of guidance, FAQs, and interpretive advice; and other procedures and activities. FinCEN recognizes the need to ensure that reporting companies, authorized users, and other stakeholders have a thorough understanding of the rule and its requirements, both before and after the effective date. In addition, FinCEN remains mindful of the imperative to minimize any associated burdens on reporting companies while also fulfilling the CTA's directives for establishing an effective reporting framework.[225] FinCEN appreciates that outreach and education is an important element of the effort to reduce any such compliance burdens.

FinCEN recognizes the expectation expressed by secretaries of state that they will need to field a high volume of questions and devote significant resources to addressing reporting companies' concerns, even with an effective date that provides significant time to educate reporting companies about their responsibilities, distribute guidance, and ensure that reporting mechanisms are fully functional and user-friendly. A coordinated effort with state and Tribal authorities will be crucial to ensuring proper implementation and broad education about these reporting requirements. FinCEN intends to conduct substantial outreach with stakeholders, including secretaries of state as well as Indian tribes, trade groups, and others, to ensure coordinated efforts to provide notice and sufficient guidance to all potential reporting companies.

FinCEN notes that 31 U.S.C. 5336(g) requires the Director of FinCEN, in promulgating regulations carrying out the CTA, to reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the CTA's requirements. FinCEN has engaged in such outreach throughout the rulemaking process. In April 2021, FinCEN issued an ANPRM soliciting comments from the public, including from members of the small business community. Following the issuance of the ANPRM, FinCEN met with several small business trade associations to receive input on how to make the reporting process efficient and effective for small businesses. In December 2021, FinCEN issued an NPRM in which FinCEN proposed regulations relating to the reporting of BOI and solicited input from the public, including from members of the small business community. In response to both the ANPRM and NPRM, FinCEN received and considered numerous comments from small businesses and organizations representing small business interests. In addition, FinCEN has consulted with the Small Business Administration's Office of Advocacy throughout the rulemaking process.

ii. Interaction With Other Rulemakings

This final rule is one of three required rulemakings to implement the CTA. The CTA requires that FinCEN also promulgate rules to establish the statute's protocols for access to and disclosure of BOI, and to revise the 2016 CDD Rule, consistent with the requirements of section 6403(d) of the CTA.

Specifically, 31 U.S.C. 5336(c) requires the Secretary to issue regulations regarding access by authorized parties to BOI that FinCEN will collect pursuant to 31 U.S.C. 5336(b). The access rule would implement 31 U.S.C. 5336(c) and explain which parties would have access to BOI, under what circumstances, as well as how the parties would generally be required to handle and safeguard BOI.

The CTA also requires that FinCEN rescind and revise portions of the 2016 CDD Rule within one year after the effective date of the BOI reporting rule.[226] The CTA does not direct FinCEN to rescind the requirement for financial institutions to identify and verify the beneficial owners of legal entity customers under 31 CFR 1010.230(a), but does direct FinCEN to rescind the beneficial ownership identification and verification requirements of 31 CFR 1010.230(b)–(j).[227] The CTA identifies three purposes for this revision: (1) to bring the 2016 CDD Rule into conformity with the AML Act as a whole, including the CTA; (2) to account for financial institutions' access to BOI reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and (3) to reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.[228]

Comments Received. Commenters requested the opportunity to comment on the three rulemakings contemporaneously, as their views on the reporting requirements may be affected by how the reported information would be accessed and disclosed (in the access rule) and how it would be applied for CDD purposes (in the revised CDD Rule). FinCEN also received comments specific to the anticipated access and revised CDD rules. Comments in anticipation of the access rule focused on the structure of the BOSS, emphasizing the importance of security, suggesting specifics on FinCEN's technology, and urging FinCEN to verify the information. Commenters also raised points on the mechanism by which users would be authorized to access BOI and underlying FinCEN ID information, and access specifics for certain users, including a handful of comments proposing access to non-authorized users (*e.g.,* money services businesses and the Government Accountability Office).

Comments anticipating the revised CDD rule requested clarification on how BOI may or may not be relied upon for CDD purposes and discrepancy reporting or verification by financial institutions. Comments urged FinCEN to standardize definitions between this final rule and the revised CDD rule (including some arguing that the 2016 CDD Rule definitions should be maintained). Many comments also discussed burden on financial institutions, emphasizing that the revised CDD rule should ease, and not cause, burden. Some comments stated that FinCEN should address certain of these issues in this final rule.

Response. While FinCEN recognizes that the three required rulemakings are related, the CTA does not require them to be completed simultaneously. The CTA includes three separate rulemaking provisions,[229] and this final rule is focused solely on the implementation of the reporting requirements, as described in 31 U.S.C. 5336(a) and (b), rather than

[225] *See* 31 U.S.C. 5336(b)(1)(F), (b)(4)(B).

[226] CTA, Section 6403(d)(1).

[227] CTA, Section 6403(d)(2). The CTA orders the rescission of paragraphs (b) through (j) directly (''the Secretary of the Treasury shall rescind paragraphs (b) through (j)'') and orders the retention of paragraph (a) by a negative rule of construction (''nothing in this section may be construed to authorize the Secretary of the Treasury to repeal . . . [31 CFR] 1010.230(a)[.]'').

[228] CTA, Section 6403(d)(1)(A)–(C).

[229] 31 U.S.C. 5336(b)(4) (instructing Treasury to issue regulations related to reporting obligations and FinCEN identifiers); 31 U.S.C. 5336(c)(3) (instructing Treasury to issue regulations concerning access); CTA, Section 6403(d) (instructing Treasury to revise the 2016 CDD Rule).

including issues related to BOI access or revisions to the 2016 CDD Rule. Furthermore, the CTA directs FinCEN to promptly publish this final rule within a specific timeframe and contemplates subsequent rulemakings for access to BOI and revisions to the 2016 CDD Rule within different timeframes. In particular, the timeframe set for the publication of the 2016 CDD Rule—one year after the effective date of this final rule—indicates that Congress expected this final rule to be completed first. Proceeding serially in this order also ensures that important topics concerning each subject will be thoroughly considered and that the public will have ample opportunity to comment at each phase.[230] Commenters generally did not explain with specificity what aspects of the reporting rule they believe depend on choices to be made in the other two rulemakings. But commenters will nevertheless have opportunities to submit any comments they wish to provide in those rulemakings.

In addition, Congress emphasized the importance of promulgating regulations establishing reporting obligations when it established a one-year deadline for such regulations.[231] Reopening this rulemaking for further comment would result in additional delay.[232] The commenters who requested this indicated in general that their views concerning BOI reporting obligations might change depending upon how FinCEN planned to protect and disclose BOI. However, these commenters' concerns regarding data security and disclosure are more pertinent to other CTA rulemakings and are beyond the scope of this final rule. In undertaking those other rulemakings, FinCEN will consider all relevant comments.

IV. Severability

If any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

V. Regulatory Analysis

This section contains the final regulatory impact analysis (RIA) for the rule; it estimates the cost of the BOI reporting requirements to the public, among other items. The estimated costs for completing a BOI report depend on the complexity of the beneficial ownership structure of an entity. FinCEN's burden assessments differ for entities with beneficial ownership structures of different complexities. For entities with a simple structure (*i.e.,* one beneficial owner, with that beneficial owner also being the one company applicant) FinCEN estimates that it will cost $85.14 to prepare and submit an initial BOI report. This is comparable to (and in some cases less than) the fees that states charge for creating a limited liability company, which vary from $40 to $500, depending on the state. On the other end of the spectrum, FinCEN estimates that it will cost slightly more than $2,600 on average for entities with complex beneficial ownership structures (*i.e.,* 8 beneficial owners and two additional individuals as company applicants) to complete an initial filing, of which $2,000 is for professional fees. In the RIA (Section V. below), FinCEN estimates that 59 percent of reporting companies will have a ''simple structure,'' 36.1 percent of reporting companies will have an ''intermediate structure'' (*i.e.,* four beneficial owners and a fifth individual as the one company applicant), and 4.9 percent of reporting companies will have a ''complex structure.''

The aggregate cost of this regulation is reflective of the large number of corporations and other entities that are covered in order to implement the broad scope of the CTA. FinCEN estimates that there will be approximately 32.6 million reporting companies in Year 1, and 5 million additional reporting companies each year in Years 2–10. Given the estimated number of reporting companies, FinCEN estimates that the rule will have total estimated costs in the billions of dollars on an annual basis. The RIA's time horizon is the first 10 years of the rule, during which reporting companies will learn about and become familiar with these new requirements. Although not accounted for in the RIA, after this initial learning curve FinCEN assesses that the cost to reporting companies is likely to decrease.

While many of the rule's benefits are not currently quantifiable, FinCEN assesses that the rule will have a significant positive impact and that the benefits justify the costs. The rule will likely improve investigations by law enforcement and assist other authorized users in a variety of activities. All of this should in turn strengthen national security, enhance financial system transparency and integrity, and align the U.S. financial system more thoroughly with international financial standards.[233] The RIA includes a discussion of these benefits, and this discussion should be kept firmly in mind alongside the quantitative discussion of costs.

FinCEN has made efforts to calculate the cost of the rule realistically, but notes that because the rule is a new requirement without direct supporting data, the cost estimates are based on several assumptions. FinCEN has described its cost estimates in as detailed a manner as possible in part to inform the public about the rule and its potential impact on a wide range of businesses, including small businesses.

FinCEN has analyzed the final rule as required under Executive Orders 12866 and 13563, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the Paperwork Reduction Act. FinCEN's analysis assumed the baseline scenario is the current regulatory framework, in which there is no general federal beneficial ownership disclosure requirement. Thus, any estimated costs and benefits as a result of the rule are new relative to maintaining the current framework. It has been determined that this regulation is a ''significant regulatory action'' and economically significant as defined in section 3(f) of Executive Order 12866. Pursuant to the Regulatory Flexibility Act, FinCEN's analysis concluded that the rule will have a significant economic impact on a substantial number of small entities. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN concluded that the rule will result in an expenditure of $165 million or more

[230] *Cf. Transportation Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transportation Workers* v. *Fed. R.R. Admin.,* 10 F.4th 869, 875 (D.C. Cir. 2021) (''We have recognized that, under the pragmatic one-step-at-a-time doctrine, agencies have great discretion to treat a problem partially and regulate in a piecemeal fashion.'' (cleaned up); *NTCH* v. *FCC,* 950 F.3d 871, 881 (D.C. Cir. 2020) (noting that an agency ''need not 'resolve massive problems in one fell regulatory swoop;' instead, it may 'whittle away at them over time,'" (quoting *Massachusetts* v. *EPA,* 549 U.S. 497, 524 (2007)); *Nat'l Ass'n of Broadcasters* v. *FCC,* 740 F.2d 1190, 1207 (D.C. Cir. 1984) (explaining that "'reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the [regulatory] mind,'" (quoting *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489 (1955)).

[231] 31 U.S.C. 5336(b)(5).

[232] *See Sierra Club* v. *Costle,* 657 F.2d 298, 398 (D.C. Cir. 1981) (noting that an agency's decision not to extend or reopen a comment period was justified in part because doing so would have resulted in additional delay when Congress had ''put a premium on speedy decisionmaking by setting a one year deadline from [a statute's] enactment to the rules' promulgation'').

[233] FinCEN anticipates that the forthcoming rulemaking on access requirements for BOI will include a detailed discussion about the potential cost savings to government agencies that may access BOI. While not directly applicable to this RIA, the benefits of reporting BOI and accessing BOI are inextricably linked.

annually by state, local, and Tribal governments or by the private sector.[234]

As a result of the rule being an economically significant regulatory action, FinCEN prepared and made public a preliminary RIA, along with an Initial Regulatory Flexibility Analysis (IRFA) pursuant to the Regulatory Flexibility Act, on December 7, 2021.[235] FinCEN received multiple comments about the RIA and the IRFA, which are addressed in this section. FinCEN has incorporated additional data points, additional cost considerations, and other points raised by commenters into the final RIA, which is published in its entirety following a narrative response to the comments.

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this regulation is an economically significant regulatory action as defined in section 3(f) of Executive Order 12866, as amended. Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB).

i. Discussion of Comments to the RIA

a. General Comments

Many comments to the NPRM stated that the proposed reporting requirements are excessively onerous. These include some comments that proposed alternatives asserted to be less costly or burdensome. The comments summarized and incorporated into the RIA regarding burden are those that included quantifiable estimates or discussed the impact on a specific segment of the economy, such as small businesses.

Many comments focused on how the proposed reporting requirements might negatively affect small businesses. Multiple comments stated that costs to comply with the proposed reporting requirements would hurt small businesses during financially difficult times, with several pointing to already overwhelming regulatory requirements. One comment stated that the additional costs could shut down many businesses, while another said it would be ''greedy'' to require that businesses pay for the filing. One comment stated that, due to a lack of clarity in the proposed rule, requirements are likely to be defined through expensive litigation with the government, costs of which could be ruinous for small businesses.

Commenters also raised general concerns with the proposed rule's minimization of burden, particularly as such consideration is required under the Regulatory Flexibility Act. Responses to specific comments related to the NPRM's initial regulatory flexibility analysis (IRFA) are discussed in Section V.B. below.

Given the NPRM's assessment of the significant economic impact on small businesses, one commenter urged FinCEN to ease this burden by using the statutory maximum reporting timelines (*i.e.,* implementation date, days to file, and days to file a corrected report) and stated that Congress allowed for more flexibility than FinCEN proposed on these items. Maximum flexibility would ease the burden of the final rule, the commenter argued, as would making the Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996, as helpful as possible. Another commenter stated that the proposed rule does not provide sufficient justification for why the burden of scanning identification documents should fall on small businesses. The commenter further stated that rather than decrease the burden on small businesses as required by statute, the proposed rule would increase burden by requiring disclosure of additional information about the business not required by statute, such as business names, trade names, addresses, and unique numbers identifying the business. One commenter effectively summarized the rest by stating that the proposed rule is too complex, overly broad, and does not adhere to congressional intent to minimize burden on small businesses.

FinCEN is sensitive to concerns from small business about having to comply with a new set of regulations, and has endeavored to minimize unnecessary compliance burdens. As several commenters noted, the CTA exhorts FinCEN to ''seek to minimize burden on reporting companies,'' [236] to the extent practicable. At the same time, the statute directs FinCEN to ''collect information in the form and manner that is reasonably designed to generate a database that is highly useful to national intelligence and law enforcement agencies and Federal functional regulators.'' [237] This is a delicate balance. In an effort to achieve it, and to comply with applicable statutory requirements, FinCEN has not required information beyond that which is essential to developing a useful, secure database. FinCEN has also endeavored to draft the regulations as clearly as possible, although the issuance of public guidance may be appropriate to address specific questions in the future. FinCEN anticipates that this will provide greater clarity to the regulated community over time.

Regarding reporting timelines, FinCEN has explained why it views the rule's deadlines as reasonable, but also adds here that it is working to leverage technology and relationships with state, local, and Tribal authorities to make expectations clear and reporting processes straightforward. The goal is to make it as easy as possible for reporting companies of all sizes to comply with reporting requirements in the time provided. Commenters highlighted other select portions of the proposed rule that could be made less burdensome, such as the company applicant definition, beneficial owner definition, reporting company definition, reporting requirements related to addresses, and updated report requirements. The specifics of such comments are summarized in Section III above in connection with the specific provisions of the proposed rule that they address. Commenters also proposed changes to the rule that were not adopted, as also discussed in Section III above. However, the RIA does consider other significant alternatives.

One comment noted that the majority of existing entities do not retain certain information about individuals such as beneficial owners (*i.e.,* personal documents, driver's licenses, and passports) due to serious data security issues, protocols, and guidance they have received to delete such information when not needed for business purposes. FinCEN does not see its proposed regulations as requiring entities to deviate from those data

[234] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of $100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 118.37 in 2021. *See* U.S. Bureau of Economic Analysis, Implicit Price Deflators for Gross Domestic Product, available at *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&1921=survey&1903=13#reqid=19&step=3&isuri=1&1921=survey&1903=13.* Thus, the inflation adjusted estimate for $100 million is 118.37/71.823 × 100 = $165 million.

[235] *See* 86 FR 69947–69969 (Dec. 8, 2021).

[236] CTA, Section 6402(8)(A).

[237] CTA, Section 6402(8)(C).

retention practices, as there is no requirement in the proposed rules to store copies of identification documents once a reporting company has reported relevant information to FinCEN.

One comment focused on non-U.S. residents, stating that the proposed rule appears to impose another redundant layer of reporting requirements on non-resident American citizens who own small businesses and also have a business license in the United States. This comment stressed that several legislative measures and federal regulations over the years unfairly affect millions of United States citizen taxpayers, and any new FinCEN rule should exercise caution in considering both the goals and potential negative impacts on working-class Americans living abroad. FinCEN has considered statutory goals and potential negative impacts and done its best to mitigate the latter for United States residents and non-residents alike.

Finally, FinCEN received a general comment related to the NPRM's economic analysis as a whole. One commenter stated that the economic analysis ''makes major, major errors'' and is ''objectively and demonstrably wrong to a massive degree.'' The specific points raised by this commenter are addressed in the summary and analysis in Section V.B. below.

b. Cost-Related Comments

A few comments expressed concern with the estimated cost to comply with the proposed reporting rule. One commenter noted that if the estimate is accurate, the cost to small businesses will almost match the amount appropriated by Congress for FinCEN's budget for fiscal year 2022. Given the broad population to which the rule applies and the requirements it imposes, FinCEN believes the cost estimate methodology is appropriate. The overall cost estimate has increased from the NPRM given changes made to the analysis, based on comments and updated sources of information.

Commenters noted points regarding the per-entity initial and ongoing cost estimates. One commenter stated that FinCEN's proposed cost analysis is detailed and thoughtful, and its assumptions appear reasonable. The commenter further stated that using the numbers in the RIA, the estimated per-entity cost to update beneficial ownership information when changes occur is approximately $20, and the vast majority of filers (roughly 20 million in any given year) will have no filing costs. The commenter stated that these numbers reflect both the CTA authors' and FinCEN's successful efforts to minimize the burden on filers.

However, several commenters recommended that the RIA's per-entity cost estimate be reassessed. A few commenters noted that the ongoing compliance maintenance costs would likely be lower, while other commenters stated that both the initial and ongoing costs would likely be higher. Several other commenters requested more clarity and/or a more accurate estimation of the ongoing costs to small businesses.

The few commenters that suggested the ongoing compliance maintenance costs would most likely be lower referenced data from a survey conducted on covered businesses in the United Kingdom (UK) after the implementation of its beneficial ownership registry (People with Significant Control (or PSC) Register). The commenters indicated that the UK study, based on information self-reported by companies, found that after a larger first year expense, the annual compliance cost for businesses with less than 50 employees dropped to the equivalent of about $3–5. The commenters viewed it as reasonable to expect similar outcomes in the U.S., where small firms (''mom-and-pop'' enterprises, for example) have simple ownership structures that are easy to assess and update when changes occur. Two commenters explained that the per-entity cost estimate for initial compliance stops short of presenting information on the ongoing cost of compliance for small businesses. These commenters suggested that the final RIA provide estimates of the cost over time to reassure small businesses of the low cost of ongoing compliance.

FinCEN concurs that costs for simple beneficial ownership structures will be lower than for more complex entities, and has incorporated this point into the RIA. FinCEN continues to assess that the cost of compliance will be higher than the $3–5 cited in the UK study, particularly as U.S. entities learn about the reporting requirements in the first year. However, FinCEN concurs that the cost of compliance is likely to decrease as the reporting requirements become routine over time, and FinCEN will adjust its burden estimates accordingly throughout the life cycle of the rule. The RIA aims to accurately reflect the burden and costs entities will incur to come into compliance with the rule.

On the other hand, some commenters stated that the per-entity costs should be higher. One of these commenters explained that costs would include not just physical resources used to create the report, but also opportunity costs associated with employees reviewing documents and engaging in other compliance activity. Another commenter expressed concern that FinCEN miscalculated the burden and costs to smaller businesses, including those already in existence that might face interruptions in their banking relationships until they file their initial beneficial ownership reports with FinCEN. Further, the commenter stated that FinCEN's assumption that most small businesses are structurally simple ''misses the mark'' on how high administrative costs associated with rule compliance could run. Another commenter opined that the RIA's cost estimates for private sector filers and FinCEN's estimates for designing, building, and maintaining the system are both remarkably low. Specifically, the commenter recommended that the per-entity cost estimate be reassessed, explaining that identifying all possible persons with potentially significant control, getting legal advice, and collecting identification documents will take hours of time, speculating that FinCEN's estimate was off by a factor of ten. These comments are discussed in more detail in Section V.A.ii.e. below, and the per-entity cost has been reassessed to account for additional burden activities.

Several other commenters requested more clarity and/or a more accurate or complete estimation of the ongoing costs to small businesses. Another commenter indicated that it is very difficult to estimate cost for small businesses, as the rule is still unclear as to how this information will be collected, and that a more accurate estimation could be provided once the method of data collection is known and terms are more clearly defined. In response, FinCEN has updated the RIA's organization to increase clarity and added a detailed section discussing the estimated burdens and costs associated with the steps of filing initial and updated BOI reports.

Commenters raised a number of other cost considerations, including additional costs that should be considered and suggestions regarding estimates for the total number of entities, the number of entities that meet certain exemptions, and time burdens associated with the rule. Entity estimates have been updated, as described in Section V.A.ii.e. below. In the case of costs that were not initially accounted for in the RIA, but that are identified by commenters and are relevant to the final rule, FinCEN has revised portions of the RIA to incorporate them.

The following comments relate to the estimated number of reporting companies.

Total entity estimates. Some commenters raised concerns with FinCEN relying on public 2018 survey data from the International Association of Commercial Administrators (IACA) to estimate the total number of U.S. entities. Specific concerns included that the information is dated and only represents a small percentage of U.S. jurisdictions. These commenters stated that the RIA likely underestimated the number of affected entities, and therefore misjudged anticipated costs. Another comment suggested that FinCEN reach out to IACA regarding FinCEN's interpretation of their data. Other comments raised concerns with the RIA's assumption that the number of new entities each year equals the number of dissolved entities. A commenter suggested that this assumption is incorrect, and pointed out that the annual creation of domestic (U.S.) business entities in North Carolina has grown from 47,000 in 2011 to 163,100 in 2021, and that creations exceed destructions in the jurisdiction by over 40 percent in every year after 2013. Moreover, the rate and raw number of entities created has increased greatly since 2015. One comment stated that most jurisdictions have seen significant increases in the number of business entities formed in the last two years. In a sampling of states, increases ranged from 50 to 60 percent since 2018.

In response to these comments, FinCEN reviewed additional data sources and refreshed the analysis with the most up-to-date IACA data publicly available. This new IACA data included information for 2018, 2019, and 2020, which allowed FinCEN to estimate a growth factor to account for year-over-year percent increase in entities. FinCEN has updated the analysis to include an annualized average growth assumption for entity creations. For purpose of the analysis, FinCEN chooses to use a simple annualized average growth rate factor for entity formation using IACA data.

A few commenters proposed alternative data sources to consider. One commenter pointed to 2020 data published by the Small Business Administration (SBA) indicating that 99.9 percent of U.S. businesses are small businesses and 81 percent of those have no employees. The commenter argues that if a large percentage of these businesses are single-owner corporations or single-member LLCs, identifying beneficial owners will impose a near zero cost for most U.S. businesses. The same comment also suggested that FinCEN coordinate access to Census Bureau Business Register data on U.S. businesses jointly owned by spouses in order to estimate the number of these businesses, which similarly would be able to easily identify their beneficial owners at virtually no cost, in the commenter's estimation. FinCEN reviewed these suggestions and incorporated three additional public data sources from the U.S. Census Bureau into the RIA. The additional data sources supported FinCEN's approach and findings with regard to the total domestic entity estimate. Additionally, part of FinCEN's updated approach in the RIA is to identify the likely distribution of reporting companies' beneficial ownership structure complexity. The approach assumes that a majority of reporting companies will have simple beneficial ownership structures to report. FinCEN concludes that such entities would still bear a cost to comply with the rule but assesses that these costs would be lower for simple beneficial ownership structures.

Another commenter stated that the RIA's reporting company estimate appears to include sole proprietorships, even though they are unlikely to meet the reporting company definition. The comment pointed to the National Small Business Association's estimate that 12 percent of small businesses (which account for 99.9 percent of all businesses in the U.S.) are sole proprietorships, which amounts to a little over 3 million businesses. The commenter states that FinCEN should either reduce its overall cost estimates or acknowledge that they very likely overstated the aggregate cost to businesses. Although the underlying data source FinCEN relies upon for total entity estimates does not specify that it includes sole proprietorships, FinCEN acknowledges that there are likely some number of sole proprietorships included in the reporting company estimate. Nonetheless, FinCEN maintains its conservative approach to total cost estimation. Furthermore, FinCEN is unaware of a methodology to remove sole proprietorships without also removing potential single-owner LLCs and other similar entities that meet the definition of a reporting company.

Other alternative data sources included statistics that states provided in comments. As of December 31, 2021, for example, Michigan had 1,051,163 active entities on record, 992,574 of which were domestic Michigan entities. North Carolina had over 1,810,000 registered entities as of 2021, 843,300 of which were entities in good standing (neither permanently dissolved nor in temporary administrative dissolution status).[238] North Carolina and Michigan were reporting jurisdictions in the updated IACA data used for the total domestic entity estimate. Using the growth factor established, FinCEN projected the total domestic entity estimates of 871,681 and 820,561 for 2024 in Michigan and North Carolina, respectively. Given the likelihood that data provided by these two comments includes non-reporting companies (*i.e.,* exempt entities), FinCEN believes that the statistics from these comments further demonstrate the approach's relative accuracy and reliability.

Finally, multiple comments made reference to how many businesses or small businesses would be affected by the rule but did not provide sources for these statements. Such comments included claims such as there would be compliance costs for ''over 12 million tiny businesses'' and obligations on tens of millions of businesses. These statements generally support FinCEN's conclusion that tens of millions of businesses, most of which are likely to be small, will be affected by the rule.

Overall, concerns raised by commenters were addressed by numerous updates to the RIA. Specifically, FinCEN used the most up-to-date IACA dataset, established a growth factor, reviewed additional data sources from the U.S. Census Bureau, and applied a distribution of reporting companies' beneficial ownership structure complexity.

Entity lifespan. A commenter stated that FinCEN underestimated the length of time that entities will have ongoing update obligations, citing to state data that demonstrate that 50 percent of entities in North Carolina survive their first six years, and more than 40 percent remain in existence beyond their tenth year. FinCEN did not make any assumptions in the NPRM's analysis about the lifespan of an entity and is not making any such assumption in the final analysis. The 10-year horizon referenced in the NPRM was for the present value calculation to discount the near-term expected annual impact into today's dollar value. The rule's impact was not estimated into perpetuity but instead at a 10-year horizon, and captures the bulk of the near-term impact of the rule. Because

[238] FinCEN assumes that these statistics refer to entities created in those respective states. While this assumption is not clarified in the Michigan comment, it is supported by a statement in the North Carolina comment that ''unless stated otherwise, all figures represent North Carolina domiciled entities only and do not reflect registrations with the Department of entities formed in other states or foreign countries.''

FinCEN does not incorporate an assumption for entity lifespan, and therefore, does not net out any cost savings from entity dissolutions that may occur within that 10-year present value estimation period, FinCEN's estimates will overestimate the overall impact within the 10-year period.

Trusts. In the RIA, FinCEN asked for comments on data sources to determine the total number of trusts and what portion of the total are created or registered with a secretary of state or similar office. One commenter noted that trusts are neither created nor registered with the Corporations Division in Michigan. Given this, FinCEN has not changed the approach to trusts in the RIA. The reporting company estimate relies on an updated (2021) IACA survey that provides ''the number of entities registered . . . in responding jurisdictions.'' [239] FinCEN therefore assesses that if any trusts are included in the data, they would have been required to register with a secretary of state or similar office.

Exempt insurance companies estimate. One commenter stated that the NPRM's estimate of insurance companies could be higher; however, FinCEN assesses that this depends on facts and circumstances. For example, a determination on whether a particular captive insurance company meets the insurance company definition depends on factors like the company's structure and business activity. FinCEN emphasizes that the sources used for the exemption estimates should not be viewed as encompassing all entities that may be captured under the exemption.

The comment further notes that the NPRM omits any count of exempt insurance companies from Table 2, which summarized FinCEN's estimate of the number of entities in each of 22 exempt categories that were subtracted from the total entity estimate developed in the NPRM. FinCEN did not subtract insurance companies from the total entity estimate in the NPRM based on an assumption that such entities would not have been counted in the underlying data; however FinCEN does not include this assumption in the final RIA. Finally, the comment disagreed with the statement in the NPRM that there is likely overlap between insurance companies and state-licensed insurance producers. FinCEN concurs with the commenter that there is likely little overlap between the two exemptions, and has revised the RIA accordingly.

Exempt tax-exempt entities estimate. A commenter raised concerns with the estimate of these entities in the NPRM, which was based on 2018 IACA survey data and totaled approximately 2.8 million. The commenter, North Carolina's secretary of state, asserted that many entities formed as nonprofits under North Carolina law (144,700, or 17 percent) will not satisfy the criteria for the tax-exempt entity exemption because such entities are neither a 501(c) nor a 527 entity under federal law, and were therefore not properly accounted for in the RIA. More specifically, under North Carolina law, such entities are not required to obtain federal tax-exempt status from the IRS, and many are either unqualified for such status or otherwise choose not to obtain federally exempt status. Therefore, the commenter contends that FinCEN overestimated the number of entities that will qualify for this exemption and therefore underestimated the costs.

In light of this comment, FinCEN sought to more accurately reflect the number of entities with federal tax-exempt status, taking into account that not all nonprofits are tax-exempt at the federal level. As shown in the RIA, the estimate for this category has decreased to approximately 2.4 million entities.

Exempt inactive entities estimate. A commenter suggested that entities considered ''inactive'' in state registries should be included in the reporting company estimate (and not excluded). This commenter, North Carolina's secretary of state, noted that it is probable that many dissolved entities in North Carolina will have reporting obligations because the vast majority of company dissolutions in that state are temporary and do not prevent a dissolved entity from conducting business. Of the over 1,810,000 registered entities in North Carolina, only 13 percent are permanently dissolved. Another 40 percent are in temporary administrative dissolution status, with another 46 percent entities in good standing.[240] Over the past three years, 44,000 entities resolved their temporary administrative dissolution and were reinstated, representing about 34 percent of the administrative dissolutions filed during that same three year period. The commenter indicated they do not have information to reliably estimate what percentage of the administratively dissolved entities are, in fact, no longer actively engaged in business. The commenter suspects that the number may range from 60 to 70 percent of all administratively dissolved entities. The commenter recommended that if FinCEN takes the position that administratively dissolved entities are not exempt as reporting companies, it should update its RIA to calculate the costs of compliance for the approximately 727,000 North Carolina entities that are in temporary administrative dissolution status but able to conduct business, as well as 239,000 permanently dissolved North Carolina entities that cannot be confirmed to have concluded winding up business. The comment notes that these costs include approximately $966,000 (approximately $1 per entity) in unfunded mandates to North Carolina associated with notifying entities about the reporting obligation.

FinCEN does not estimate a number of entities that fall under the inactive entity exemption given the lack of data regarding entities that will meet the exemption's criteria. That underlying data source for the total entity estimates contains statistics reported by the states to IACA. If the states reported temporarily or permanently dissolved registered entities in the counts to IACA, such entities are included in FinCEN's analysis. The reporting company estimate increased from the NPRM, and the estimate is corroborated by other sources. FinCEN addresses comments related to indirect state costs in the RIA as well.

The following comments relate to additional costs or burdens that should be considered in the RIA.

Estimated time burdens for filing reports. A few commenters stated that the estimated time burden of 70 minutes for filing initial reports was unrealistically low given the complexity of the requirements. One comment stated that the 20 minute allotment to read the form and understand the requirement from the initial report time estimate should be increased to no fewer than 4.5 hours per report. This commenter asserted that FinCEN should estimate three hours for one senior official to read the final rule, one hour for one senior official to take the necessary steps to determine whether the entity is a reporting company, and one half-hour for a second senior official to consider the analysis and concur. The commenter stated that based on the NPRM's page length, the final rule is likely to be at least 180 pages long, supporting their three hour estimate for a preliminary reading (*i.e.,* one page per minute). The comment cautioned that to the extent the form, its instruction, and

[239] FinCEN accessed this description by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/*. Then, FinCEN selected ''BD—Registered Entities'' to view the description of the data.

[240] Another commenter provided estimates on the number of inactive companies in a state, indicating that as of December 31, 2021, Michigan had 1,583,291 inactive entities on record. Domestic, Michigan entities account for 1,485,897 of the inactive entities.

any accompanying guidance released exceeds 20 pages, FinCEN should account for this increased complexity under this assumption. Accordingly, FinCEN has increased this time estimatein the RIA.

In response to the RIA's assumption of 30 minutes to identify and collect information about beneficial owners and company applicants as part of the initial report time estimate, the commenter shared that FinCEN should estimate that a senior official will spend one hour, and an ordinary employee will spend two hours, per entity determining its beneficial ownership. FinCEN has adjusted this time estimate in the RIA by different amounts depending on the complexity of beneficial ownership structure.

Commenters argued that burdens related to locating company applicants, particularly for companies created years ago, should be accounted for in the RIA. One comment stated that to comply with the proposed reporting requirements, thousands if not millions of small or medium businesses will be forced to spend an inordinate amount of time searching for the person who submitted their formation filing. This will cause them to incur costs and time away from their businesses, a burden not anticipated by the RIA. Given that the final rule removes the requirement for existing entities to report company applicants, this burden is not included in the RIA. However, FinCEN considers an alternative scenario in which this activity is required.

In addition, a commenter stated that the Paperwork Reduction Act may require consideration of additional burden activities beyond those noted by FinCEN in the 70-minute time period for filing initial reports. Specifically, the comment stated that some burdens do not appear to have been addressed in the NPRM, including having to acquire, install, and use technology and systems to file requisite reports, as well as reviewing collected information. References to this comment are included in the time burden estimates for initial and updated BOI reports.

One commenter states that the NPRM's assumption (based on underlying data from the UK) that 87 percent of reports will include one or two beneficial owners is impossible given the proposed definition of beneficial owner. The commenter assesses that the proposed definition would result in at least three beneficial owners (President/CEO, Treasurer/CFO, and corporate secretary) in addition to any 25 percent or more owners. Including any other senior officer and person that has ''substantial influence over important matters'' would result in reporting companies generally having at least four or five and probably more likely 15 to 25 beneficial owners. The comment states that the estimates provided by FinCEN in the RIA are off by at least 400 percent and quite likely several times that, and therefore it is ''impossible'' that the cost estimates are correct. FinCEN considered this comment and included a different estimate of the number of beneficial owners per report in the RIA. However, FinCEN continues to assume that the majority of reporting companies will have a simple reporting structure, such as an LLC which has a single owner and no other beneficial owners.

Estimated hourly wage. A few commenters stated that FinCEN's estimated hourly wage rate of $38.44 per hour was unrealistically low. One commenter criticized FinCEN's decision to tether the estimated wage rate for each reporting requirement to the mean hourly wage rate for all employees. The comment asserted that the FinCEN filing process is going to be undertaken by senior management or highly paid professionals, as opposed to ordinary employees. The comment concluded that the cost per hour is going to be two to three times the figure estimated by FinCEN. Similarly, one comment estimated the average cost to be $500 per hour—significantly higher than FinCEN's estimate.

Another commenter echoed this sentiment, noting that it would be unlikely that an ordinary employee would be the sole person called upon, without supervision, to understand the FinCEN filing requirement and make filing decisions on behalf of an entity. The comment asserted that the work associated with FinCEN's filing requirement would require a senior officer or equivalent, and likely demand the services of a professional. The comment concluded that a more accurate cost estimate would be at least twice the amount estimated by FinCEN. Similarly, another commenter argued that the loaded wage rate is unreasonably low because the vast majority of small businesses will rely on attorneys and/or accountants to prepare their initial filings. The comment concluded that the median hourly Certified Public Accountant (CPA) rate in the U.S. is $210/hour, and after considering personnel time plus professional time, the actual costs of complying with initial beneficial ownership reporting requirements would likely be at least $600 per initial beneficial ownership filing.

The wage rate is adjusted in the RIA to reflect some of this feedback. This has increased the estimated hourly wage rate.

Costs of professional expertise. Multiple comments stated that the RIA should have included in its cost estimate the costs to reporting companies, and particularly small businesses, of hiring professional experts to help them understand and comply with the rule. Commenters gave examples of lawyers, accountants (many comments cited CPAs), and U.S. tax preparers as professionals that companies would likely consult to understand the reporting company definition, identify beneficial owners pursuant to the rule's definition and their business structure, and prepare initial and updated reports, among other compliance steps. One commenter noted having polled attorneys who represent early stage and startup companies, and reported that the attorneys expected to spend a substantial amount of time with clients, on an ongoing and continuous basis, regarding the proposed rule and its frequent update requirements. Commenters noted that the penalties for violating the rule's reporting requirements create an incentive to obtain this expertise.

A commenter noted, in a sentiment echoed by others, that small businesses cannot afford attorneys, accountants, and clerks, and will instead rely on do-it-yourself compliance. However, other commenters stated that small businesses were likely to hire external expertise. One comment anticipated that the vast majority of small business owners will rely on outside professionals, and another stated that entities are more likely than not to require the help of a professional. A comment stated it was highly likely that professionals will add guidance on complying with the rule to their current service offerings, but the commenter hoped that financial institutions would not be expected to provide guidance. A commenter noted that paying for external legal counsel to comply with the requirements would impose a ''new cost on small businesses at a time when they are trying to recover from two years of pandemic-imposed recession, and would not be in the public interest.''

Regarding potential cost estimates for hiring this expertise, one comment noted having been quoted ''1000s'' (of dollars, presumably) by CPAs to fill out the BOI report. Another comment stated that FinCEN should estimate one hour of outside professional review per document (with one document per entity, and including study of the entity's ownership and control structure) plus client consultation time,

for a total of two hours of professional time spent per entity. The comment states that this accounts for the expectation that some entities will require numerous professional hours due to complicated ownership and control structures (increasing the cost estimate per entity), while some entities will share a professional and thus may share client consultation time (decreasing the cost per entity).[241] One comment offered that between three and five hours for the initial report would be more realistic, as many reporting companies will need time for exchanges between themselves and outside professionals to ensure they understand applicable requirements and file reports correctly. A comment proposed the cost of $400 per hour for retaining outside professionals, based on a recent SEC PRA analysis.[242]

Given the many points raised by commenters on this topic, FinCEN assessed and included a cost for hiring professionals to comply with the requirements in the RIA.

Costs of data security. A couple of commenters noted that the RIA failed to consider the substantial harms that could be experienced by reporting companies, beneficial owners, and company applicants should the images of identifying documents required to be submitted under the rule not be kept secure by either FinCEN or by those who collect the images for submission to FinCEN. Commenters explained that many, if not most, small businesses that will comprise the bulk of reporting companies will lack the security and privacy tools necessary to protect their stored copies of the imaged documents they must collect from their beneficial owners and company applicants. Those businesses will be vulnerable to hacking, spoofing, and malware attacks that could result in the disclosure of the imaged documents and their use for criminal purposes. The law firms and service companies that assist in business formations likewise will face elevated risk if they assist their clients with submission of their reports and therefore begin to accumulate electronic images of the required forms of identification.

Another commenter noted that while FinCEN does an admirable job estimating the regulatory cost of the paperwork burden associated with the proposed regulations, it does not estimate, or even acknowledge, that through the process of FinCEN collecting personally identifiable information from companies' beneficial owners, hundreds if not thousands of individuals will be subject to identity theft. The commenter further states that FinCEN should publicly commit to pay for credit monitoring and identity theft protections for any victims of unauthorized BOI disclosure, either through an unauthorized data breach, or through unauthorized disclosure of BOI from an agent or employee of the government. In response to these comments, a discussion of data security costs was added to the RIA.

Costs to exempt entities. One comment stated that the burden to exempt entities of having to understand the reporting requirement and relevant exemptions should be included. The commenter stated that the decision to report must be made not just by each reporting company but also by exempt entities. Citing the reporting violation penalties and ''willful'' standard, the comment stated FinCEN will not be sympathetic to non-filing entities that do not read or analyze the final rule or reporting form prior to deciding not to file. The comment concluded by stating that on this basis, the cost to read and understand the final rule will be borne by all 30 million entities that FinCEN estimates exist in the United States. This cost consideration is discussed in the RIA, but the RIA does not quantify a specific cost estimate for such activity for the reasons stated therein.

Costs of tracking updated information. Other comments asserted that the burden estimate does not take into account the time and effort required by reporting companies to track beneficial ownership changes in compliance with the reporting requirements. One commenter argued that if reporting companies are required to update any of their beneficial ownership information within 30 days of any change, FinCEN should account for monthly or recurring review of such information. This cost consideration is discussed in the RIA, but the RIA does not quantify a specific cost estimate for such activity for the reasons stated therein.

Cost of government audits. One commenter stated that it is unclear if the estimated FinCEN costs include costs associated with audits required by the CTA. Another commenter noted that the CTA imposes years-long audit obligations on Treasury, the Treasury Inspector General (IG), and the Government Accountability Office (GAO) to evaluate registry operations, examine exempt entities, assess state incorporation practices, and determine whether additional entities should disclose their beneficial owners. The comment stated that given the RIA's magnitude of estimated entity counts, the only way effective audits can take place is if the registry produces automated reports to auditors. In addition, the commenter states that auditors will need to work directly with FinCEN as well as state and Tribal agencies to ensure the auditors are using reliable data and effective audit procedures. The commenter stated that such automated data reports and auditing activities should be an explicit part of the overall cost benefit analysis. FinCEN does not dispute that there may be costs associated with all of these activities, but FinCEN assesses that such activities are outside of the scope of this rule. The costs of the CTA's required audits and studies therefore are not estimated herein.

The following comments refer to the RIA's discussion of costs to state, local, and Tribal authorities, costs to FinCEN, and potential costs to the government and third parties in identifying noncompliance with the reporting requirements.

Costs to State, local, and Tribal authorities. Comments from state, local, and Tribal authorities explained that if secretaries of states and other similar offices were required to provide notice of the reporting obligations and a copy of, or internet link to, FinCEN's BOI reporting form, this would result in a significant cost and substantial increase in duties to such offices. Particularly, commenters noted that these offices will likely only have a mailing address for the registered agent of a business entity and that the time and cost of mailing paper notices is significant. Commenters also raised concerns that filing offices would have no way to determine which entities are reporting companies that should receive such notices and that the action of sending such notice would result in entities perceiving the requirement as a state-level regulation. Commenters raised additional concerns that state, local, and Tribal authorities would have expenditures beyond providing notice. Commenters stated that the potential future responsibilities of such offices related to the CTA remain unaddressed. Commenters anticipated that customer service agents at filing offices will spend a considerable amount of additional time responding to CTA compliance questions, and that additional staff will be needed. Another commenter noted that filing office staff cannot provide legal advice and will not be able to

[241] The commenter caveated that this economies of scale may not occur to the extent that ownership and control structures vary among related entities.

[242] Securities and Exchange Commission, *Holding Foreign Companies Accountable Act Disclosure, Release No. 34–93701* (Dec. 2, 2021), p. 56, available at *https://www.sec.gov/rules/final/2021/34-93701.pdf.*

answer such inquiries, which will likely lead to frustration. The commenter also noted that receiving calls related to the CTA will impose costs on filing offices even if such calls are redirected to FinCEN.[243]

Multiple state authorities commented that the costs associated with the rule would result in unfunded mandates. While some commenters noted that FinCEN anticipated indirect costs to such authorities in the RIA, comments suggested that these costs were substantially underestimated. One commenter stated that costs could exceed $1.34 million for notifications to entities and responses to entities' inquiries.[244]

To minimize these costs and burdens, commenters proposed that FinCEN should do the following:

—Provide dedicated support to relieve the states
—Provide a mechanism for reimbursing the states for these substantial costs
—Provide dedicated customer service for applicants, reporting companies, and beneficial owners, such as a customer service call center
—Develop an online wizard to assist businesses in determining filing requirements without assistance
—Not expect secretaries of state to change their business registry systems or databases
—Not expect secretaries of state to make any legislative changes
—Limit offices' exposure by adding a link to a FinCEN website on secretaries of states' websites
—Not require additional mailings by secretaries of state
—Reconsider the scope of the proposed rule as it relates to obligations of dissolved entities, preexisting companies, and obligations to report company applicant information

FinCEN appreciates these suggestions, and will continue to review the suggestions in light of the cost estimates commenters provided. FinCEN is sensitive to the concerns articulated by these commenters, particularly those related to cost, and notes that the rule does not impose direct costs on state, local, and Tribal governments. Moreover, consistent with the requirements of the CTA,[245] FinCEN intends to coordinate closely with state, local, and Tribal authorities on the implementation of the rule and efforts to provide notice of the reporting requirement. A discussion on certain indirect costs to state, local, and Tribal authorities is included in the costs section of the RIA.

Costs to FinCEN. A commenter stated that there was no explanation or underlying information about what is encompassed in the NPRM's estimates of costs to FinCEN. The commenter raised that the proposed rule did not mention whether FinCEN plans to use the Beneficial Ownership Data Standard (BODS) [246] as a basis for developing the Beneficial Ownership Secure System (BOSS). The commenter stated that the use of the BODS could potentially save millions of taxpayer dollars in U.S. database development costs. The commenter stated that at a minimum, the RIA should make clear to what extent FinCEN plans to take advantage of the BODS as an established guide for collecting and structuring beneficial ownership data. Additionally, the comment noted that the proposed rule did not describe any of the BOSS's expected features or the extent to which estimated software costs already include any of the associated expenses. The comment included examples of such features. In response, FinCEN notes that FinCEN's IT development included outreach on existing beneficial ownership models, to include BODS. A description of what the estimated IT costs to FinCEN encompass is included below; however, additional discussion of database functionality and access is expected in forthcoming BOI access rulemaking.

Another commenter noted that the cost of developing and building the BSA database in 2010–2014 was in excess of $100 million, and costs approximately $27 million per year to operate. The commenter stated that the BOSS will cost at least that much in 2022–2025 dollars. As noted in the RIA, FinCEN anticipates that the BOSS will build upon existing BSA infrastructure to the extent possible; however, cost estimates have been increased due to its complexity. An additional comment stated FinCEN's cost estimates must include the provision of adequate resources to partner with and support state, local, and Tribal jurisdictions. These should include funding for materials (*e.g.,* fact sheets, FAQs), for the availability of FinCEN domestic liaisons for relevant jurisdictions, and for other support to ensure seamless implementation. Such activity is accounted for in the non-IT FinCEN cost estimates included in the RIA.

Potential costs from identifying noncompliance. The NPRM discussed that FinCEN and other government agencies may incur costs in enforcing compliance with the regulation, and noted that FinCEN plans to identify noncompliance with BOI reporting requirements by leveraging a variety of data sources. FinCEN requested comment on what external data sources would be appropriate for FinCEN to leverage in identifying noncompliance with the BOI reporting requirements and what potential costs may be incurred by third parties.

One commenter, a financial institution, stated that financial institutions are likely one of the best sources of data for identifying noncompliance with the proposed rule. The commenter provided the example that every time a financial institution searches or makes a request to the BOSS, a lack of confirming data would be evidence of an entity's noncompliance. However, the commenter strongly urged FinCEN to not outsource noncompliance detection to financial institutions that already struggle under the weight of helping regulators prevent and solve crime. Doing so, the commenter argued, would increase already significant costs and reduce efficiencies by requiring financial institutions to assist and counsel customers to meet the proposed rule's requirements.

Two commenters identified government data sources that could be cross-referenced to identify noncompliance. One commenter indicated that data lists of corporations and limited liability companies, domestic and foreign, that have filed or registered with a specific secretary of state office could be generated, which could be leveraged to cross-check for noncompliance. Another commenter indicated that FinCEN could cross-reference IRS filings for certain entities. However, the commenter, an attorney, explained that professional experience indicated that there is significant noncompliance in reporting foreign ownership of U.S. disregarded entities to the IRS.

In response to the NPRM's question on this topic, a state authority

[243] In addition, one commenter stated that filing offices would spend time and resources researching information about company applicants given the proposed rule's requirement that existing entities report company applicant information, which the commenter stated was unmanageable and would require an estimated over 22,500 staff days to search paper records. However, this cost is not applicable to the rule given that company applicant reporting for existing entities is no longer required.

[244] The commenter separately estimated $232,000 to notify and respond to corporate entities and $1,111,000 to notify and respond to administratively dissolved, permanently dissolved, and nonprofit entities that the commenter stated were underestimated in the NPRM's reporting company estimate. FinCEN has addressed the comments related to the reporting company estimates separately.

[245] 31 U.S.C. 5336(d).

[246] The BODS is an open data standard for beneficial ownership registries designed by OpenOwnership.

commented that the state would incur costs if the proposed rule required it to change its existing database or existing technical processes. The comment did not describe what changes would be required for identification of noncompliance or potential cost estimates.

Another commenter suggested that FinCEN establish an online tip site, similar to those states use to facilitate reporting of unlawful employment practices, to gather information that can be cross-matched with any beneficial ownership and company information that has been filed. The comment suggested that FinCEN inquire with those states that have such tip sites on the cost of establishing a similar site.

FinCEN does not include cost estimates related to identifying noncompliance with the reporting rule in the RIA given that the responsive comments did not include cost estimates for such activity. While commenters provided input on potential avenues that could (or should not) be considered for identifying noncompliance, it is unknown at this time whether FinCEN is likely to rely on any such avenue. Such specifics will likely vary with the compliance matter. Therefore, a separate estimate of this activity is not included in the RIA; however, the RIA does discuss costs associated with compliance and enforcement efforts.

c. Benefits-Related Comments

FinCEN did not receive comments that specifically addressed the qualitative discussion of benefits from the reporting requirements in the RIA. A number of comments discussed the potential benefit the BOI database could provide to financial institutions in the context of CDD requirements. One such comment stated that the only way to provide a benefit that justifies the cost of complying with the requirement is to allow the BOI system data to satisfy financial institution CDD or other reporting requirements. FinCEN will consider this perspective as it revises the 2016 CDD Rule in accordance with CTA requirements. Also, commenters discussed the benefits of specific elements of the reporting rule; such comments are summarized in the preamble.

d. Comments on Other Topics

Comments also covered other topics pertaining to the RIA. Specifically, commenters focused on a proposed alternative scenario, estimates for individuals applying for FinCEN identifiers, and potential chilling effects on incorporation practices.

Alternative scenario of indirectly collecting BOI. The NPRM included an alternative scenario in which a reporting company would submit its BOI to FinCEN indirectly through a designated jurisdictional authority at the state or Tribal level. The RIA noted that FinCEN decided not to propose this alternative in its proposed rule due to multiple concerns that commenters raised in response to the ANPRM. However, FinCEN noted that it continues to consider whether there are feasible opportunities to partner with state authorities on the BOI reporting requirement, particularly where states already collect BOI, and requested comment on this subject. The NPRM also included a question on whether reporting companies would prefer to file BOI via state or Tribal governments rather than directly with FinCEN.

A few commenters to the NPRM stated that partnering with state and Tribal governments, or repurposing information filed with such authorities, would be more efficient and less costly for reporting companies than requiring reporting companies to file BOI directly with FinCEN. A commenter suggested that FinCEN require certain states to include BOI reporting as part of their formation and annual filing requirements. Another commenter noted that FinCEN's best opportunity to minimize small business compliance costs is to integrate the FinCEN filing as seamlessly as possible into existing state-level incorporation processes, and that FinCEN should reflect projected costs of material and personnel to do so in the cost estimates.

In contrast, one comment stated that the proposed rule correctly rejected this alternative of reporting companies submitting BOI indirectly to FinCEN through a designated jurisdictional authority at the state or Tribal level. Two comments from state authorities questioned why FinCEN asked whether reporting companies would prefer to file BOI with states or FinCEN. One of these commenters stated that this should have no impact on the administration of the CTA or the final rule, and that the CTA explicitly requires reporting companies to submit BOI to FinCEN. The other reiterated that the law requires that reporting companies submit reports to FinCEN.

Other commenters emphasized the importance of partnership with state and Tribal authorities in implementing the CTA. However, one state authority noted that this should be limited to notifying individuals about the requirement. That commenter opposed any approach that would require states to remit information to FinCEN. Such an approach, the commenter argued, would create inconsistent information across the United States and impose costly administrative challenges in processing and remitting the information.

As noted in the RIA's alternative scenario discussion, FinCEN intends to work closely with relevant state, local, and Tribal authorities to minimize burdens on all stakeholders to the extent practicable in the ongoing CTA implementation process.

FinCEN identifier estimates. One commenter stated that the RIA's reasoning for why an individual may apply for a FinCEN identifier is a misreading of the CTA, explaining that no statutory language authorizes FinCEN to construct a regulation to help beneficial owners conceal their identities from reporting companies. The commenter also stated that the proposed rule fails to make clear that entities seeking to obtain a FinCEN identifier must first disclose their beneficial owners to FinCEN, and that all parties with authorized access to the BOI database can promptly access the identifying information for each person assigned a FinCEN identifier. The commenter also observed that FinCEN's estimate of individuals who would apply for a FinCEN identifier, while seemingly modest compared to the total number of 25 million initial reporting companies in the NPRM, is still a large dataset. This commenter believes this estimate is artificially low because it does not take into account the many entities that may also apply for a FinCEN identifier. Further, the commenter stated that the number of entities that utilize FinCEN identifiers may be significantly more than the number of individuals that seek FinCEN identifiers. Still another factor is that, because the FinCEN identifier applicants are likely to be individuals or entities using complex ownership structures, the data itself may be difficult to parse for accurate insights. The large numbers and complex data make it impractical to expect database auditors to manually track or analyze the FinCEN identifier data.

FinCEN has updated the relevant descriptions and estimates of individuals applying for a FinCEN identifier in the RIA to be consistent with changes to the final rule. FinCEN assumes that costs associated with entities applying for and updating information related to a FinCEN identifier are accounted for in the estimates related to initial and updated BOI reports. This is because entities would perform such functions related to their FinCEN identifier through the BOI report form.

Chilling effects on incorporation practices. A few commenters expressed concern with the proposed rule's potential chilling effect on new business formation. One commenter noted that the reporting requirements and other potential obligations imposed on lawyers to verify information about reporting companies and their beneficial owners may have a chilling effect on the continued formation of entities by many lawyers who routinely form new entities for small clients. The commenter expressed concern regarding the disclosure of personal information by lawyers for companies with which they may have no involvement after formation. The commenter also stated that there is a lack of clarity regarding who would be responsible for the reporting of the information. The commenter presumes that a lawyer forming an entity for a client will likely bear the burden of filing such a report, which in turn will result in a much greater harm to those small and medium sized business clients across the country who are no longer able to obtain legal services in the creation of new entities because of the burdensome reporting and investigation requirements placed upon legal services providers.

FinCEN understands this concern. As discussed in Section III.F above, the agency has made clear in the final rule that the reporting company is ultimately responsible for both making the filing and ensuring that it is true, correct, and complete. The same is true of the accompanying certification, which is to be made on the reporting company's behalf. The revised certification language and locus of ultimate responsibility with the reporting company are consistent with other FinCEN requirements and certifications with which the regulated community is already familiar, and should therefore be sufficient to mitigate potential chilling effects based on certification concerns. Moreover, it is not uncommon for lawyers and other providers of professional services to be subject to professional and legal obligations in connection with their provision of services to clients.

FinCEN understands there may be other concerns associated with lawyers and other professionals potentially being reported to FinCEN as company applicants. FinCEN views it as unlikely that these concerns will result in chilling effects on entity formation services. Additionally, FinCEN assesses that any chilling effects that do arise—including any specific to small and medium-sized entities—should abate as service providers become more comfortable with the final rule's requirements. As discussed in Section III.D. above, FinCEN has taken steps to reduce the burden on company applicants. For example, the final rule clarifies that at most two individuals would be considered company applicants and reporting companies need not file updated reports for those individuals. Finally, the CTA does not distinguish between different types of individuals who may be company applicants.

Another commenter noted that the reporting requirements will have a disproportionately adverse effect on underserved communities. This commenter explained that one of the primary drivers of inequity in the corporate space is regulatory complexity. While established founders and companies with access to capital and experts may be able to obtain advice and comply with the proposed rule, small businesses in underserved communities that do not have such support to help them navigate this new regulatory scheme will be disproportionately disadvantaged by the proposed rule, and the net effect will be to chill formation of new businesses in these communities, limiting their economic opportunity.

Another commenter recommended FinCEN consider the potential adverse effects that frequent reporting could have on small companies seeking investors. The commenter explained that if the scope of ownership interests is not tailored appropriately, small businesses could be required to report personally identifiable information for several investors. As investors cycle in and out, more information will need to be obtained and reported, and the risk of inadvertent disclosure will rise. These risks and operational burdens could be a deterrent to seeking needed capital, or at least reduce the value of such capital. FinCEN is particularly sensitive to potential adverse consequences that this final rule could have for small businesses and underserved communities, and has made efforts to minimize burdens on these and other segments of the regulated community. Whether additional efforts are necessary is a question FinCEN will evaluate as it receives feedback from stakeholders after reporting requirements take effect.

ii. Final Regulatory Impact Analysis

a. Overview of the RIA

The RIA begins with a summary of the rationale for the final rule, five regulatory alternatives to the final rule, and findings from the cost and benefit analysis. The next section is a detailed cost analysis that considers costs to: the public (including sub-sections estimating the affected public for BOI reports, the cost of initial BOI reports, the cost of updated BOI reports, and the cost of FinCEN identifiers); FinCEN; and other government agencies. The section concludes with other cost considerations. The next section is a qualitative discussion of benefits. This is followed by conclusions. FinCEN revised some of the organization, sub-headings, and wording of the RIA for further clarity. Changes to the analysis or assumptions are clearly specified, as well as references to comments that are incorporated into the RIA. In the course of this discussion, FinCEN describes its estimates, along with any non-quantifiable costs and benefits.[247]

b. Rationale for the Final Rule

This rule is necessary to comply with and implement the CTA. As described in the preamble, this rule is consistent with the CTA's statutory mandate that FinCEN issue regulations regarding the reporting of beneficial ownership information. Specifically, the regulations implement the CTA's requirement that reporting companies submit to FinCEN a report containing their BOI. As required by the CTA, these regulations are designed to minimize the burden on reporting companies and to ensure that the information reported to FinCEN is accurate, complete, and highly useful. As also described throughout the preamble, although the U.S. Government has tools capable of obtaining some BOI, the tools' limitations, and the time and cost required to successfully deploy them, suggest the magnitude of the benefits that a centralized repository of information, free from those limitations, delays, and costs, would provide to law enforcement. Additionally, FinCEN's other existing regulatory tools have limitations. The 2016 CDD Rule, for example, requires that certain types of U.S. financial institutions identify and verify the beneficial owners of legal entity customers at the time those financial institutions open a new account for a legal entity customer. But the 2016 CDD Rule has certain limitations: the information about beneficial owners of certain U.S. entities seeking to open an account at a covered financial institution is not

[247] Throughout the analysis, FinCEN rounds estimates for entity counts to the nearest whole number, and any wage and growth estimates to the nearest 1 or 2 decimal places. Calculations may not be precise due to rounding, but FinCEN expects this rounding method produces no meaningful difference in the magnitude of FinCEN's estimates or conclusions.

comprehensive, not reported to the Government, and not immediately available to law enforcement, intelligence, or national security agencies. The CTA's statutory mandate that FinCEN collect BOI will address these existing challenges and result in increased transparency of corporate beneficial ownership to appropriate government agencies throughout the United States.

c. Discussion of Regulatory Alternatives to the Final Rule

The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered certain significant alternatives in the NPRM that would be available under the statute. FinCEN replicated those alternatives here with adjustments for clarity and for incorporated changes to the RIA. FinCEN also included two additional alternative scenarios. The sources and analysis underlying the burden and cost estimates cited in these alternatives are explained in the RIA. Although not replicated in this RIA, the NPRM also included a comparison of how the estimated cost changed under different burden assumptions.[248] The NPRM's comparison illustrates that the time burden is a significant component of the overall cost of the rule and highlights the importance of training, outreach, and compliance assistance in the implementation of this rule in order to decrease the burden and costs to the public.

1. Indirect Submission of BOI

One alternative would be to require reporting companies to submit BOI to FinCEN indirectly, by submitting the information to their jurisdictional authority who would then transmit it to FinCEN. In this case, jurisdictions would need to develop IT processes that would ultimately transmit data to FinCEN. For example, each jurisdictional authority would have to build a system to electronically receive BOI; scan, quality check, or otherwise process images; protect, secure, and store all of the BOI; and provide a receipt of filing acknowledgement. Moreover, FinCEN would still have to build numerous interfaces and all of the backend systems necessary to securely accept, validate, process, and store BOI and test each one of the interfaces with each jurisdictional authority. This approach would provide inconsistent customer experience, significantly increase testing efforts for FinCEN, and potentially create security vulnerabilities if jurisdictional authorities did not adhere to government-mandated security standards. As a lower bound estimate, if FinCEN assumes that jurisdictions would incur 25 percent of FinCEN's stated initial IT development costs of approximately $72 million, then each jurisdiction would incur approximately $18 million in development costs. As an upper bound estimate, if FinCEN assumes that jurisdictions would incur 75 percent of the stated costs, then each jurisdiction could incur as much as approximately $54 million for IT development, plus additional ongoing maintenance costs. At either end of the range, this scenario would impose significant costs on state and local governments, as well as increase the total costs associated with the rule.[249] FinCEN does not assess that this scenario will significantly decrease FinCEN's estimated costs; FinCEN will still incur costs in developing the IT systems to receive and administer access to BOI, and FinCEN will likely incur additional costs in organizing activities and reporting streams across multiple jurisdictions.

FinCEN requested comment in the ANPRM on questions regarding the collection of BOI through partnership with state, local, and Tribal governments. In response to the ANPRM, several state authorities commented that they should not be involved in the process of collecting and transmitting BOI to FinCEN. These comments were summarized in the NPRM,[250] and based on the issues they raised, FinCEN decided not to propose an alternative in which reporting companies would submit BOI to FinCEN through another jurisdictional authority. FinCEN noted in the NPRM that it continues to consider whether there are feasible opportunities to partner with state authorities on the BOI reporting requirement, particularly where states already collect BOI, and requested comment. Responsive comments have noted the challenges with implementing this scenario. A discussion of this alternative scenario is included to address comments that continued to question whether reporting to FinCEN was necessary, given that states collect such information. As concluded in the NPRM, FinCEN believes indirect reporting is not a viable alternative and rejects it.

2. Reporting Timeline for Existing Entities

The CTA requires reporting companies already in existence when the final rule comes into effect to submit initial BOI reports to FinCEN ''in a timely manner, and not later than 2 years after'' that effective date.[251] In the NPRM, FinCEN proposed requiring existing reporting companies to submit initial reports within one year of the effective date, which is permissible given the CTA's two-year maximum timeframe. As noted in the NPRM, however, FinCEN considered giving existing reporting companies the entire two years to submit initial BOI reports as authorized by the statute, and compared the cost to the public under the one-year and two-year scenarios.

In both scenarios, the estimated cost per initial BOI report ranges from $85.14 to $2,614.87, depending on the complexity of a reporting company's beneficial ownership structure. That cost does not change depending on whether reporting companies have to incur it within one year or two years of the rule's effective date. If all 32,556,929 existing reporting companies have to incur it in the same single year, the aggregate cost to all existing reporting companies is approximately $21.7 billion for Year 1, after applying the beneficial ownership distribution assumption. FinCEN assumed that if the reporting deadline for existing reporting companies was two years from the final rule's effective date, then half of those entities would file their initial BOI report in the first year and the other half would file in the second, dividing that initial aggregate cost in half to produce average aggregate costs of approximately $10.8 billion in each year.[252]

[248] *See* 86 FR 69968 (Dec. 8, 2021), Table 9.

[249] In the NPRM, FinCEN suggested that costs to State or local governments in this alternative scenario could range from 10 percent to 100 percent. Given feedback received through the rulemaking process, FinCEN is adjusting this range to be from 25 percent to 75 percent. The lower bound range increases to 25 percent to account for potential burden increases to these jurisdictions related to system requirements. The upper bound is lowered to 75 percent, since these jurisdictions are not building any disclosure methods under this scenario.

[250] *See* 86 FR 66954–69955 (Dec. 8, 2021).

[251] 31 U.S.C. 5336(b)(1)(B).

[252] Changing the estimated number of initial reports in Year 1 and Year 2 has downstream effects on other estimates in the analysis. FinCEN assumes that the estimated number of FinCEN identifier applications tied to initial report filings (the number is estimated to be 1 percent of reporting companies) would similarly extend from a one-year to two-year period. Half of the initial FinCEN identifier applications, which FinCEN assumes are linked to persons with ties to existing reporting companies, would be filed in Year 1, and the other half in Year 2. FinCEN also assumed that updated reports and FinCEN identifier information would increase at an incremental rate throughout the two-year period (rather than one-year), and therefore calculated the number of updated reports by extending its methodology to a 24-month timeframe (rather than a 12-month timeframe). From Year 3 onward, estimates related to initial BOI reports

Continued

According to FinCEN's analysis, requiring existing reporting companies to file initial BOI reports within two years of the rule's effective date instead of one results in a 10-year horizon present value at a three percent discount rate of approximately $60.3 billion instead of $64.8 billion—a difference of approximately $4.5 billion and a 10-year horizon present value at a seven percent discount rate of approximately $51.1 billion instead of $55.7 billion—a difference of approximately $4.6 billion. FinCEN assesses, however, that these long-term figures obscure the practical reality that having to incur the same cost one year from the rule's effective date instead of two years from its effective date will have little impact on most existing reporting companies. The cost is the same either way. Additionally, FinCEN's effective date of January 1, 2024 will allow for a substantial outreach effort to notify reporting companies about the requirement and give existing reporting companies time to understand the requirement prior to the one-year timeline. Because a year's difference for initial compliance does not change the per reporting company impact and because of the value to law enforcement and other authorized users of having access to accurate, timely BOI in the relatively near term, given the time-sensitive nature of investigations, FinCEN rejects this alternative.

3. Reporting Timeline for Updated BOI Reports

As in the NPRM, FinCEN considered whether to require reporting companies to update BOI reports within 30 days of a change to submitted BOI (as proposed in the NPRM) or within one year of such change (the maximum permitted under the CTA).[253] FinCEN compared the cost to the public of these two scenarios.

FinCEN assumed that allowing reporting companies to update reports within one year would result in ''bundled'' updates encompassing multiple changes. For example, a reporting company that knows one beneficial owner plans to dispose of ownership interests in two months while another plans to change residences in four might wait several months to report both changes to FinCEN. Meanwhile, law enforcement agencies and others with authorized access to—and interest in—the relevant reporting company's BOI would be operating with outdated information and potentially wasting time and resources. A shorter 30-day requirement, on the other hand, would be more likely to result in reporting companies filing discrete reports associated with each individual change, allowing those with authorized access to BOI to stay better updated.

From a cost perspective, FinCEN assumed that bundling would result in reporting companies submitting approximately half as many updated reports overall. FinCEN also assumed that bundled reports would have the same time burden per report as discrete updated reports, given that the expected BOSS functionality requires all information to be submitted on each updated report.

Were FinCEN to require updates within one year instead of 30 days, reporting companies that choose to regularly survey their beneficial owners for information changes would not have to reach out on a monthly basis to request any updates from beneficial owners. FinCEN has not accounted for this potentially reduced burden in its estimate other than in the time required to collect information for an updated report, but discusses this potential collection cost more in the cost analysis section of the RIA. FinCEN's cost estimates for updated reports also do not currently account for the possibility that individuals using FinCEN identifiers might further reduce costs by alleviating reporting companies of the responsibility of filing updated BOI for those beneficial owners. This is because those beneficial owners would be responsible for keeping the BOI associated with their FinCEN identifiers updated, consistent with the requirements of the rule.

FinCEN estimated that requiring reporting companies to update reports in one year instead of 30 days results in an aggregate present value cost decrease of approximately $7.4 billion at a seven percent discount rate or $9.1 billion at a three percent discount rate over a 10-year horizon. The annual aggregate cost savings to reporting companies (which FinCEN assumes are small entities) would be approximately $519.3 million in the first year and $1.1 billion each year thereafter. These cost savings would be due to reporting companies filing fewer reports.

While FinCEN does not dismiss an aggregate cost savings to the public, the bureau does not view the savings in that amount as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with FinCEN. As noted in both the preamble and NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While risks such as this are difficult to quantify, these concerns justify the increased cost.

4. Company Applicant Reporting for Existing Reporting Companies and Updates for All Reporting Companies

In the NPRM, FinCEN considered requiring reporting companies in existence on the rule's effective date to report company applicant information with their initial reports. FinCEN further considered requiring all reporting companies to update changes to company applicant information as they occur in the future. Many comments criticized these requirements as overly burdensome. While the final rule does not include these requirements, this alternative analysis assesses what the cost would have been if those requirements had been retained.

Numerous comments to the NPRM noted that existing entities would bear a significant cost in identifying company applicants, who may not have had contact with the reporting company since its initial formation. Based on comments, FinCEN assesses that each existing reporting company, regardless of structure, would have incurred an additional burden of 60 minutes per initial report in locating and reaching out to the company applicant(s). This estimate represents the average amount of time to locate information for company applicants, taking into account there may be instances where the company applicant is known, with easily obtained information, as well as other instances where the company applicant is unknown and difficult or impossible to locate. Using the wage estimate from the cost analysis in Section V.A.ii.e. below, this would total an additional $56.76 per initial report in Year 1. FinCEN only applies this burden to Year 1 to reflect that it would affect existing entities' initial BOI reports, which would be filed within Year 1. FinCEN acknowledges that some of the initial BOI reports in Year 1 will be from newly created entities that would likely not incur this additional time burden, but to be conservative, FinCEN applied the burden to all initial reports in Year 1 for this analysis. At least one commenter also noted that such a requirement could result in costs to state governments, as reporting companies may enlist secretaries of state

would be based on the number newly created reporting companies.

[253] 31 U.S.C. 5336(b)(1)(D).

or similar offices to help look for historical company applicants, which FinCEN has not separately calculated, but assumes is part of the 60 minutes added to the burden estimate.

In the NPRM, FinCEN estimated how many report updates would likely stem from changes to company applicant information.[254] This was based on an assumption that 90 percent of BOI reports would have one company applicant while 10 percent of reports would have two company applicants. The RIA includes an updated distribution of reporting companies' beneficial ownership structures, which is applied to this analysis. The updated distribution estimates that 59 percent of reporting companies would have no unique company applicant (the company applicant would be the beneficial owner); 36.1 percent would have one company applicant; and 4.9 percent would have two company applicants. Applying the estimated cost of an updated report from the analysis in Section V.A.ii.e. below (which increased from the cost assessed in the NPRM), this would result in an additional cost in Year 1 of $2.3 billion and $1 billion each year thereafter.

In addition to the burden of submitting initial company applicant information and subsequent report updates, companies may have also incurred a cost associated with monitoring changes to company applicant information. This cost may have been significant, especially given that company applicants are less likely to stay in regular contact with associated reporting companies. This additional burden from ongoing monitoring is not separately estimated and could result in an underestimation of the cost savings to reporting companies in this alternative scenario.

FinCEN estimated that requiring company applicant reporting and updates for existing entities results in a present value cost increase of approximately $8.3 billion at a seven percent discount rate or $9.9 billion at a three percent discount rate over a 10-year horizon. FinCEN did not select this scenario, thereby reducing the cost to small businesses.

5. Alternative Definitions of Beneficial Owner

FinCEN considered many alternative definitions of ''beneficial owner'' due to comments received in the NPRM. Some of these comments proposed that the definition of beneficial owner should match the definition in the 2016 CDD Rule, under which one person must be identified as in substantial control, with up to four other beneficial owners identified by way of equity interests of 25 percent or more, for a maximum of 5 beneficial owners.

Using the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the time burden for some reporting companies reviewing which individuals to report as beneficial owners in their initial reports. This is because that definition is already known to most reporting companies, ties ownership to narrow ''equity interests'' rather than ''ownership interests,'' and caps the maximum number of beneficial owners a company can have for purposes of the rule at five. This combination would make it easier for some entities to identify individuals to report as beneficial owners, and would reduce the number of individuals they have to report. However, FinCEN assesses that the majority of reporting companies are unlikely to have more than five beneficial owners to report under the rule. FinCEN assumes that 59 percent of reporting companies will have one beneficial owner and an additional 36.1 percent of reporting companies will have four beneficial owners, and therefore would not significantly benefit in terms of reporting burden from the narrower definition.[255] Most of the benefits of using the 2016 CDD Rule's definition of beneficial owner therefore seem likely to accrue to reporting companies with more complex beneficial ownership structures, which FinCEN estimates at 4.9 percent of reporting companies. All reporting companies would benefit from being able to reuse information previously provided to financial institutions for compliance with a CDD rule with which they are already familiar (existing reporting companies) or that would have to be provided to financial institutions in order to obtain necessary financial services (new reporting companies).

Because reporting companies are already familiar with the 2016 CDD Rule and would not need to spend time understanding the requirement, FinCEN assumes that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would reduce the time burden of the first portion of initial BOI reports' time burden by a third for all reporting companies, regardless of beneficial ownership structure. In the cost analysis in Section V.A.ii.e. below, the first portion of initial BOI reports' time burden is to ''read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition.'' However, if the 2016 CDD Rule definition was adopted, ''understanding the requirement'' would not apply, as reporting companies are already familiar with the requirement. The second portion of initial reports' time burden, ''identify . . . beneficial owners . . .,'' would likely also be less burdensome given reporting companies may have already done this exercise for compliance with the 2016 CDD Rule. However, FinCEN assumes the decreased burden in the first portion of the time burden will already account for this. Therefore, this decrease in burden will result in a per-report cost reduction of approximately $25.23 for reporting companies with a simple structure.

Additionally, reporting companies with complex beneficial ownership structures, which FinCEN assessed to be 4.9 percent of reporting companies, will have a decreased time burden for other steps related to filing initial BOI reports and updated reports. This is because FinCEN currently assesses the costs to such entities in the scenario in which they report 10 people on their BOI report (8 beneficial owners and 2 company applicants). If the 2016 CDD Rule definition of ''beneficial owner'' was adopted, then such entities would instead report the maximum of 5 beneficial owners and 2 company applicants, or 7 people. For consistency, FinCEN assumes that this would result in a reduction of a third of the time for ''identifying, collecting and reviewing information about beneficial owners and company applicants,'' and a reduction of 30 minutes in filling out and filing the report (10 minutes for each of the 3 beneficial owners no longer reported, given the definition's cap). With all of these time burden reductions included, the initial report time burden estimate for reporting companies with complex ownership structures would be reduced by 390 minutes (650 minutes versus 260 minutes), which results in a per-report cost reduction of approximately $369 ($2,614.87 versus $2,245.95).[256]

In order to calculate the total cost change of the rule under this alternative, FinCEN assumes that all time burdens related to updated reports and FinCEN identifiers would remain the same with one exception. FinCEN applies the same time reduction for complexly structured reporting companies' updated report time burden as applied for initial reports (a decrease from 110 minutes to

[254] 86 FR 69963 (Dec. 8, 2021).

[255] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies.

[256] This cost analysis estimates an hourly wage rate of $56.76. Dividing this wage rate by 60 minutes yields a cost of approximately $0.95 per minute; if this rate is multiplied by 390 minutes, the cost is approximately $369.

80 minutes) to account for only 7 persons submitted on the form. Therefore, FinCEN assesses that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the cost in Year 1 by $3.4 billion and $614.5 million in each year thereafter. The present value cost decreases by approximately $7 billion at a seven percent discount rate or $8 billion at a three percent discount rate over a 10-year horizon. This benefit to small businesses would come at the significant cost of undermining the purpose of the CTA, which specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' without reference to a maximum number. As explained in the preamble, the 2016 CDD Rule's numerical limitation on beneficial owners contributes to the omission of persons that have substantial control of a reporting company, but are not reported. Replicating that approach in this rule would primarily benefit more complex entities, with the foreseeable consequence of allowing illicit actors to easily conceal their ownership or control of legal entities. This is a considerable cost to the U.S. economy that FinCEN assesses would not benefit most reporting companies. This lopsided balance led FinCEN to reject suggestions to adopt the 2016 CDD Rule's definition of ''beneficial ownership'' in the final reporting rule.

d. Summary of Findings

1. Costs

The cost analysis estimates costs to the public, FinCEN, and other government agencies. The public cost estimates included detailed analysis estimating the size of the affected public, costs related to filing initial BOI reports, costs related to filing updated BOI reports, and costs relating to obtaining and maintaining a FinCEN identifier. FinCEN estimates that it will cost the majority of the 32.6 million domestic and foreign reporting companies that are estimated to exist as of the January 2024 effective date approximately $85 apiece to prepare and submit an initial BOI report. In comparison, the state formation fee for creating a limited liability company could be between $40 and $500, depending on the state.[257] Commenters provided feedback on these cost estimates, as well as additional cost considerations, which are summarized in the cost analysis section in Section V.A.ii.e. below.

Administering the regulation will also entail costs to FinCEN. This RIA estimates costs to FinCEN for information technology (IT) development and ongoing annual maintenance, as well as processing electronic submissions of BOI data. FinCEN will incur additional costs while implementing the BOI reporting requirements. FinCEN and other government agencies may also incur costs in enforcing compliance with the regulation. The RIA includes a quantitative and qualitative discussion related to government costs. Some comments to the NPRM discussed or asked for clarification regarding the FinCEN cost estimates.

The rule does not impose direct costs on state, local, and Tribal governments. However, state, local, and Tribal governments will incur indirect costs in connection with the implementation of the rule. Comments to the NPRM from state authorities and others described potential costs that such entities may incur due to the rule. FinCEN summarizes and discusses these comments above in connection with regulatory alternatives to the final rule, and also includes a discussion of such indirect costs in the RIA.

The present value of the total cost over a 10-year time horizon at a seven percent discount rate for the rule is approximately $55.7 billion. At a three percent discount rate, the present value is approximately $64.8 billion as the aggregate cost estimate of the rule.

2. Benefits

There are several benefits associated with this rule. These benefits are interrelated and likely include better, more efficient investigations by law enforcement, and assistance to other authorized users in a variety of activities, which in turn may strengthen national security, enhance financial system transparency and integrity, and align the U.S. financial system more thoroughly with international financial standards. These benefits of the rule are difficult to quantify. A detailed discussion of the significant benefits is included in the qualitative discussion of benefits in Section V.A.ii.f. below. FinCEN did not receive significant comments regarding the estimate of benefits in the NPRM, although some comments spoke generally about the benefits BOI will bring authorized users and the wider benefits of corporate transparency.

e. Detailed Discussion of Costs

The rule will incur costs to the public related to BOI reports and FinCEN identifiers, costs to FinCEN for administering the reporting process, and costs to other government agencies that may be involved in enforcement of the reporting requirements or receive questions about the process from the public. The discussion of costs includes both quantitative and qualitative items.

1. Costs to the public

The primary cost to the public associated with the rule will result from the requirement that reporting companies must file an initial BOI report with FinCEN, and update those reports as appropriate. To assess this cost, FinCEN first estimates the affected public, which is the number of reporting companies that will be required to file. FinCEN then considers the steps and costs associated with filing an initial BOI report and updating those BOI reports. These estimations draw upon and include points raised by commenters.

Affected Public for BOI Reports

The rule requires reporting companies to file BOI reports and update them as needed. The reporting companies are the affected public for this requirement. To estimate reporting companies, FinCEN first estimated the total number of entities that could be reporting companies and then subtracted the number of entities FinCEN estimates will be exempt from the reporting company definition. FinCEN does not have definitive counts of reporting companies, but has identified information relevant to the definition. None of the information identified by FinCEN can be used in the analysis to estimate the number of reporting companies without caveats.

Reporting companies include domestic and foreign entities. FinCEN first estimated the number of domestic entities, regardless of type, that will be in existence at the rule's effective date and then created yearly thereafter. While the definition of ''domestic reporting company'' is any entity that is a corporation, limited liability company, or other entity that is created by the filing of a document with a secretary of state or any similar office under the law

[257] One commenter stated that ''the current costs charged for formation of a U.S. foreign subsidiary not owned by a large entity varies between $1,500–2,000.'' The fee for Articles of Organization of a domestic limited liability company in Kentucky is $40. Kentucky Secretary of State, *Business Filings Fees,* available at *https://sos.ky.gov/bus/business-filings/Pages/Fees.aspx.* The fee for a Certificate of Registration for a limited liability company in Massachusetts is $500. Massachusetts Secretary of State, *Corporations Division Filing Fees,* available at *https://www.sec.state.ma.us/cor/corfees.htm.* FinCEN also identified a website that provides the fees for all states, as a point of reference. *See* IncFile, *Review State Filing Fees & LLC Costs,* available at *https://www.incfile.com/state-filing-fees.*

of a state or Indian tribe, FinCEN is not able to limit its estimate of domestic entities to specific entity types or to entities created by such a filing in each jurisdiction that falls under the rule's requirement because not all entity types are specified in the underlying data and because of variance among state-by-state filing practices. This simplifies the analysis but may produce overestimations of affected entities and total burden and costs.

As noted in the NPRM, FinCEN considered many possible data sources in estimating total and annual new domestic entities.[258] While none of the considered data sources provided a complete picture of domestic entities, they provided an approximate range for estimation and highlighted the likely variation among states in numbers of reporting companies. Overall, the sources FinCEN reviewed suggest that tens of millions of entities may be subject to the rule. To estimate the number of initial total and then ongoing annual new domestic entities in the NPRM, FinCEN proposed analyzing data from the most recent iteration (2018) of the annual report of jurisdictions survey administered by the IACA,[259] in which a subset of state authorities provided statistical data in response to the same series of questions on the number of total entities and total new entities in their jurisdictions by entity type. FinCEN stated in the NPRM that it proposed relying upon IACA data because the survey provides consistency in format and response among multiple states. However, FinCEN also noted potential shortcomings that the IACA data may not exactly match the definition of ''domestic reporting company'' in the proposed rule, and may have other limitations.[260]

FinCEN received comments regarding the data source for this analysis. Commenters were generally concerned that the source was outdated and included only a few states. Some comments proposed other sources. In light of these comments, FinCEN reviewed a number of public data sources from the U.S. Census Bureau.

The first, *Statistics of U.S. Businesses (SUSB),* is an annual series that provides national and subnational data on the distribution of economic data by establishment industry and enterprise size.[261] The *2019 SUSB Annual Data Table* provides the number of firms, establishment, employment, and annual payroll for U.S. businesses. The dataset totals 6,102,412 firms; however, firms included in this table must have ''paid employees at some time during the year.'' [262] Similar to the conclusion in the NPRM, FinCEN determined that this dataset had shortcomings when applying it to the reporting company definition, as it only represents employer firms and excludes a material number of North American Industry Classification System Codes (NAICS) industries that should be considered for the purposes of this analysis given entities in those industries will likely be reporting companies.[263]

The next Census Bureau data source reviewed was the *Annual Business Survey (ABS) Program.*[264] The ABS combines data results from survey respondents and administrative records to produce data on business ownership. The survey is collected from employer businesses. The table *2020 ABS—Characteristics of Businesses* provides 2019 data on the number of owners and employees for 5,771,292 employer firms.[265] FinCEN used this dataset is to estimate a distribution for reporting companies' beneficial ownership structure complexity.

The third Census Bureau data source reviewed was the *Nonemployer Statistics* (NES), an annual series that provides subnational economic data for businesses that have no paid employees and are subject to federal income tax.[266] The *Nonemployer Statistics: 2019 Table,* released in 2022, is derived from tax return data shared by the IRS.[267] This dataset provides a breakdown of the different types of legal formations of nonemployer establishments. For example, 86.46 percent of the total 27,104,006 nonemployer establishments in 2019 were sole proprietorships, as defined by the U.S. Census Bureau. FinCEN confirmed through outreach that Census categorizes single-owner LLCs as proprietorships, consistent with their equivalence for tax purposes. This percentage is relevant to the estimated distribution of reporting companies' beneficial ownership complexity.

Finally, FinCEN reviewed IACA's *2021 International Business Registers Report* to see whether the data could be used to estimate the total number of domestic entities.[268] This dataset includes statistics provided by a subset of state authorities in response to a series of questions on the number of total entities and total new entities in their jurisdictions by entity type. The 2021 version of this report provides data for 2018, 2019, and 2020 for each reporting jurisdiction.

FinCEN is relying upon IACA's *2021 International Business Registers Report* data in this analysis because it: provides a consistent survey format; is based on state authorities' data, which more closely aligns to the definition of reporting company; and includes multiple years of data that enabled FinCEN to determine a company formation growth factor and extrapolate the total number of U.S. entities expected by the end of 2024 (the rule's effective date). Given that the rule's domestic reporting company definition requires an entity to be created by a filing with a secretary of state or similar office, FinCEN believes that the most relevant data source for estimating the number of reporting companies is data provided by state authorities. Relying on data linked to federal tax filings, for example, would be further removed

[258] *See* 86 FR 69956 (Dec. 8, 2021).

[259] *See* International Association of Commercial Administrators, *Annual Reports of Jurisdictions Survey* (2018), available at *https://www.iaca.org/annual-reports/.*

[260] As noted in the NPRM, these data limitations included not specifying general partnerships. *See* 86 FR 69956 (Dec. 8, 2021).

[261] *See* U.S. Census Bureau, *2019 SUSB Annual Data Tables by Establishment Industry* (last revised May 27, 2022), available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.* FinCEN also reviewed the data in the NPRM stage, and noted it was not aware of a methodology that may be applied to ''carve out'' entities that meet the definition of reporting companies from the SUSB data. *See* 86 FR 69956 (Dec. 8, 2021).

[262] A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments. *See* U.S. Census Bureau, *SUSB Glossary* (last revised April 8, 2022), available at *https://www.census.gov/programs-surveys/susb/about/glossary.html.*

[263] Among those NAICS industries not included are crop and animal production; rail transportation; pension, health, welfare, and vacation funds; and others. *See* U.S. Census Bureau, *SUSB Program Coverage* (last revised April 1, 2022), available at *https://www.census.gov/programs-surveys/susb/about.html.*

[264] *See* U.S. Census Bureau, *Annual Business Survey (ABS) Program* (last revised July 5, 2022), available at *https://www.census.gov/programs-surveys/abs.html.*

[265] *See* U.S. Census Bureau, *2020 Annual Business Survey (ABS)—Characteristics of Businesses* (last revised Oct. 26, 2021), available at *https://www.census.gov/data/tables/2020/econ/abs/2020-abs-characteristics-of-businesses.html.*

[266] *See* U.S. Census Bureau, *Nonemployer Statistics (NES)* (last revised July 12, 2022), available at *https://www.census.gov/programs-surveys/nonemployer-statistics.html.*

[267] *See* U.S. Census Bureau, *NES Tables 2019* (last revised June 27, 2022), available at *https://www.census.gov/programs-surveys/nonemployer-statistics/data/tables.html.*

[268] FinCEN reached out to IACA following their comment to the NPRM, and this source was identified in that outreach. *See* International Association of Commercial Administrators, *2021 International Business Registers Report,* (2021), available at *https://www.iaca.org/ibrs-survey/.*

from the definition of the population FinCEN aims to estimate than data provided by state authorities. FinCEN received statistics from a few state authorities in both the ANPRM and NPRM comment process.[269] However, IACA's dataset provides a consistent survey format across multiple state authorities, which FinCEN continues to assess to be the best approach for this analysis.

This approach utilizes the same source originator as the NPRM (IACA), but relies upon more updated information from the source as well as on an annual company formation growth factor, addressing a specific concern raised by commenters. FinCEN's 2024 total domestic entity estimate based on the 2021 IACA data, adjusted to 2024, is 36,510,573.

To estimate the total number of existing domestic entities in the United States in 2024, FinCEN leveraged the 2021 IACA dataset and performed the following analysis:

1. FinCEN used data from the ''Number of Registered entities by the end of the year'' dataset reported by each of the following jurisdictions: Colorado, Michigan, North Carolina, Wisconsin, Connecticut, Massachusetts, Louisiana, Rhode Island, Washington DC, and North Dakota.[270] The data were for each reported year (2018, 2019, and 2020).[271]

2. FinCEN totaled the number of entities reported for each year for each jurisdiction. The IACA data provide a breakdown by type of entity (*i.e.,* Limited Liability Company, Private Limited Company, General Partnership, or ''other'').[272] For purposes of estimating the total number of entities, the data were aggregated so that each jurisdiction had a total number of entities for each reported year.

3. Next, FinCEN calculated the percent change or ''growth factor'' for each jurisdiction from 2018 to 2019 and from 2019 and 2020.[273] The percent change for each jurisdiction from these two previous calculations was then averaged, effectively providing FinCEN with an average annual percent change for each reporting jurisdiction. Finally, FinCEN calculated an average across all jurisdictional averages for both years to provide the overall average annual percent change across all reporting jurisdictions, a 6.83 percent year over year increase.[274]

4. Next, U.S. Census Bureau data [275] were compiled for each IACA reported jurisdiction and for the total United States population for the year 2020.

5. An entity per capita rate was calculated for each of the IACA reported jurisdictions by dividing the total estimated domestic entities in 2020 (4,232,083) by the total population of respondent states for 2020 (50,040,439). The entity per capita rate was 0.085.

6. FinCEN then multiplied the entity per capita rate by the overall United States population in 2020 (331,501,080) to arrive at the estimated 2020 total domestic entities in the United States of 28,036,127.

7. Finally, by applying the growth factor of 6.83 percent per year for four years (*i.e.,* from 2020 through 2024), FinCEN projected there will be 36,510,573 existing domestic entities in 2024.[276]

To estimate the total number of new domestic entities annually in the United States after 2024, FinCEN leveraged the 2021 IACA dataset and performed the following analysis:

1. FinCEN used data in the ''Number of Incorporations'' dataset reported by each of the jurisdictions (Ohio, Michigan, Colorado, North Carolina, Wisconsin, Massachusetts, Connecticut, Louisiana, Rhode Island, and North Dakota).[277] The data were for the 2018, 2019, and 2020 reporting years.[278]

2. For each reporting jurisdiction, FinCEN calculated the three year average number of incorporations.[279]

3. FinCEN totaled the average incorporations for each reporting jurisdiction. This total was 631,738 average incorporated entities for the reporting sample.

4. Next, U.S. Census Bureau data were compiled for each IACA reporting jurisdiction and for the total United States population for the year 2020.[280]

5. FinCEN calculated the total population for IACA reporting jurisdictions by adding each individual reporting jurisdictions' population. The total population for reporting jurisdictions in 2020 was 61,140,933.

6. FinCEN calculated the rate of incorporated entities per capita by dividing the total three year average number of incorporations (631,738) by the total population for reporting jurisdictions in 2020 (61,140,933). The per capita rate was 0.01.

7. FinCEN multiplied the U.S. Census Bureau's total 2020 population (331,501,080) by the per capita rate to arrive at the annual domestic incorporation estimate of 3,425,231.

8. Next, FinCEN calculated the average growth rate factor for new annual domestic incorporations. This was performed by taking the average of the percent change between 2018 and 2019 for reported jurisdictions' total incorporations and the percent change between 2019 and 2020 for reported

[269] Such comments to the NPRM are summarized above. ANPRM comments were summarized in the NPRM. *See* 86 FR 69956 (Dec. 8, 2021).

[270] FinCEN accessed the data by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/.* Then, FinCEN selected ''BD—Registered Entities'' to view the data labeled ''Number of Registered entities by the end of the year.'' The states that are included in the 2021 IACA dataset differ from those in the 2018 IACA data that FinCEN relied upon in the NPRM. States such as Delaware that generally have a high rate of entities per capita are not included in the 2021 dataset. FinCEN notes that inclusion or removal of such states in the analysis could have effects; however, FinCEN compares the estimates based on the 2018 versus 2021 datasets and finds that they are consistent.

[271] Two jurisdictions, Louisiana and North Dakota, only reported data for the year 2020.

[272] LLCs comprised the majority of reported entities in the data. General Partnerships are included although such entities are likely not to fall under the definition of a reporting company because FinCEN understands that states do not generally require such entities to file creation documents. The total number of General Partnerships is relatively small (22,061) and their inclusion is not expected to significantly affect the RIA's conclusions.

[273] In the NPRM, FinCEN assumed that the number of new entities each year equals the number of dissolved entities. A few commenters disagreed with this assumption. FinCEN used the 2021 IACA dataset, which included data for the years 2018, 2019, and 2020, to identify a year-over-year growth factor and extrapolate to 2024.

[274] Two jurisdictions did not provide historical data for 2018 and 2019. Their reported entities in 2020 were therefore excluded from the growth factor analysis.

[275] *See* U.S. Census Bureau, *State Population Totals and Components of Change 2020–2021* (last revised Dec. 21, 2021), available at *https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.*

[276] FinCEN notes that the updated IACA data estimate for 2021 total domestic entities (using the growth factor) was 29,949,748 compared to the NPRM total domestic entity estimate of 30,247,071, which provides an example of the growth factor's accuracy. However the data reviewed by FinCEN showed that there is variation in the annual growth of entity formations over the last several years. There will likely continue to be variation in this growth in an increasing interest rate environment and potential economic turbulence. However, for simplicity of the analysis, FinCEN chooses to use a simple annualized average growth rate factor for entity formation using IACA data.

[277] FinCEN accessed the data by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/.* Then, FinCEN selected ''BD—Incorporations'' to view the data labeled ''Number of Incorporations.'' Notably, the reporting jurisdictions differ from the ''Number of Registered entities by the end of the year'' dataset. The District of Columbia did not report its number of incorporations, whereas Ohio provided its number of incorporations but not total registered entities per year.

[278] Two jurisdictions, Louisiana and North Dakota, only reported data for the year 2020.

[279] FinCEN used the three year average of new domestic incorporations rather than most recent year (2020) of data due to the significant fluctuation in year-over-year incorporations.

[280] *See* U.S. Census Bureau, *State Population Totals and Components of Change 2020–2021* (last revised Dec. 21, 2021) available at *https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.*

jurisdictions' total incorporations.[281] The average growth rate factor for new annual domestic incorporations was 13.1 percent.

9. Applying the growth factor for new annual domestic incorporations of 13.1 percent per year for four years (*i.e.,* from 2020 through 2024), FinCEN estimates that there will be 5,605,471 new domestic entities created in 2024.

FinCEN also estimates the number of foreign entities already registered to do business in one or more jurisdictions within the United States as of the effective date of the regulation and the number that are newly registered each year thereafter. FinCEN estimates these numbers based on tax filing data, noting that it may not include all entities that qualify as ''foreign reporting companies'' as defined in the rule. In 2019 there were approximately 23,000 partnership tax returns filed by foreign partnerships.[282] Using the 6.83 percent annual growth factor, which was applied to each year for five years (*i.e.,* from 2019 to 2024), the estimate of these entities in 2024 is 31,997. In addition, in 2019 an estimated 22,000 foreign corporations filed the Form 1120–F (''U.S. Income Tax Return of a Foreign Corporation'')—which is estimated to be 30,605 in 2024. In addition, another subset of foreign entities will have requirements under the rule: foreign pooled investment vehicles. The rule requires that any entity that would be a reporting company but for the pooled investment vehicle exemption and is formed under the laws of a foreign country shall file with FinCEN a report that provides identification information of an individual that exercises substantial control over the pooled investment vehicle. The NPRM separately estimated the burden and costs of foreign pooled investment vehicle reports. However, based on current database development, such reports will be filed via the BOI report form. Therefore, FinCEN now includes estimates related to this requirement as part of the BOI report burden and costs. Based on information provided by SEC staff, FinCEN estimates that at least 6,834 entities will be obligated to make initial reports as of 2021. Applying the same growth factor of 6.83 percent increases this estimate to 8,331 in 2024, when the rule comes into effect.

Adding these foreign estimates (31,997 + 30,605 + 8,331) results in an overall estimate of 70,933 foreign entities operating in the United States that may be subject to BOI reporting requirements. To estimate new foreign companies annually after 2024, FinCEN multiplied the estimate of new entities annually, 5,605,471, by the overall ratio of existing total foreign companies in 2024 to total entities based on the IACA data analysis (70,933)/36,510,573). This results in an estimate of 10,890 new foreign entities subject to the reporting companies per year after 2024.

Summing the estimates of both domestic and foreign entities, the total number of existing entities in 2024 that may be subject to the reporting requirements is 36,581,506 and the total number of new companies annually thereafter is 5,616,362.[283]

FinCEN corroborated this estimate with the reviewed Census Bureau data. The total nonemployer entities from the *Nonemployer Statistics (NES): 2019 Table* was 27,104,006. The total number of employer entities was 5,771,292 from the *2020 ABS—Characteristics of Businesses* dataset and 6,102,412 from the *2019 SUSB Annual Data Table.* Therefore, per U.S. Census Bureau data, the total number of entities in the U.S. in 2019 could be estimated to be 32,875,298 (the total of nonemployer entities from the NES and employer entities from the ABS) or 33,206,418 (the total of nonemployer entities from the NES and employer entities from the SUSB). This roughly aligns with FinCEN's estimate, though FinCEN's estimate is higher. This may indirectly address commenter's concerns that the data from a small number of states may not be applicable or inclusive enough to apply to the rule's jurisdiction.

To estimate reporting companies that will be subject to BOI filing requirements, FinCEN had to subtract the number of entities that will meet one or more of the exemptions to the reporting company definition from the number of total entities. To estimate the number of existing entities under each of the exemptions, FinCEN conducted research and outreach to multiple stakeholders to identify a reasonable estimate for each exemption. Some of these estimates have been updated from the NPRM to account for more recent or precise sources. Additionally, the 6.83 percent growth factor estimate has been applied to all of the exemption categories unless otherwise noted.[284] Although some exempt entity types may not experience the same growth as others, FinCEN chose to use the 6.83 percent average growth assumption as a general growth for consistency and simplicity. FinCEN acknowledges that some categories of exempt entities may even decline year over year. However, these are potentially outweighed by exempt entity categories that are growing year over year and that comprise the majority of the overall exempt entity population (*i.e.,* tax-exempt entities). FinCEN applied the growth factor as necessary depending on the date of the source of information. For example, if the data are based on 2021 information, FinCEN applied the growth factor for 3 years (2021 to 2022, 2022 to 2023, and 2023 to 2024).

FinCEN considered whether the data underlying FinCEN's estimate of exempt entities in each exemption category aligns with the definition of the exemption in the rule. The sources used for these estimates should not be viewed as encompassing all entities that may be captured under the definition. Additionally, the sources should not be understood to convey any interpretation of the exemptions' definitions. As noted in the NPRM, FinCEN identified sources for estimates using what it believes to be the best data available *related to* the exemption in question. Furthermore, these estimates are based on multiple data sources that may not always align, meaning that the data source for an exemption may not only or totally include the entities subject to the exemption that are included in the total entities' estimate. Each exemption estimate is considered in detail here:

[281] Louisiana and North Dakota only reported new incorporations for the year 2020 and therefore were excluded from the growth factor analysis for this estimate.

[282] FinCEN understands that, in the vast majority of cases, foreign partnerships file a U.S. partnership tax return because they engage in a trade or business in the United States; however, this may not always be the case.

[283] For analysis purposes, FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[284] This analysis generalizes trends across different categories of exemption categories that may not be the case in practice. For example, the number of entities in some exemption categories (such as securities reporting issuers, banks, credit unions, or brokers or dealers in securities) could decrease over time.

1. *Securities reporting issuers:* FinCEN relied upon information provided by SEC staff. This estimate is 7,965.[285] The number is provided by SEC staff based on analysis of all operating companies that filed periodic reports pursuant to the Securities Exchange Act of 1934 with the SEC in calendar year 2021.

2. *Governmental authorities:* FinCEN relied upon the U.S. Census Bureau's 2017 Census of Governments for this estimate. FinCEN accessed the publicly available zip file ''Table 1. Government Units by State: Census Years 1942 to 2017'' and the ''Data'' Excel file included therein. The Excel file lists the total number of federal, state, and local government units in the United States as of 2017 as 90,126.[286] FinCEN requested comment in the NPRM on whether such entities should be scaled for future entity count projections, and did not receive a response. FinCEN assesses that governmental authorities' formation or destruction is not connected to economic growth. Therefore, FinCEN does not apply the growth factor to this estimate and used a total governmental entity count of 90,126.

3. *Banks:* FinCEN accessed the number of Federal Deposit Insurance Corporation (FDIC)-insured entities as of June 30, 2022, through the ''Institution Directory'' on FDIC's Data Tools website. FinCEN searched for active institutions anywhere in the United States, which resulted in 4,780 insured institutions (banks).[287] FinCEN also considered whether to include in this estimate uninsured entities that are required to implement written AML programs as a result of a final rule issued on September 15, 2020.[288] However, given that the exemption may or may not apply to these entities, FinCEN did not include them. FinCEN did not apply a growth factor to these entities because of the downward trend in bank counts over the last several decades, as evidenced in the FDIC data. Therefore, FinCEN used a total bank count of 4,780.[289]

4. *Credit unions:* There are 4,853 federally insured credit unions as of June 30, 2022.[290] FinCEN did not apply a growth factor to these entities because of the downward trend in credit union counts over the last several decades, as evidenced in the NCUA data. Therefore, FinCEN used a total credit union count of 4,853.[291]

5. *Depository institution holding companies:* According to a report from the Federal Reserve, as of December 31, 2021, there are 3,546 bank holding companies and 10 savings and loan holding companies (6 insurance, 4 commercial).[292] FinCEN did not apply a growth factor to these entities because of the downward trend in depository institution holding company counts over the last several decades. Therefore, FinCEN used a total count of 3,556 (3,546 bank holding companies and 10 savings and loan holding companies).[293]

6. *Money services businesses:* According to the FinCEN Money Services Business (MSB) Registrant Search page, there are 23,622 registered MSBs as of July 8, 2022.[294] Please note this count includes MSBs that are registered for activity including, but not limited to, money transmission. This count does not include MSB agents that will not be within the scope of the exemption since they are not registered with FinCEN. FinCEN's 2024 estimate is 26,957.

7. *Brokers or dealers in securities:* According to the SEC's Fiscal Year 2023 Congressional Budget Justification, the number of registered broker-dealers in fiscal year 2021 was 3,527.[295]

8. *Securities exchanges or clearing agencies:* According to the SEC's website, there are 24 registered national securities exchanges and 14 registered clearing agencies (includes Proposed Rule Change Filings and Advance Notice Filings), totaling 38 entities.[296] FinCEN's 2024 estimate is 43.

9. *Other Exchange Act registered entities:* According to an SEC proposed rule, there are two exclusive securities information processors.[297] The SEC's website shows that there is one national securities association, the Financial Industry Regulatory Authority.[298] According to data available on the SEC's website as of July 2022, there are 467 municipal advisors.[299] The SEC's website lists 10 nationally recognized statistical rating organizations.[300] The SEC granted two applications to register as security-based swap repositories.[301] According to prior SEC proposed collection notices, there are three approved OTC derivatives dealers as of 2019[302] and 373 registered transfer agents as of mid-2018.[303] According to data available on the SEC's website, there are 48 security-based swap dealers

[285] FinCEN did not project how many securities reporting issuers could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[286] *See* U.S. Census Bureau, *Table 1. Government Units by State: Census Years 1942 to 2017* (last revised Oct. 8, 2021), available at *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[287] *See* Federal Deposit Insurance Corporation, *Details and Financials—Institution Directory,* available at *https://www7.fdic.gov/idasp/advSearchLanding.asp.*

[288] 85 FR 57129 (Sept. 15, 2020).

[289] FinCEN did not project how many banks could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[290] *See* National Credit Union Administration, *Quarterly Credit Union Data Summary* (Q2, 2022), p. i, available at *https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q2.pdf.*

[291] FinCEN did not project how many credit unions could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[292] Federal Reserve Board of Governors, *Supervision and Regulation Report,* (May 2022), p. 18, available at *https://www.federalreserve.gov/publications/files/202205-supervision-and-regulation-report.pdf.*

[293] FinCEN did not project how many depository holding companies could decrease from 2021 to 2024 and therefore left the 2021 estimate unchanged.

[294] *See* Financial Crimes Enforcement Network, *MSB Registrant Search,* available at *https://www.fincen.gov/msb-registrant-search.*

[295] Securities and Exchange Commission, ''Fiscal Year 2023 Congressional Budget Justification,'' *https://www.sec.gov/files/fy-2023-congressional-budget-justification-annual-performance-plan_final.pdf,* p. 33. FinCEN did not project how many brokers or dealers in securities could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[296] Securities and Exchange Commission, *Self-Regulatory Organization Rulemaking,* available at *https://www.sec.gov/rules/sro.shtml.*

[297] Securities and Exchange Commission, *Proposed Rule: Market Data Infrastructure,* 85 FR 16731 (Mar. 24, 2020).

[298] Securities and Exchange Commission, *Self-Regulatory Organization Rulemaking,* available at *https://www.sec.gov/rules/sro.shtml.*

[299] Securities and Exchange Commission, *Information about Registered Municipal Advisors* (July 2022), available at *https://www.sec.gov/help/foia-docs-muniadvisorshtm.html.*

[300] Securities and Exchange Commission, *Current NRSROs,* available at *https://www.sec.gov/ocr/ocr-current-nrsros.html.*

[301] Securities and Exchange Commission, *Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository* (June 16, 2021), available at *https://www.sec.gov/rules/other/2021/34-92189.pdf* and *Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository* (May 7, 2021), available at *https://www.sec.gov/rules/other/2021/34-91798.pdf.*

[302] Securities and Exchange Commission, *Proposed Collection; Comment Request,* 84 FR 6450 (Feb. 27, 2019).

[303] Securities and Exchange Commission, *Proposed Collection; Comment Request,* 83 FR 47949 (Sept. 21, 2018).

as of July 13, 2022.[304] The total count of these entities is 906. FinCEN's 2024 estimate is 1,034.

10. *Investment companies or investment advisers:* According to information provided by SEC staff, there are 2,764 registered investment companies (number of trusts, not funds) and 14,739 registered investment advisers as of December 2021. This totals 17,503. FinCEN's 2024 estimate is 21,337.

11. *Venture capital fund advisers:* According to information provided by SEC staff, there are 1,776 exempt reporting advisers utilizing the exemption from registration as an adviser solely to one or more venture capital funds as of December 2021. FinCEN's 2024 estimate is 2,165.

12. *Insurance companies:* According to the Treasury Department's Federal Insurance Office's annual report on the insurance industry, there were 676 life and health insurers, 2,614 property and casualty insurers, and 1,260 health insurers licensed in the United States during 2020, totaling 4,550.[305] FinCEN's 2024 estimate is 5,925.

13. *State licensed insurance producers:* According to the National Association of Insurance Commissioners' website, as of October 14, 2021, there were more than 236,000 business entities licensed to provide insurance services in the United States.[306] FinCEN's 2024 estimate is 287,698.

14. *Commodity Exchange Act registered entities:* Counts related to the following entities are available on the Commodity Futures Trading Commission (CFTC) website: Designated Contract Market (16); Swap Execution Facility (19); Designated Clearing Organization (15); and Swap Data Repository, Provisionally-registered (4)—totaling 54.[307] Additionally, CFTC staff provided the following breakdown for the following companies as of August 31, 2022: Futures Commission Merchant (58); Introducing Broker in Commodities (995);Commodity Pool Operators (1,256); Commodity Trading Advisory (1,686); Retail Foreign Exchange Dealer (4); Swap Dealer, Provisionally-registered (107); and Major Swap Participant (0)—totaling 4,106. These totals combined equal 4,160. FinCEN's 2024 estimate is 4,747.

15. *Accounting firms:* FinCEN searched the Public Company Accounting Oversight Board's (PCAOB) Registered Firms list, accessible on their website, and identified 835 firms as of July 7, 2022.[308] FinCEN searched for firms in the United States, Northern Mariana Islands, and Puerto Rico and totaled those with the status of ''Currently Registered'' or ''Withdrawal Pending.'' FinCEN's 2024 estimate is 953.

16. *Public utilities:* FinCEN relies upon the U.S. Census Bureau's 2019 Statistics of U.S. Businesses data for this estimate. FinCEN accessed the publicly available 2019 SUSB annual data tables by establishment industry and the ''U.S. & states, 6-digit NAICS'' Excel file. The Excel file lists the total firms in the United States with the NAICS code of 22: Utilities as 6,096.[309] SUSB data only include entities with paid employees at some time during the year. FinCEN understands that firms may operate in multiple NAICS code industries; therefore this number could include firms that partly operate as utilities and partly as other types of exempt entities. Additionally, each ''firm'' in Census data may include multiple entities. FinCEN's 2024 estimate is 8,480.

17. *Financial market utilities:* According to the designated financial market utilities listed on the Federal Reserve's website, there are eight such entities.[310] While the website has not been updated since January 29, 2015, FinCEN understands this estimate is still applicable and that the number is unlikely to change by 2024. Therefore no growth factor is applied to this estimate.

18. *Pooled investment vehicles:* According to information provided by SEC staff, as of December 2021 there were 115,756 pooled investment vehicle clients reported by registered investment advisers. Of these, 6,438 are registered with a foreign financial regulatory authority. FinCEN subtracted these for a total of 109,318.[311] FinCEN's 2024 estimate is 133,265.

19. *Tax-exempt entities:* A commenter recommended that FinCEN rely on data that more accurately reflect the number of entities with federal tax-exempt status. FinCEN therefore relies on the 2021 Internal Revenue Service Data Book, which includes an annual count of tax-exempt organizations, nonexempt charitable trusts, nonexempt split-interest trusts, and section 527 political organizations for fiscal year 2021. This number is 1,980,571 as of September 30, 2021.[312] FinCEN's 2024 estimate is 2,414,437.

20. *Entities assisting a tax-exempt entity:* FinCEN could not find an estimate for these entities, and a comment to the ANPRM suggested that the public is also not aware of a possible estimate. Therefore, to calculate this estimate, FinCEN assumes that approximately a quarter of the entities in the preceding exemption will have a related entity that falls under this exemption, totaling 603,609 in 2024.[313]

21. *Large operating companies:* This estimate is based on tax information. There were approximately 231,000 employers' tax filings in 2019 that reported more than 20 employees and receipts over $5 million.[314] FinCEN's 2024 estimate is 321,357.

22. *Subsidiaries of certain exempt entities:* In the NPRM, FinCEN referenced a commercial database provider that indicated there were 239,892 businesses in the U.S. that were ''majority-owned subsidiaries.'' As noted in the NPRM, this estimate was not refined further to consider only wholly-owned subsidiaries of *certain exempt entities.* During the review of additional data sources suggested by commenters, FinCEN identified that, per the *2020 ABS—Characteristics of Businesses* survey, 1.97 percent of employer respondents identified

[304] Securities and Exchange Commission, *List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants,* available at *https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants.*

[305] U.S. Department of the Treasury Federal Insurance Office, *Annual Report on the Insurance Industry* (Sept. 2021), p. 5, available at *https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf.*

[306] National Association of Insurance Commissioners, *Producer Licensing* (last updated Oct. 14, 2021), available at *https://content.naic.org/cipr_topics/topic_producer_licensing.htm.*

[307] Data for each of the entities are available at the following respective CFTC websites. The numbers cited herein are as of July 11, 2022: *https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations* (filtered by ''Designated''); *https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities* (filtered by ''Registered''); *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations* (filtered by ''Registered''); and *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories* (filtered by ''Pending—provisional registration'').

[308] *See* Public Company Accounting Oversight Board, *Registration, Annual and Special Reporting,* available at *https://rasr.pcaobus.org/Search/Search.aspx.*

[309] U.S. Census Bureau, *U.S. & states, 6-digit NAICS* (2019), available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.*

[310] Federal Reserve Board of Governors, *Designated Financial Market Utilities* (Jan. 29, 2015), available at *https://www.federalreserve.gov/paymentsystems/designated_fmu_about.htm.*

[311] This estimate may not account for foreign pooled investment vehicles advised by banks, credit unions, or broker-dealers.

[312] Internal Revenue Service, *Data Book, 2021* (May 2022), p. 30, available at *https://www.irs.gov/pub/irs-pdf/p55b.pdf.*

[313] $2{,}414{,}437 \times 0.25$.

[314] The gross receipts include all receipts from activities conducted directly by the entity, including foreign sales to the extent that the entity has a branch in a foreign country. However, it would not include, for example, the gross receipts earned by a foreign subsidiary of the entity.

themselves as a ''business owned by a parent company, estate, trust, or other entity.'' [315] FinCEN applied this percentage to the 2024 total entity estimate of 36,581,506 to determine that there will be 720,656 wholly owned subsidiary entities in 2024. To calculate the subset of these entities that are wholly owned subsidiaries of *certain exempt entities,* FinCEN divided the number of exempt entities (not including the subsidiary exemption) by the 2024 total estimate to identify that around 10.93 percent are *certain exempt entities.* Finally, FinCEN applied this 10.78 percent of certain exempt entities to 720,656 wholly owned subsidiaries to calculate an estimated 77,752 *subsidiaries of certain exempt entities* in 2024.

23. *Inactive entities:* One commenter expressed concern that entities considered ''inactive'' in state registries may not be exempt from reporting obligations due to the lack of information to reliably estimate which and what percentage of administratively dissolved entities are, in fact, no longer actively engaged in business. FinCEN understands this concern and is not proposing an estimate for this exemption due to a lack of available data. FinCEN notes that administratively dissolved companies may not be included in the estimates from the IACA data.[316] If this is the case, there is no need to subtract such entities from the total entities estimate because they are not counted. However, there are likely to be some companies on corporate registries in the United States that fall under this exemption. If such companies were included in the 2021 IACA survey responses, it would impact FinCEN's estimates by *increasing* the total number of reporting companies. This means that FinCEN's estimate of reporting companies is potentially over-inclusive rather than under-inclusive, and therefore the total cost estimate would be less than what is estimated in this analysis.

FinCEN considered whether the exemption categories were likely to overlap, and therefore included counts of the same entities that would result in a duplicative subtraction. For example: A variety of entities, such as public utilities, securities reporting issuers, and brokers or dealers in securities, could be large operating companies with more than 20 employees and $5 million in gross receipts/sales; certain subsidiaries of exempt entities may themselves be exempt entities; or specific exemptions may overlap.[317] Another scenario could be that the exemption estimates include entities that are not in the IACA data (such as a bank that is a large operating company with more than 20 employees and $5 million in gross receipts/sales), resulting in an unnecessary subtraction.

Estimating the precise amount of overlap for each of these possibilities and other potential overlaps is difficult due to lack of data. Critically, however, FinCEN assumes that any overlap would have a relatively minor effect on the burden estimate as a whole. With that in mind, FinCEN has not attempted to estimate each category of overlap.[318]

Given this analysis, FinCEN estimates that the total number of existing exempt entities as of 2024 is approximately 4,024,577. Subtracting this number from the estimate of 36,581,506 total existing entities as of 2024, FinCEN estimates that there are 32,556,929 entities that will meet the definition of a reporting company as of 2024, excluding exemptions. To estimate new exempt companies annually, FinCEN multiplied the estimate of new companies annually, 5,616,362, by the overall ratio of existing exempt entities to total existing entities from the calculations based on IACA data (4,024,577/36,581,506). The resulting estimate of new exempt entities is approximately 617,894. Therefore, FinCEN estimates that there will be 4,998,468 new entities per year that meet the definition of reporting company, excluding exemptions.

As discussed in the cost analysis, to estimate annual costs of the rule's requirements, FinCEN assumed a distribution of reporting companies' beneficial ownership structure complexity. The *2020 ABS—Characteristics of Businesses* survey provides the number of owners for employer firms and was identified as the best source for an estimated distribution of reporting companies' beneficial ownership structure because of its focus on U.S. entities.[319] The survey's data show that 58.96 percent of respondent employer firms were owned by a single person. Further, 95.09 percent of all respondents reported under 4 owners (*i.e.,* 58.96 percent of respondents indicated 1 owner plus 36.13 percent of respondents indicated 2 to 4 owners). The assumption that the majority of reporting companies will have a simple structure is further supported by the *Nonemployer Statistics: 2019 Table,* which shows that 87 percent of the approximately 27 million nonemployer firms were considered sole-proprietorships, which includes single-owner LLCs.[320]

For purposes of estimating total cost, FinCEN applied the following distribution based on the *2020 ABS—Characteristics of Businesses* survey data: 59 percent of reporting companies will have a ''simple structure'' (*i.e.,* one beneficial owner and the same person is the company applicant), 36.1 percent of reporting companies will have an ''intermediate structure'' (*i.e.,* four beneficial owners and one company applicant), and 4.9 percent of reporting companies will have a ''complex structure'' (*i.e.,* 8 beneficial owners and two company applicants).[321] The

[315] The 2022 ABS Survey instruction manual states that this response should be selected ''when one of these types of organizations acted as a single entity in owning all of the rights, claims, interests, or stock in this business in 2021.'' FinCEN understands this to mean that those entities that selected this response should be considered wholly owned subsidiaries for purposes of this estimate. *See* U.S. Census Bureau, *2022 Annual Business Survey (ABS) Instructions* (2022), p. 7, available at *https://www2.census.gov/programs-surveys/abs/information/ABS-2022-Instructions.pdf.*

[316] IACA's 2017 survey specified in its questions that entities be in good standing or active. FinCEN assumes that this same expectation applies to the 2021 survey, but recognizes that does not mean no such companies were included in the state statistics.

[317] In the NPRM, FinCEN listed an example of an overlap as insurance companies and state-licensed insurance producers. One commenter noted that such an overlap is highly unlikely to occur. FinCEN concurs with the commenter's statement and no longer cites this as example; however, other exemptions may still overlap.

[318] FinCEN considered whether it may be able to address the overlap between the large operating company exemption and the public utility exemption that was calculated using SUSB data. Because the SUSB data may be filtered by employee size, FinCEN could remove from the estimate the number of entities with greater than 20 employees. However, this estimate would be imprecise given that SUSB data does not consider the threshold of $5 million gross receipts/sales.

[319] In contrast, the NPRM included an estimated distribution of beneficial owners per report that relied upon UK entity data.

[320] Although the *Nonemployer Statistics: 2019 Table* had a higher percentage of likely simple structures for the purpose of a distribution, FinCEN elected to use the lower percentage to ensure a conservative final cost estimate.

[321] The U.S. Census Bureau's *2020 ABS—Characteristics of Businesses* data show that 58.96 percent of reporting employer firms had 1 owner. FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with a simple structure. The ABS data show that 36.13 percent of reporting employer firms had 2 to 4 owners, and FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with an intermediate structure. The ABS data show that 4.9 percent of reporting employer firms had either 5 to 10 owners (1.7 percent), 11 or more owners (0.63 percent), are ''business owned by a parent company, estate, trust, or other entity'' (1.97 percent), or have an unknown number of owners (0.62 percent). FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with a complex structure. The distribution used by FinCEN is based on a consolidated version of this distribution, simplified for ease of the analysis. *See* U.S. Census Bureau,

estimated distribution and number of reported persons is summarized in Table 1.

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Table 1 – Estimated Distribution of Reporting Companies and Persons Reported

Distribution	Beneficial Owners	Non-Beneficial Owner Company Applicants
0.59	1	0
0.361	4	1
0.049	8	2

Costs of Initial Report Determination and Filing

FinCEN assumes that each reporting company will file one initial BOI report. Given the implementation period of one year to comply with the rule for entities that were created or registered prior to the effective date of the final rule, FinCEN assumes that all of the entities that meet the definition of reporting company will submit their initial BOI reports in Year 1, totaling 32,556,929 reports. While new reporting companies may be created during this year as well, FinCEN notes that some existing companies will dissolve and not file within the first year, though FinCEN does not account for dissolutions in the analysis. Additionally, FinCEN applied a 6.83 percent growth factor each year since the date of the underlying source (2020) through 2024 (*i.e.,* Year 1 of the rule) that would account for the creation of new entities until the implementation of the rule. In Year 2 and thereafter, FinCEN estimates that the number of new initial BOI reports will be fixed at 4,998,468, which is the same estimate as the number of new entities per year that meet the definition of reporting company in 2024.[322] Such entities will have 30 days to file an initial report.

In response to comments to the NPRM, FinCEN includes herein a detailed discussion of the steps related to the filing of an initial BOI report and the related time burden and cost of each step. The PRA analysis in the NPRM proposed the following activity and average time burden breakdown for initial BOI reports:

- 20 minutes to read the form and understand the requirement;
- 30 minutes to identify and collect information about beneficial owners and applicants;
- 20 minutes to fill out and file the report, including attaching a scanned copy of an acceptable identification document for each beneficial owner and applicant;
- 70 minutes in total.

A few commenters stated that this estimate was too short and proposed additional activities that should be considered as part of the cost of filing an initial BOI report. Commenters also proposed that different levels of employees, and subsequently differing wage levels, will participate in the process and should be accounted for in the burden. Commenters pointed to the penalty provisions as incentives to consult with professionals prior to filing. Further, the rule requires that those filing BOI reports on behalf of the reporting company certify that the report is true, correct, and complete, which may increase the time burden associated with the filing requirement. FinCEN considers these points and adjusts the time burden estimate accordingly.

Considering the comments and the rule, it is apparent that the burden and costs associated with filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN contends, as stated in the NPRM, that for some reporting companies this will be a minimal burden because the structure of the reporting company will be simple.[323] For example, an LLC could have one beneficial owner, who self-registered the entity and is therefore the company applicant. The same person filing the initial BOI report would, with minimal burden, be able to fill out the report using their own personal information that is readily available to them. However, entities with more complex structures will have an increased level of burden associated with applying the rule to the company's structure and collecting identifying information from multiple people. For example, a corporation could have four beneficial owners with ownership interests, four beneficial owners with substantial control (consider a corporation with a CEO, CFO, COO, and general counsel, each of which do not hold 25 percent or greater ownership interests), and two company applicants (consider a law firm partner who controlled the filing of incorporation documents, and a person at the law firm who filed the documents). An employee of the corporation may file the report to FinCEN, with the CEO's review, and may analyze how the rule will apply to the company's structure, identify who needs to be reported, and coordinate the collection of identifying information from the nine required people. These two examples of simple versus complex structures result in very different burden estimates.

FinCEN assumed in the NPRM that all reporting companies would be small businesses, in part due to the fact that large operating companies are exempt. However, FinCEN acknowledges that a small business may not always have a simple reporting structure for purposes of this requirement. FinCEN therefore estimates a range of burden and costs associated with filing an initial BOI report to account for the likely variance among reporting companies. The lower bound of the range assumes a reporting company with a simple structure and

2020 Annual Business Survey (ABS)—Characteristics of Businesses, last updated Oct. 26, 2021, available at *https://www.census.gov/data/tables/2020/econ/abs/2020-abs-characteristics-of-businesses.html.*

[322] For analysis purposes, FinCEN assumes that the number of new entities per year from years 2 through 10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[323] One commenter ''disagreed vehemently'' with this assertion.

one individual to report where this same individual also fills out the BOI form. The upper bound of the range assumes a reporting company with a complex structure and ten individuals to report, in which multiple employees and persons may be involved in the filing activities. Including this consideration in the cost of filing initial BOI reports departs from the NPRM, in which the number of beneficial owners per report was considered in the analysis of updated BOI reports only.

A commenter argued that 15–25 beneficial owners could be required to be reported per company given the proposed definition. FinCEN believes that, given the types of entities that fall under the reporting company definition, such a high number of reported individuals would be an outlier scenario. FinCEN does not intend for the upper bound selected here to imply it is the maximum number of such persons that may be reported; there could indeed be reports with over 8 beneficial owners, and the rule does not put a cap on the number of beneficial owners to be reported. However, FinCEN believes those structures are rare and only a small subset of the entire population of reporting companies. This assumption is supported by the available data sources used to derive the distribution of reporting companies' beneficial ownership structures. Specifically, a strong majority of over 95 percent of reporting employer firms in the *2020 ABS—Characteristics of Businesses* survey stated they had less than four owners and 87 percent of nonemployer firms in the *Nonemployer Statistics: 2019 Table* were considered sole proprietorships, which included single-owner LLCs.

This assumption is also supported by available data from the Federal Reserve Banks' *Small Business Credit Survey (SBCS)* regarding the ways in which small businesses obtain financial services.[324] The SBCS data for both employer and nonemployer based small businesses indicate that very few of the surveyed entities obtain financing through ''other'' means, such as through farm-lending institutions, friends or family or the owner, nonprofit organizations, private investors, and government entities.[325] According to data from recent years, at most 5 percent of surveyed firms in a given year obtained financing through other means.[326] These findings hold regardless of number of employees for employer firms and for revenues of both employer and nonemployer firms. Because most small surveyed businesses do not seek financial services through non-traditional routes, FinCEN believes this supports the assumption that reporting companies will have a simple beneficial ownership structure from a financial stakeholders' perspective. Therefore, FinCEN believes the selected range is appropriate in estimating an average overall burden for the requirement. FinCEN uses a lower and upper bound estimate for each burden activity associated with filing initial BOI reports. FinCEN then estimates an average of these two scenarios to account for intermediately structured entities, assumed to have four beneficial owners and one company applicant.

The first step to complete a BOI report remains to read the form and understand the requirement, with slight amendments to account for reading other documents in addition to the form and analyzing the definition of reporting company. FinCEN takes the point raised by a commenter that some reporting companies may, as part of this activity, read the final rule. Given the length of the final rule, FinCEN concurs that in those instances it will take an individual longer than 30 minutes to complete this step. FinCEN anticipates issuing guidance documents to assist with this step that FinCEN estimates will lessen the burden associated with understanding the requirement. The commenter also stated that determining whether the entity is a reporting company and having another individual consider this conclusion and concur will also add time to this activity.[327] FinCEN assumes that the time reporting companies spend on this step will vary based on the complexity of their structure. While all companies will need to read the form and understand the requirement, more complexly organized entities are more likely to closely read the final rule, conduct an analysis of whether they are a reporting company, and request secondary review of this determination. Therefore, FinCEN estimates a range between 40 and 300 minutes (40 minutes to 5 hours) for this step. The lower bound is double the estimate in the NPRM. FinCEN believes this increase is appropriate given the points raised by the commenter about the time to review the final rule and/or FinCEN guidance documents, in addition to the form, and to analyze whether an entity is a reporting company. The upper bound is a half-hour higher than the timeframe proposed by the commenter; FinCEN believes 5 hours is an appropriate upper bound to account for the length of the final rule and review of future guidance documents.

The second step to complete a BOI report was slightly amended from the description in the NPRM. In addition to identifying and collecting information about beneficial owners and the company applicant, this information must also be *reviewed*. This amendment reflects a commenter's suggestion that the review of collected information should be accounted for, a detail which FinCEN agrees should be explicitly stated. Again, FinCEN assumes that the time reporting companies spend on this step will vary based on their structure. For a reporting company with a simple structure, where the person who completed the first step is the owner, this individual will already understand that the requirement only applies to their own information, and therefore will only need to collect the required information about themselves and their company, all of which should be readily available. FinCEN also anticipates issuing guidance documents to assist in simplifying such a determination for such entities. The rule does not require existing entities to identify a company applicant, which will lessen the burden of this activity for many reporting companies. In a more complex reporting company structure, multiple people may need to analyze who will meet the definition of beneficial owner and company applicant for their company and coordinate with these persons to collect their information for the BOI report. This scenario will be more burdensome; one commenter proposed 3 hours to determine beneficial ownership. Therefore, FinCEN estimates a range of 30 to 240 minutes (0.5 to 4

[324] *See* Federal Reserve Banks, *Small Business Credit Survey 2022 Report on Employer Firms* (May 2022), available at *https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms* and *Small Business Credit Survey 2021 Report on Nonemployer Firms* (2021), available at *https://www.fedsmallbusiness.org/survey/2021/report-on-nonemployer-firms.* The data is accessible on both sites through a ''download data'' link.

[325] The other response options in the survey to the question of the primary source of financial services for these firms were: alternative financial source, community development financial institution (CDFI), credit union, finance company, financial services company, fintech lender, larger bank, and small bank. The definitions of the options, including ''other'', may be found in the data's ''Definitions'' sheet.

[326] According to the 2021 SBCS employer firms data, 1 percent of firms obtained financial services from other means. According to the 2020 SBCS nonemployer firms data, 5 percent of firms obtained financial services from other means. These responses may be found in the data's ''Employer firms'' and ''Nonemployer firms'' sheets, respectively.

[327] The commenter also specified which role in a company may perform such activities; FinCEN considers these points in its discussion of the hourly wage estimate.

hours) to perform this step. The lower bound estimate is consistent with the estimate in the NPRM, while the upper bound incorporates the 3 hour estimate proposed by a commenter to identify beneficial owners, with an additional hour to account for collection and review of information from beneficial owners and company applicants.

The third step to complete a BOI report is to fill out and file the report. This step will require attaching an image of an acceptable identifying document for each beneficial owner and company applicant. FinCEN believes that the mechanics of filling out the report, including uploading attachments, will remain a relatively minor burden activity. This is partly because the other steps already account for understanding the form and collecting the necessary information. One comment noted that FinCEN did not account for acquiring, installing, and utilizing technology and systems to make this filing. The filing method will be accessible via the internet and will not require any additional acquisition or installation of technology by reporting companies, as FinCEN assumes that such technology is accessible to reporting companies. FinCEN believes that the time burden estimated in this step accounts for utilizing this technology to make this filing. The time burden to fill out the report may vary depending on the number of persons included. Therefore, FinCEN estimates a range of 20 to 110 minutes for this step. The lower bound estimate is consistent with the estimate in the NPRM, and assumes that it will take 20 minutes to fill out the report with information about the reporting company and one person. To estimate the upper bound, FinCEN assumed 10 additional minutes each to fill out the report for 9 additional persons (totaling 10 persons), resulting in 110 minutes.

Commenters raised other costs associated with filing initial BOI reports outside of these steps. The most frequently raised other cost was the need for reporting companies to hire professional expertise to assist in these steps, which was a point FinCEN specifically requested comment on in the NPRM.[328] The NPRM did not include the cost of hiring professionals in its cost estimate, but noted that FinCEN is aware that some reporting companies may seek legal or other professional advice in complying with the BOI requirements.

Given the comments received on this topic, FinCEN adds an estimate for professional expertise to the cost of initial BOI reports. FinCEN again assesses that a range is most appropriate for estimating this cost, as some entities may not consult professionals and therefore not incur this cost. As stated in the NPRM, FinCEN intends that the reporting requirement will be accessible to the personnel of reporting companies who will need to comply with these regulations and will not require specific professional skills or expertise to prepare the report. However, FinCEN concurs with comments that it is likely that some reporting companies will hire or consult professional experts. FinCEN also assesses that this likelihood increases for more complex reporting company structures.[329]

Commenters provided perspectives on the amount of time and hourly rate to consider for hiring professional expertise, which most commenters identified as lawyers or accountants. One commenter provided an estimate of 2 hours and another commenter provided an estimated range of 3–5 hours. FinCEN is adopting the high end of this range proposed by the second commenter of 5 hours. The hourly estimate takes into account the time for professional review of the entity's ownership and control structure and communications with the reporting company to ensure accurate understanding and filing of the report.

A commenter recommended a per hour rate estimate of $400, which was based on a recent SEC PRA analysis.[330] FinCEN generally agrees with the commenter's reasoning and therefore has adopted this estimate as part of the estimated range of cost associated with this requirement. However, FinCEN notes that this upper bound estimate potentially overestimates the cost to retain professional expertise, as the preparation and filing of reports with the SEC generally requires specialized knowledge of securities regulation. Although the completion of the BOI report is a new requirement for professionals such as lawyers and accountants to become familiar with, FinCEN does not view the content of the report to be as specialized. While $400 an hour may be an overestimation of the cost of professional services, FinCEN is incorporating it as an upper bound estimate given the feedback from commenters.

As reflected in Table 2, the total dollar estimate of the upper bound range of the cost of professional expertise is $2,000, which is based on the estimated 5 hours at an hourly rate of $400 per hour to complete an initial BOI report. FinCEN anticipates that this per reporting company upper bound cost will decrease over time for new reporting companies as professionals become familiarized with the rule and thus more efficient and effective in helping clients comply with the rule.

In the NPRM, the hourly wage rate estimated for each reporting requirement was an average cost of $27.07 per hour, the mean hourly wage for all employees from the U.S. Bureau of Labor Statistics' (BLS) May 2020 National Occupational Employment and Wage Estimates report. The foregoing rate was then multiplied by a private industry benefits factor of 1.42 [331] to estimate a fully loaded wage rate of $38.44 per hour. Commenters were critical of FinCEN's selection of the ''all employees'' [332] wage estimate used to calculate hourly wage rates, and expressed that such estimates were far less than what may reasonably be expected. Specifically, commenters criticized FinCEN's notion that ordinary employees, with no specialized knowledge or training, would be capable of filing the initial reports. Multiple commenters expressed that reporting companies will rely on, at least in part, managers and corporate officers to submit initial filings. FinCEN finds this argument persuasive and has amended estimated wage and fully loaded wage rates to reflect this.

FinCEN has increased the estimated base wage rate of $27.07 to approximately $39.97 per hour.[333] This

[328] FinCEN sought comment on whether small businesses anticipate requiring professional expertise to comply with the BOI requirements described herein and what FinCEN could do to minimize the need for such expertise. *See* 86 FR 69953 (Dec. 8, 2021). One comment stated that FinCEN's question to commenters in the NPRM on this topic is ''off the mark'' for any entities that are not businesses at all, as many entities engage in no interstate commerce, and that the question fails to refer to large businesses that do not fit within the exemptions.

[329] It may also be the case that such reporting companies with a more complex structure have in-house professional expertise that may assist with the requirements.

[330] Securities and Exchange Commission, *Holding Foreign Companies Accountable Act Disclosure Release No. 34–93701* (Dec. 2, 2021), p. 56, available at *https://www.sec.gov/rules/final/2021/34-93701.pdf.*

[331] The ratio between benefits and wages for private industry workers is $11.42 (hourly benefits)/$27.19 (hourly wages) = 0.42, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private industry dataset,* (March 2022), available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

[332] The proposed rule selected an ''all employees'' estimate to reflect FinCEN's goal to develop the BOI reporting requirement so that a range of businesses' ordinary employees, with no specialized knowledge or training may file reports.

[333] FinCEN assumes that the fully loaded hourly wage estimate calculated in this analysis is the average internal hourly cost to entities to comply

Continued

updated estimate derives from the BLS May 2021 Wage Estimates [334] and represents the average reported hourly wage rates of three major occupational groups assessed to be most likely responsible for executing filings on behalf of reporting companies: management; business and financial operations; and office and administrative support. The management group was included to account for feedback from commenters that senior officers and other management roles are likely to be involved in the filing activities, such as reviewing the form before it is filed. FinCEN concurs with this point from commenters and has therefore updated the wage estimate to account for such occupations.[335] Additionally, FinCEN assesses it is appropriate to include the occupational groups for business and financial operations and office and administrative support to account for a mix of specialized employees within a reporting company that may assist in the filing. FinCEN assesses that such employees are likely to include business or financial operations specialists that assist with conducting the reporting company's regulatory requirements, or office and administrative employees that assist with the reporting company's paperwork and other administrative tasks.

FinCEN reviewed and considered whether all major occupational groups should be included in this wage estimate. In particular, FinCEN considered whether legal occupations should be included. However, FinCEN accounts for the cost of legal (and other professional) expertise in an additional cost, a range of $0 to 2,000 per reporting company. FinCEN believes that this is a better way to account for the cost of legal expertise for this filing requirement because it reflects the billable rate that reporting companies are likely to pay for such services, rather than the profession's hourly wage rate,[336] and therefore more accurately estimate the cost to the reporting company. Regarding the other major occupational groups,[337] FinCEN acknowledges that individuals from such occupations may file BOI reports, given that entities in such industries may be reporting companies. However, the other occupational groups are not likely to be involved in the filing of a BOI report by virtue of their occupation, as opposed to the three groups that were selected.[338] As stated in the NPRM, those filing BOI reports on reporting companies' behalves could work across all industries (thus the reliance on the ''all employees'' wage estimate). However, FinCEN proposes a more specific approach here, based on the type of labor likely to be involved in the report filing according to NPRM comments.

The calculated average hourly wage of the above-mentioned three occupation groups is $39.97.[339] Multiplying the foregoing estimated hourly wage rate by the private industry benefits factor of 1.42 [340] [341] produces a fully loaded hourly wage rate of approximately $56.76. The wage rate is applied to all reporting companies, regardless of the estimated beneficial ownership structure, in order to reflect that the role of the individual filing in all scenarios could include a mix of managerial, specialized, and administrative individuals.

The following table shows the estimated cost of filing initial BOI reports per reporting company, which FinCEN estimates to be a range of $85.14–2,614.87 per reporting company.

with the rule. However, FinCEN recognizes that in practice, there is heterogeneity across entities for a number of reasons including but not limited to number and expertise of employees, and the geographical location, profitability, and age of the entity.

[334] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates United States* (May 2021), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[335] The wage rate that FinCEN included in the NPRM for ''all employees'' did include management occupations as part of this rate. However, by narrowing the occupational groups in the final RIA, FinCEN's analysis gives more weight to the role managers (and other specific occupational groups) will have in the reporting requirement. FinCEN believes this change is appropriate given the feedback received from commenters on the wage estimate.

[336] FinCEN's estimate assumes a $400 per hour rate for such expertise. As a point of comparison, the BLS mean hourly wage for the legal occupational group is $54.38.

[337] The other major occupational groups are the following: computer and mathematical; architecture and engineering; life, physical, and social science; community and social service; educational instruction and library; arts, design, entertainment, sports, and media; healthcare practitioners and technical; healthcare support; protective services; food preparation and serving related; building and grounds cleaning and maintenance; personal care and service; sales and related; farming, fishing, and forestry; construction and extraction; installation, maintenance, and repair; production; transportation and material moving. *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates United States* (May 2021), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[338] For example, a healthcare worker at a medical office is unlikely to be involved in the filing of the office's BOI report unless that healthcare worker is also the senior officer (or owner) of the office.

[339] FinCEN recognizes that in practice, the hourly wage will vary across reporting companies for a number of factors including, but not limited to, number and expertise of employees, and the geographical location, profitability, and age of the entity. FinCEN considered using an average of the lowest 10th percentile and then of the highest 90th percentile of these three wage categories, as provided by the BLS, rather than the $39.97 used for this analysis. This resulted in an hourly wage rate of $18.42 at the 10th percentile and $46.41 at the 90th percentile of the wage distribution. However, FinCEN chose to use an average of the 50th percentile (mean) wage rate of $39.97 due to a lack of data on the likely underlying wage distribution across reporting companies.

[340] The ratio between benefits and wages for private industry workers is $11.42 (hourly benefits)/$27.19 (hourly wages) = 0.42, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Cost for Employee Compensation: Private industry dataset,* March 2022, available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

[341] The NPRM included a sensitivity analysis of selecting a higher benefits factor of 2 based on the Department of Health and Human Services 2016 ''Guidelines for Regulatory Impact Analysis,'' which recommends that employees undertaking administrative tasks while working should have an assumed benefits factor of 2, which accounts for overhead as well as benefits. *See* Department of Health and Human Services, *Guidelines for Regulatory Impact Analysis* (2016), p. 33, available at *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//171981/HHS_RIAGuidance.pdf.* FinCEN did not apply this alternative in the RIA because no comments regarding the benefits factor were received and because FinCEN is concerned about the applicability of this benefits factor in this rulemaking. The benefits factor included herein applies broadly to private industry workers, rather than only those related to health and human services, which is more appropriate given the affected public for this rule.

Table 2 – Burden and cost of initial BOI reports per reporting company

Description	Simple Structure	Intermediate Structure	Complex Structure
Read FinCEN BOI documents, understand requirement, and analyze reporting company definition	40 minutes	170 minutes	300 minutes
Identify, collect, and review information about beneficial owners and company applicants	30 minutes	135 minutes	240 minutes
Fill out and file report	20 minutes	65 minutes	110 minutes
Total time burden to file:	90 minutes	370 minutes	650 minutes
Avg. wage rate to file (in dollars)	$56.76	$56.76	$56.76
Professional expertise cost (in dollars)	$0	$1,000	$2,000
Cost per initial report:	**$85.14**	**$1,350.00**	**$2,614.87**

In assessing the total cost of initial BOI reports in Year 1, FinCEN applies the distribution summarized in Table 1, which assumes that for reporting purposes, 59 percent of reporting companies have a simple structure, 36.1 percent have an intermediate structure, and 4.9 percent have a complex structure. The range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structure and assuming for the upper bound that all reporting companies are complex structures is $2.8 billion–$85.1 billion. Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of initial BOI reports to be $21.7 billion. In Year 2 and onwards, in which FinCEN assumes that initial BOI reports will be filed by newly created entities, the range of total costs is $425.6 million–$13.1 billion annually. Applying the reporting companies' structure distribution, the estimated total cost of initial BOI reports annually in Year 2 and onwards is $3.3 billion.

FinCEN considered a commenter's statement that exempt entities will incur costs of undergoing the first step of the initial BOI reporting burden, which is to read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition in order to initially confirm and understand their exempt status. FinCEN estimates that this will mostly be a *de minimis* cost for exempt entities. Such entities will likely only review the exemption category that applies to them, understand the exemption status, and not undergo further analysis. FinCEN agrees that some exempt entities may incur more substantive additional costs in understanding their exemption status, including time burden to read the final rule and guidance documents, analyze their entity's structure in relation to the exemptions, and possibly consult with professional experts. However, FinCEN believes such costs will apply to only a small portion of exempt entities. Further, the costs associated with this analysis will only be applicable initially and once the entity understands its applicability to a particular exemption, the cost associated with this analysis will be *de minimis* over time. In some cases, such ongoing analysis could be more costly. For example, an entity that just meets the criteria for the large operating company exemption because the company has 21 full-time employees may engage in regular analysis to ensure that the entity continues to meet the exemption (*i.e.,* in the event the employee count lowers to 19 for more than 30 days). FinCEN asserts that such scenarios will not apply broadly to the exempt entity populations.

The rule also includes specific special reporting rules. The foreign pooled investment vehicle rule requires that any entity that would be a reporting company but for the pooled investment vehicle exemption and is formed under the laws of a foreign country shall file with FinCEN a report that provides identification information of an individual that exercises substantial control over the pooled investment vehicle. In contrast to the NPRM, FinCEN is including the burden of such reports as part of the estimate of the burden for BOI reports. In the NPRM, FinCEN assessed that such initial reports would result in 40 minutes of burden (30 minutes less than the NPRM's estimate for filing initial BOI reports) in part due to the requirement that only one beneficial owner be identified. However, the updated approach to the burden estimate of filing initial BOI reports considers additional burden activities that foreign pooled investment vehicles may undertake and accounts for a low end range of one beneficial owner to report. Therefore, FinCEN assumes that the burden for initial BOI reports will be applicable to such entities, and a separate burden estimate is not calculated.

Finally, some of the special reporting rules may lessen the burden of initial report filings. The special rule for reporting companies owned by exempt entities requires such reporting companies to report the exempt entities' name, which will lessen the burden. Another special reporting rule states that existing entities do not need to report company applicant information. FinCEN does not separately calculate how much burden may be lessened by such special rules, although FinCEN considers what the cost of reporting company applicants for existing entities would have been in an alternative scenario.

Costs of Updated BOI Reports and Other Ongoing Costs

The rule requires that updated BOI be reported to FinCEN within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN concerning the reporting company or the beneficial owners of the reporting company. This includes any change with respect to who is a beneficial owner of a reporting company and any change with respect to information

reported for any particular beneficial owner.[342] In order to estimate the costs of updated BOI reports, FinCEN first estimated the number of updated reports a reporting company will likely file in a year and then considered the associated costs with the updated report requirement.[343] Commenters suggested FinCEN provide more clarity and a more accurate estimation as to the ongoing costs to small businesses.

FinCEN first estimates the number of updated reports per month based on the probability of the most likely triggers for an update occurring. FinCEN's assessment indicates that the three most likely triggers for updates to BOI reports are: (1) change in address of a beneficial owner or company applicant; (2) death of a beneficial owner; or (3) a management decision resulting in a change in beneficial owner. There may be other causes for updating BOI reports, such as change of beneficial owner or applicant name, expiration of the provided identification number document, or change in the identifying information for the reporting company, such as address or name/DBA. However, FinCEN assessed that these changes will occur at a relatively minor rate compared to the three most likely triggers.

Commenters included examples of other triggering events. For example, one commenter noted that although a renewed driver's license may not include a changed identification number, the image of the driver's license would change and an update would therefore be required. However, as noted in Section III.B.v. above, a change in the details of a document's image that do not relate to a change in information to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D) on the identification document will not trigger a requirement to update the image. FinCEN assesses that the rate at which such a number would change is not significant. For example, license renewal cycles vary state to state, which range from 2–4 years (Vermont) [344] to 12 years (Arizona).[345] Given that the renewal cycles are many years in length, updates would be infrequent. Similarly, the U.S. passport renewal cycle is generally 10 years. Given the infrequency of this update, FinCEN believes that providing an updated passport number and image of the same would not be considered a ''most likely trigger.'' FinCEN notes that the coverage of convertible instruments under the beneficial owner definition would result in updates, but FinCEN believes such events are captured in the estimate of a likelihood of a management decision resulting in a change in beneficial ownership.

No commenters proposed alternative ''most likely trigger events'' in order to estimate the number of updated reports. Therefore, FinCEN retains the ''most likely trigger events'' from the NPRM, with updates for more recent data sources and changes accounting for the final rule's elimination of the requirement to update information for company applicants. FinCEN also retains its assumption that updated reports stating that a previous reporting company is now eligible for an exemption would be negligible burden and has not separately estimated the number of reports that result from such a change. Updates are also required by the rule when a minor child that is a beneficial owner reaches the age of majority; similarly, updated reports based on such an event are not separately estimated.

To estimate the likelihood of the following, and thus updated BOI reports on a monthly basis (given that the rule requires updates within 30 calendar days), FinCEN approximated probabilities for these causes from other sources:

1. *Change in address of a beneficial owner:* According to the Census Bureau's Geographic Mobility data, 27,059,000 people one year or older moved from 2020–2021.[346] This is approximately 8.16 percent of the 2021 U.S. population.[347] Therefore, FinCEN assesses that 8.16 percent of beneficial owners may have a change in address within a year, resulting in an updated BOI report.

2. *Death:* FinCEN utilized data published in the Social Security Administration's 2019 Period Life Table to estimate this probability.[348] FinCEN expanded the range of ages to 18 to 90 [349] and calculated the median probability of death for males (0.0070) and females (0.0042). FinCEN then averaged these numbers, resulting in a 0.56 percent probability of death within a year.[350]

3. *Management decision:* Changes to beneficial ownership due to management decisions could encompass items such as a sale of an ownership interest or a change in substantial control (the removal, change, or addition of a beneficial owner with substantial control). FinCEN is not aware of a current data source that could accurately estimate such updates to BOI. As in the NPRM, FinCEN assumes that 10 percent of beneficial owners may change within a year due to management decisions.[351]

Totaling these estimated probabilities, there is an approximately 19 percent probability of a change for a given beneficial owner resulting in an updated BOI filing within a year.[352] FinCEN divided this by 12 to find the monthly probability of an update: 1.56 percent.

In the NRPM, FinCEN relied on data published in the UK in a 2019 study on their BOI reporting requirements and applied a distribution of the estimated number of beneficial owners per report to estimate the number of updated reports per year. FinCEN declines to rely on that data in the RIA, and instead utilizes the reporting company structure distribution in Table 1, applied to initial reports. This ensures that the RIA is consistent and also that the underlying data source is based on trends in U.S., rather than UK, entities. This distribution assumes that 59 percent of

[342] 31 CFR 1010.380(a)(2).

[343] The NPRM included a summary of information received from DC Department of Consumer and Regulatory Affairs. *See* 86 FR 69961 (Dec, 8, 2021).

[344] *See* Vermont Department of Motor Vehicles, *Application for License/Permit,* p. 3, available at *https://dmv.vermont.gov/sites/dmv/files/documents/VL-021-License_Application.pdf.*

[345] *See* Arizona Department of Transportation, *License Information FAQs,* available at *https://azdot.gov/motor-vehicles/faq-motor-vehicle-division/driver-services-faq/license-information-faq.*

[346] *See* U.S. Census Bureau, *Table 1. General Mobility, by Race and Hispanic Origin and Region, and by Sex, Age, Relationship to Householder, Educational Attainment, Marital Status, Nativity, Tenure, and Poverty Status: 2020–2021—United States,* available at *https://www.census.gov/data/tables/2021/demo/geographic-mobility/cps-2021.html.* The total movers, in thousands, is 27,059.

[347] The U.S. population on July 7, 2021 was 332,861,350 according to the Census Bureau. *See* U.S. Census Bureau, *U.S. and World Population Clock,* available at *https://www.census.gov/popclock/.* The percentage was calculated by: $(27{,}059{,}000/331{,}893{,}745) \times 100 = 8.16$.

[348] *See* Social Security Administration, *Actuarial Life Table, Period Life Table, 2019* (2022) available at *https://www.ssa.gov/oact/STATS/table4c6.html.*

[349] FinCEN used this age range due to the special rule for minor children whereby the information of a parent or guardian may be reported in lieu of information of a minor child. 31 CFR 1010.380(d)(3)(i). This is a slight departure from the NPRM, which used the age range of 30 to 90.

[350] The rule states that an updated report will be required upon the settlement of a beneficial owner's estate upon death. Therefore, the timing of the updated report will not necessarily coincide with the timing of death, but the probability is still applicable for estimation purposes.

[351] FinCEN did not receive comments stating that this assumption is incorrect, or comments that provided sources to use for such an estimate.

[352] As a point of comparison, the UK found that 10 percent of businesses reported a change in beneficial ownership information following an initial report. United Kingdom Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register* (Mar. 2019), p. 16, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

reporting companies have 1 beneficial owner; 36.1 percent have 4 beneficial owners; and 4.9 percent have 8 beneficial owners.[353]

FinCEN utilized the same methodology as used in the NPRM to calculate the number of updated reports. To estimate Year 1 updated reports, FinCEN assumed that 1/12 of the initial reports that must be filed by reporting companies in existence on the effective date of the rule would be filed in each month of the one-year implementation period. The first month of implementation is assumed to have zero updated reports. To estimate the number of updated reports in the second month of implementation, FinCEN multiplied the estimated distribution by (1/12) of the estimated initial reports within the first year, which is the estimated distribution of initial report filings in the first month with varying levels of beneficial owners reported. FinCEN then multiplied each element of the distribution by 1 − (1 − 0.0.0156)^N, where N is the number of beneficial owners on the respective line of the distribution; this is the probability that a given company with N beneficial owners would experience a change in at least one beneficial owner's reportable information in each month.[354] This assumes that changes for a beneficial owner would be independent from changes for other beneficial owners of the same company. Table 3 provides the estimated number of updated reports for the second month of implementation using the described methodology:

Table 3—Estimated Number of Beneficial Ownership Updated Reports in Year 1, Month 2

Beneficial owners	Distribution	Number of updated reports
1	0.59	24,973[355]
4	0.361	59,705[356]
8	0.049	15,714[357]
Total:		100,392[358]

FinCEN replicated this analysis for each remaining month of the first year. The estimated initial reports monthly increase was captured by increasing the (1/12) ratio in the above equation. Therefore, the equations in the prior table remained the same per month with the following change to (1/12): 2/12 (Month 3); 3/12 (Month 4); 4/12 (Month 5); 5/12 (Month 6); 6/12 (Month 7); 7/12 (Month 8); 8/12 (Month 9); 9/12 (Month 10); 10/12 (Month 11); and 11/12 (Month 12). The total of all monthly estimates for Year 1 calculated in this fashion is 6,578,732 updated reports. Estimated monthly updated reports for all subsequent months were calculated using the same equation, but based off of all initial reports instead of a portion of them. This estimate is multiplied by 12 for an annual estimate of 14,456,452 updated reports.

In the NPRM, FinCEN estimated the number of updates to company applicant information on a monthly basis. The final rule does not require updates to company applicant information to be reported, therefore FinCEN has purposely left such an estimate out of the RIA. FinCEN discusses the cost of such a requirement in an alternative scenario.

Having estimated the number of updated BOI reports, FinCEN estimates the cost of those reports. The PRA analysis in the NPRM proposed the following activity and average time burden breakdown for updated BOI reports:

- 20 minutes to identify and collect information about beneficial owners or applicants;
- 10 minutes to fill out and file the update;
- 30 minutes in total.

Given the discussion of burden related to initial BOI reports, and given the comments received, FinCEN changed this time estimate and provided a range based on beneficial ownership structure, as set out in Table 4.

Consistent with the NPRM, FinCEN did not provide a time estimate for reading the form, understanding the requirements, and analyzing the definition of reporting company during the updated report process. These tasks will have already been performed as part of the completion of an initial BOI report and therefore are not necessary at this stage, as the reporting company will already understand the requirements and definition of reporting company. The only tasks required will be identifying, collecting, and reviewing any updated information and then filling out and filing the updated report.

The first step to complete an updated BOI report was slightly amended from that in the NPRM in two aspects. First, consistent with the amendment to completing this second step for an initial BOI report, in addition to identifying and collecting information about beneficial owners, this information must also be *reviewed.* Second, updates to company applicant information will not be included in the step, as such updates are no longer required. The time estimate to identify, collect, and review information about beneficial owners for reporting companies with simple structures remains 20 minutes as was estimated in the NPRM. This time estimate is 10 minutes less for updated reports than it is for this step in initial reports because the initial analysis to identify beneficial owners is not required. Similar to simply structured entities, complex entities will not need to analyze the

[353] FinCEN estimates 4 individuals for reporting companies with intermediate structures and 8 individuals for reporting companies with complex structures (as opposed to 5 and 10 individuals in the example for initial BOI reports) as updated information for company applications is not required.

[354] Assuming that the probability of change in a given period for a single beneficial owner is p, then the probability of no change of a single beneficial owner is (1 − p). The probability of a company with one beneficial owner having a change is therefore 1 − (1 − p). The probability of a company with two beneficial owners having a change is 1 − (1 − p)^2, etc.

[355] 0.59 × (32,556,929 × (1/12)) × (1 − (1 − 0.0156)) = 24,973.

[356] 0.361 × (32, 56,929 × (1/12)) × (1 − (1 − 0.0156)^4) = 59,705.

[357] 0.049 × (32,556,929 × (1/12)) × (1 − (1 − 0.0156)^8) = 15,714.

[358] 24,973 + 59,705 + 15,714 = 100,392.

definition of beneficial owner. FinCEN therefore estimates an hour (60 minutes) for such entities to complete this step.[359] This estimate is consistent with the statement in the initial BOI reports section that it will take an hour for such entities to collect and review beneficial ownership information.

The second step to complete an updated BOI report is to fill out and file the report. Consistent with filling out and filing initial BOI reports, this step will require attaching an image of an acceptable identifying document for each beneficial owner and company applicant. FinCEN increased the estimate for this step to align with the time estimate range of 20 to 110 minutes for filling out and filing initial BOI reports. The lower bound estimate is slightly higher than the estimate in the NPRM because it takes into account the expected functionality of the BOSS, which requires reporting companies to resubmit all information required in the report, not only the information that has changed. Reporting companies will have the option (though not a requirement) to save a PDF prior to submission of their BOI report to be used as a reference for future filings, which may lessen the burden for this step if companies reference the PDF to expedite re-populating any beneficial ownership information that has not changed.

FinCEN adopted the fully loaded wage rate of $56.76 to the cost estimate for updated BOI reports, which is reflected in Table 4. Finally, to align with the initial BOI report cost estimate, FinCEN added a range of estimated costs for professional expertise to complete updated BOI reports. FinCEN provides a range of $0 to $400, which reflects an estimate of zero hours to 1 hour at a rate of $400 per hour. This is consistent with the hourly rate for professional expertise set out above for initial BOI reports. The upper bound estimate of $400 is lower than that for initial BOI reports because FinCEN assesses that professionals will most likely only be engaged in the event of a restructuring or refinancing of the reporting company and not when merely the information of a beneficial owner has changed. The updated report cost range is $37.84–560.81 per report.

Table 4 – Burden and cost of updated BOI reports per reporting company

Description	Simple Structure	Intermediate Structure	Complex Structure
Identify, collect, and review information about beneficial owners	20	40	60
Fill out and file report	20	65	110
Total time burden to file (in minutes):	40	105	170
Avg. wage rate to file (in dollars)	$56.76	$ 56.76	$56.76
Professional expertise cost (in dollars)	0	$200.00	$400
Cost per updated report:	**$37.84**	$ 299.33	**$560.81**

In assessing the total cost of updated BOI reports in Year 1, FinCEN applies the distribution discussed above which assumes that for reporting purposes, 59 percent of reporting companies are a simple structure, 36.1 percent are an intermediate structure, and 4.9 percent are a complex structure. The range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structure and assuming for the upper bound that all reporting companies are complex structures, is $249 million–$3.7 billion. Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of updated BOI reports to be $1 billion. In Year 2 and thereafter, the range of total costs is $547 million–$8.1 billion annually. Applying the reporting companies' structure distribution, the estimated total cost of updated BOI reports annually in Year 2 and thereafter is $2.3 billion.

The rule also requires that corrected reports be filed within 30 calendar days after the date on which a reporting company becomes aware or has reason to know that reported information is inaccurate. FinCEN does not separately calculate the burden and costs of submitting a corrected report after inaccurate information was initially reported because FinCEN does not know how many corrections will need to be submitted in any given year. However, FinCEN acknowledges that filing corrected reports may result in reporting companies undertaking some of the burden activities required for initial and updated BOI reports, such as reaching out to obtain and review information and filing the report. However, FinCEN assesses that such activities may be less burdensome during the correction process, depending on the type of corrections being made to the report. For example, a correction to the spelling of a beneficial owner's name will likely result in minimal burden. However, a correction to the identity of a beneficial owner could result in more burden.

Commenters requested that FinCEN provide more clarity on the ongoing costs to small businesses. One such ongoing cost may be monitoring for updated information. Commenters noted that reporting companies would bear a cost in monitoring for changes, such as in undertaking a monthly or recurring review, or checking with their beneficial owners to ensure that no reported information has changed. Reporting companies may also consider on a recurring basis whether or not they meet an exemption, given the requirement to submit an updated report if an entity becomes exempt. FinCEN anticipates such costs to be minimal. Based on the probabilities for

[359] FinCEN acknowledges that when a reporting company goes through a significant restructuring or refinancing, the time required to identify, collect, and review information about beneficial owners may be more than this estimate. However, FinCEN expects this subset of reporting companies per year to be small relative to the total number of reporting companies that need to submit updated reports in a given year. Additionally, FinCEN believes such costs are likely accounted for in the professional expertise estimate included in Table 4.

the three most likely triggers for an updated report, there is a 1.56 percent anticipated change to a beneficial owner's information in a given month. FinCEN acknowledges that the amount of time a reporting company spends monitoring for updates is dependent upon the number of beneficial owners in its report. Based on this, a reporting company with a simple structure and one beneficial owner would spend less time monitoring each month than a reporting company with a complex structure and multiple beneficial owners. Considering both FinCEN's assumption that 59 percent of affected reporting companies will have simple structures and the estimated low probability of changes each month, FinCEN does not think the amount of time needed to perform this monitoring is significant for companies with either one or many beneficial owners.

Another ongoing cost that commenters stated should be considered in the RIA is the cost of securing data collected for BOI reports, including images of identification documents, as well as the harms should such information not be kept secure. FinCEN anticipates that considerations regarding FinCEN's storage of the data will be discussed in the future rulemaking regarding access to BOI. FinCEN concurs with commenters that the theft of such data would result in substantial harms and costs. U.S. government resources are available to small businesses concerned about data security, which FinCEN expects is a concern for such businesses regardless of this requirement.[360] FinCEN acknowledges that this requirement could heighten such concern and may result in potentially significant costs to businesses for securing the data and in increased identity theft risk to individuals in the event of a data breach, but does not have estimates for these costs.

Cost of FinCEN Identifiers

The rule would require the collection of information from individuals and reporting companies in order to issue them a FinCEN identifier. This is a voluntary collection. The individuals and reporting companies will provide the same information required pursuant to BOI reports in order to obtain a FinCEN identifier, and will be subject to the same update and correction requirements for such information.

The affected parties of this collection would overlap somewhat with parties required to submit BOI reports, given that reporting companies may request FinCEN identifiers. For individuals requesting FinCEN identifiers, FinCEN acknowledges that anyone who meets the statutory criteria could apply for a FinCEN identifier under the rule. However, the primary incentives for individual beneficial owners to apply for a FinCEN identifier are likely data security (an individual may see less risk in submitting personal identifiable information to FinCEN directly and exclusively than doing so indirectly through one or more individuals at one or more reporting companies) and administrative efficiency (when an individual is likely to be identified as a beneficial owner of numerous reporting companies). Company applicants that are responsible for many reporting companies may have similar incentive to request a FinCEN identifier in order to limit the number of companies with access to their personal information. This reasoning assumes that there is a one-to-many relationship between the company applicant and reporting companies.

Given these incentives, which FinCEN acknowledges are based on assumptions, FinCEN believes that the number of individuals who will apply for a FinCEN identifier will likely be relatively low. FinCEN is estimating that number to be approximately 1 percent of 32.6 million reporting companies in Year 1 and 1 percent of 5 million new reporting companies each year thereafter. This is the same assumption made by FinCEN in the NPRM to estimate the number of individuals applying for a FinCEN identifier. Given that the number of reporting companies estimated in the RIA has increased, this estimate will increase proportionally. FinCEN did receive comments discussing utility of the FinCEN identifier, but did not receive specific comments suggesting an alternative methodology or source from which to estimate the number of individuals that may apply for one.

FinCEN assumes that, similar to reporting companies' initial filings, there will be an initial influx of applications for a FinCEN identifier that will then decrease to a smaller annual rate of requests after Year 1. Therefore, FinCEN estimates that 325,569 individuals will apply for a FinCEN identifier during Year 1 and 49,985 individuals will apply for on a FinCEN identifier annually thereafter.

Consistent with the NPRM, FinCEN anticipates that initial FinCEN identifier applications for individuals will require approximately 20 minutes (10 minutes to read the application instructions and understand the information required and 10 minutes to fill out and file the request, including attaching an image of an acceptable identification document), given that the information to be submitted to FinCEN will be readily available to the person requesting the FinCEN identifier. FinCEN does not account for the burden of understanding the BOI reporting requirements in the FinCEN identifier application process, as FinCEN assumes that burden will be accounted for in the broader process of a reporting company assessing its BOI reporting obligations, which will presumably involve communication with beneficial owners about requirements and options. FinCEN adjusted the wage rate to align with the wage rate of $56.76 per hour estimated in the cost analysis. This is an increase from the wage rate estimated in the NPRM, but reflects an incorporation of commenters' suggestions regarding the wage estimate for those with filing requirements. FinCEN assesses that the same wage rate will be applicable for FinCEN identifier requests for individuals because individuals submitting such requests are likely to be individuals with filing requirements.[361] The estimated cost per application is therefore $18.92. The total cost of FinCEN identifier applications for individuals in Year 1 is estimated to be $6.2 million, with an annual cost of $945,667 thereafter.

To estimate the number of updated reports for individuals' FinCEN identifier information per year, FinCEN used the same methodology explained in the BOI report estimate section to calculate, and then total, monthly updates based on the number of FinCEN identifier applications received in Year 1. However, FinCEN only applied the monthly probability of 0.0068 (8.16 percent, the annual likelihood of a change in address, divided by 12 to identify a monthly rate), as this was the sole probability of those previously estimated that would result in a change

[360] *See* Small Business Administration, *Strengthen your cybersecurity,* available at *https://www.sba.gov/business-guide/manage-your-business/stay-safe-cybersecurity-threats.*

[361] FinCEN assumes that beneficial owners, some of which are also company applicants, will file the majority of BOI reports. FinCEN also assesses that employees of reporting companies may also be involved in the filing process, depending on the complexity of the company's structure. FinCEN believes that the same individuals are likely to request FinCEN identifiers and therefore uses the same reporting company hourly wage rate from earlier in the analysis. FinCEN acknowledges that other company applicants, such as those in the legal profession, are also likely to request FinCEN identifiers although such professions are not included in this wage estimate. However, given that the specifics of who will utilize FinCEN identifiers is unknown at this time, FinCEN uses the same hourly wage rate for purposes of this analysis.

to an individual's identifying information. This analysis estimated 12,180 updates in Year 1 and 26,575 annually thereafter. As in the NPRM, FinCEN estimates that updates would require 10 minutes (10 minutes to fill out and file the update). The estimated cost per application is therefore $9.46. The total cost of FinCEN identifier applications for individuals in Year 1 is estimated to be $115,219 and $251,386 annually thereafter.

FinCEN did not estimate the number of reporting companies that will obtain a FinCEN identifier in the NPRM because FinCEN assumed this would be part of the process and cost already estimated for BOI reports. A commenter noted that FinCEN did not account for this cost. However, the mechanism for reporting companies to obtain a FinCEN identifier will be to either check a box on its initial BOI report or submit an updated BOI report with the box checked. Therefore, FinCEN again assumes that the cost of reporting companies obtaining FinCEN identifiers is included in the BOI report cost estimates. Additionally, reporting companies will update FinCEN identifier information through a submission of a BOI report; therefore, the burden associated with such updates is already estimated. The final rule does not adopt proposed 31 CFR 1010.380(b)(5)(ii)(B) regarding use of FinCEN identifiers for entities. FinCEN is continuing to consider this issue and intends to address it before the effective date. Accordingly, FinCEN has reserved 31 CFR 1010.380(b)(5)(ii)(B) in this final rule.

Individuals providing FinCEN identifiers to reporting companies in lieu of BOI for subsequent reporting to FinCEN will reduce burdens on reporting companies. In such cases, reporting companies will only have to report a beneficial owner's FinCEN identifier, as opposed to the associated BOI of that beneficial owner, and the beneficial owner (not the reporting company) would be responsible for keeping their information current with FinCEN. FinCEN has not estimated a reduction in BOI reporting burden based on the use of FinCEN identifiers at this time, but expects that this could be incorporated in future burden estimates based on the use of FinCEN identifiers.

2. Costs to FinCEN

Administering the regulation would entail costs to FinCEN. Such costs include IT development and ongoing annual maintenance to securely collect, process, store, and make available electronic submissions of BOI data. FinCEN's cost estimates for development and annual maintenance are $72 million and $25.6 million, respectively, to meet the minimum system capabilities required by the rule, which includes capabilities related to the collection of images. While FinCEN expects that it will be able to leverage some existing BSA components, the feedback received throughout the rulemaking process has made clear that the BOSS architecture will be complex to design, build, and maintain. For example, the system of record (or database) for the beneficial ownership data will need to be segregated from the existing BSA system of record, and there will need to be another system of record to store the FinCEN identifier information. There will also need to be a separate user application with individual authentication requirements to perform work necessary to administer the FinCEN identifier. System engineering efforts have occurred simultaneously with the rulemaking process, which has involved significant input from various stakeholder groups with various access and disclosure requirements. This input has made clear to FinCEN that the user access and authentication will be complicated to design and develop.

For purposes of total cost analysis in this RIA, FinCEN applies FinCEN's development costs of $72 million in Year 1 of the rule and IT maintenance costs of $25.6 million annually thereafter.

FinCEN will incur additional costs, besides those estimated, in order to ensure successful implementation of and compliance with the BOI reporting requirements. These include personnel to support CTA implementation, draft regulations, conduct regulatory impact analyses and stakeholder outreach, conduct audits and inspections, adjudicate requests for BOI, provide training on the requirements, publish documents such as guidance and FAQs, and conduct outreach to and answer inquiries from the public. FinCEN estimates that there will be personnel costs of approximately $10 million associated with the rule in Fiscal Year 2023, with continuing recurring costs of roughly the same magnitude for ongoing implementation, outreach and enforcement each year thereafter.

Therefore, for purposes of total cost analysis in this RIA, total costs to FinCEN are $82 million in Year 1 and $35.6 million annually thereafter.

3. Costs to Other Government Agencies

As stated in the NPRM, the rule does not impose direct costs on state, local, and Tribal governments. However, based on comments received to both the ANPRM and NPRM,[362] such authorities anticipate incurring indirect costs in connection with the implementation of the rule. Comments to the NPRM included possible indirect costs to such authorities, including costs associated with providing information to the public and responding to questions regarding compliance. Specifically, commenters proposed that such authorities would be responsible for mailing a notice of the reporting requirement to companies, identifying reporting companies that should receive such notice, or changing existing forms to include notification of the requirement. Both the NPRM and its comments noted that state authorities may also incur indirect costs associated with fielding of calls or questions from the public regarding the reporting requirements. One cost estimate provided by comments was $1.34 million to a state authority for notifying and responding to inquiries from entities related to the rule.

FinCEN anticipates incurring its own costs directly to mitigate such expenditures by states and other authorities. The NPRM stated that FinCEN will work closely with state, local, and Tribal governments to ensure effective outreach strategies for implementation of the final rule. Additionally, FinCEN has a call center (the Regulatory Support Section) which will receive incoming inquiries relating to the CTA and its implementation. FinCEN will also provide guidance materials to state, local, and Tribal governments for their use and distribution in response to questions, which will minimize those governments' need to develop their own guidance materials at their own cost. FinCEN will also work closely with state, local, and Tribal authorities to identify cost-effective ways to notify affected parties of potentially applicable requirements. FinCEN appreciates the suggestions in comments on how to minimize burden to state, local, and Tribal authorities, and intends to do so in implementing the rule; therefore, the RIA does not include a separate cost estimate for indirect costs to state, local, or Tribal authorities related to the reporting requirement.

In addition, there may be costs to other federal agencies that will enforce compliance with the regulation. For example, FinCEN may expend resources identifying noncompliant persons and, after identifying noncompliance, FinCEN may investigate, initiate

[362] ANPRM comments were summarized in the NPRM. *See* 86 FR 69954–69955 (Dec. 8, 2021). NPRM comments are summarized in this document.

outreach to the entity, work with law enforcement in related investigations, or initiate a compliance or enforcement action. FinCEN's enforcement of the BOI reporting requirements will also involve coordination with law enforcement agencies. These law enforcement agencies may also incur costs (time and resources) while conducting investigations into noncompliance. FinCEN anticipates that costs to law enforcement agencies that have access to the BOI data will be assessed in the BOI access regulations, and therefore is not estimating them here.

4. Other Cost Considerations

FinCEN is not aware of disproportionate budgetary effects of this rule upon any particular regions of the nation or particular state, local, or Tribal governments; urban, rural or other types of communities; or particular segments of the private sector. As stated in the NPRM, the wide-reaching scope of the reporting company definition means that the rule will apply to entities across multiple private sector segments, types of communities, and nationwide regions. FinCEN acknowledges that there is potential variance in the concentration of reporting companies by region due to variation in corporate formation rates and laws. FinCEN also acknowledges that exemptions to the reporting company definition may in practice result in segments of the private sector not being affected by the rule; thereby causing those that are affected to be disproportionately so compared to exempt entities.

A commenter stated that the reporting requirements will have a disproportionate adverse effect on underserved communities that do not have access to professional expertise to understand the requirements. FinCEN notes that efforts have been made to minimize burdens on these and other segments of the regulated community. FinCEN will evaluate this issue further as it receives feedback from stakeholders after reporting requirements take effect.

FinCEN does not have accurate estimates that are reasonably feasible regarding the effect of the rule on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of U.S. goods and services.

f. Qualitative Discussion of Benefits

As previously noted, there are several potential, interrelated benefits associated with this rule, including improved and more efficient investigations by law enforcement, and assistance to other authorized users in a variety of activities. This, in turn, may strengthen national security, enhance financial system transparency and integrity, and align U.S. corporate transparency requirements with international financial standards.

As noted in the NPRM, the U.S. 2018 National Money Laundering Risk Assessment (2018 NMLRA) estimated that domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds for potential laundering annually, which is consistent with the United Nations Office on Drugs and Crime (UNODC) range that places criminal activity between 2 and 5 percent of global GDP.[363] Criminal actors may use entities to send or receive funds, or otherwise assist in the money laundering process to legitimize the illegal funds. For example, an entity may act as a shell company—which usually has no employees or operations—and hold assets to obscure the identity of the true owner, or act as a front company which generates some legitimate business proceeds to commingle with illicit earnings. The 2022 NMLRA notes that professional money laundering organizations and corruption networks, for example, leverage such front companies.[364]

FinCEN is not able to provide estimates of the amount of proceeds that flow through money laundering schemes that use entities given lack of data,[365] but entities are frequently used in money laundering schemes and provide a layer of anonymity to the natural persons involved in such transactions.[366] The deliberate misuse of legal entities, including limited liability companies and other corporate vehicles, trusts, partnerships, and the use of nominees continue to be significant tools for facilitating money laundering and other illicit financial activity in the U.S. financial system.[367]

Identifying the owners of these entities is a crucial step to all parties that investigate money laundering. The 2022 NMLRA notes that determining the true ownership of these structures requires time-consuming and resource-intensive processes by law enforcement when conducting financial investigations.[368] However, there is currently no systematic way to obtain information on the beneficial owners of entities in the United States. The misuse of legal entities, both within the United States and abroad, remains a major money laundering vulnerability in the U.S. financial system.[369] Within the United States, criminals have historically been able to take advantage of the lack of uniform laws and regulations pertaining to the disclosure of information detailing an entity's beneficial ownership. This has stemmed mainly from the different levels of information and transparency required by states at the time of a legal entity's registration.[370]

The benefits outlined in the NPRM's RIA continue to apply to the final rule. The rule will help address the lack of BOI critical for money laundering investigations. Improved visibility into the identities of the individuals who own or control entities will enhance law enforcement's ability to investigate, prosecute, and disrupt the financing of international terrorism, other transnational security threats, and other types of domestic and transnational financial crime when entities are used to engage in such activities. Other authorized users in the national security and intelligence fields will likewise benefit from the use of these data. The BOI database will also increase investigative efficiency and thus decrease the cost to law enforcement of investigations that require or benefit from identifying the owners of entities. These anticipated benefits are supported by ANPRM comments from those that represent the law enforcement community, some of whom expressed

[363] U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 2, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf#:~:text=The%202018%20National%20Money%20Laundering%20Risk%20Assessment%282018%20NMLRA%29,participated%20in%20the%20development%20of%20the%20risk%20assessment.* The U.S. 2022 National Money Laundering Risk Assessment (2022 NMLRA) did not include an estimate of the annual domestic financial crime proceeds generated for potential money laundering. *See* U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2022), available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[364] 2022 NMLRA, pp. 21, 26.

[365] The NPRM noted that trade-based money laundering is one example of a scheme that uses legal entities, and noted that the Government Accountability Office's 2020 report on trade-based money laundering stated that specific estimates of the amount of such activity globally are unavailable, but it is likely one of the largest forms of money laundering. Government Accountability Office, *Trade-based Money Laundering* (April 2020), p. 19, available at *https://www.gao.gov/assets/gao-20-333.pdf.*

[366] Please see the discussion of this topic in the Background section of the preamble and the NPRM, which describe in greater detail the money laundering concerns with legal entities and disguised beneficial owners, as well as the Department of the Treasury's efforts to address the lack of transparency in legal entity ownership structures.

[367] 2022 NMLRA, p. 1.

[368] *Id.,* p. 35.

[369] *Id.,* pp. 35–36.

[370] *Id.,* p. 36.

the opinion that the availability of BOI would provide law enforcement at every level with an important tool to investigate the misuse of shell companies and other entities used for criminal activity. To the extent these investigations become more effective, money laundering in the United States will become more difficult. Making any method of money laundering more difficult in the U.S. will improve the national security of the United States by increasing barriers for illicit actors to covertly enter and act within the U.S. financial system.[371] This may serve to deter the use of U.S. entities for money laundering purposes.

Second, since the collection of BOI would shed light upon the beneficial owners of U.S. entities, which may also provide insight into overall ownership structures, the rule will promote a more transparent, and consequently more secure, economy. Some comments to the NPRM generally supported the goal of increased corporate transparency. The NPRM's RIA noted that financial institutions with authorized access to such data would have key data points available for their customer due diligence processes, which may decrease customer due diligence and other compliance burdens. The 2016 CDD Rule also promotes transparency in ownership structures of legal entities, and thereby strengthens the U.S. economy and national security. However, the rule will build upon and improve the 2016 CDD Rule's benefits by requiring that BOI be collected earlier in the life cycle of a company—at the time of company formation—rather than when the company opens a bank account. Moreover, the rule will require reporting of the BOI to a centralized database and such BOI will be made available to authorized users. The rule will also apply to a broader range of entities, since the 2016 CDD Rule covers only those institutions subject to financial institution customer due diligence requirements (*e.g.,* those with accounts at such institutions). Further, unlike the 2016 CDD Rule, this rule does not limit the number reported of individuals in substantial control to one person, which provides law enforcement and other authorized users a much more complete picture of who makes important decisions at a reporting company. Comments to the NPRM emphasized that a decrease in customer due diligence burden would depend on the similarities between the BOI reporting requirements and the revised CDD rule; therefore, FinCEN expects that such an estimate will be addressed in the revised CDD rule.

FinCEN also expects increased transparency in ownership structures of entities to enhance financial system integrity by reducing the ability of certain actors to hide monies through shell companies and other entities with obscured ownership information. This may discourage inefficient capital allocation designed primarily for non-business reasons, such as paying for professional services to set up and potentially capitalize intermediate legal entities designed solely to obscure the relationship between a legal entity and its owners. In addition, the IRS could obtain access to BOI for tax administration purposes, which may provide benefits for tax compliance. The increased transparency in ownership structure of entities could also bolster the confidence and trust of reporting companies in other companies they do business with, and potentially encourage new business growth and economic development, as reporting companies could be fairly confident of the legitimacy of their new business relationships since their businesses partners will also likely be subject to this rule's reporting requirements.

Third, the BOI reporting requirements will have the benefit of aligning the United States with international AML/CFT standards, bolstering support for such standards and strengthening cooperation with international partners. The United States will also share BOI, subject to appropriate protocols consistent with the CTA, in transnational investigations, tax enforcement, and the identification of national and international security threats. Aligning with international AML/CFT standards will also strengthen the reputation of the United States as a global leader in combating money laundering and terrorist financing.

g. Present Value and Conclusions

The following table totals the burden and costs estimated in the prior sections. The totals for initial and updated BOI reports incorporate the distribution of reporting companies' beneficial ownership structures discussed in connection with Table 1 above. In addition, FinCEN calculated the average over the first five years of burden and costs associated with the rule (which only includes costs to the public, not costs to FinCEN). This five-year average is 53,309,290 burden hours and $9,032,327,614.77 in cost. As previously described, the rule also has significant benefits that currently are not quantifiable. The total estimated burden and costs associated with this rule is summarized in Table 5.

[371] The CTA states that FinCEN may disclose BOI upon receipt of a request from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under prescribed conditions. 31 U.S.C. 5336(c)(2)(B)(ii). Therefore, the sharing of BOI with international partners may also result in more efficient investigations of money laundering on a global scale and also help U.S. law enforcement understand global money laundering networks that affect the United States.

Table 5—Total Burden and Costs

Year 1			
Activity	**Count of reports**	**Burden hours**	**Cost**
Initial BOI reports	32,556,929	118,572,335	$21,673,487,885.48
Updated BOI reports	6,578,732	7,657,096	$1,038,524,428.72
FinCEN identifier applications for individuals	325,569	108,523	$6,159,488.81
FinCEN identifiers updates for individuals	12,180	2,030	$115,218.68
FinCEN costs			$82,000,000.00
Totals	39,473,410	126,339,984[372]	**$22,800,287,021.69**[373]

Year 2+			
	Count of reports	**Burden hours**	**Cost**
Initial BOI reports	4,998,468	18,204,421	$3,327,532,419.21
Updated BOI reports	14,456,452	16,826,105	$2,282,108,290.77
FinCEN identifier applications for individuals	49,985	16,662	$945,666.84
FinCEN identifiers updates for individuals	26,575	4,429	$251,386.22
FinCEN costs			$35,600,000.00
Totals	19,531,480	35,051,617[374]	**$5,646,437,763.04**[375]

In addition, FinCEN calculated the present value of cost for a 10-year horizon at discount rates of seven and three percent,[376] totaling approximately $55.7 billion and $64.8 billion, respectively. FinCEN is selecting the time period of 10 years, a relatively short time period given that the requirement is permanent. This is because FinCEN cannot predict how the burden and costs of compliance may change after the requirement is widely adopted by reporting companies. For example, in the cost analysis it states that FinCEN anticipates the upper bound estimate of the cost of

[372] Regarding burden hours for BOI reports, companies with simple beneficial ownership structures account for an estimated 31,400,517 burden hours in Year 1 (((0.59 × 32,556,929) × (90 minutes/60 minutes)) + ((0.59 × 6,578,732 × (40 minutes/60 minutes))) = 31,400,517. Companies with intermediate beneficial ownership structures account for an estimated 76,633,264 burden hours in Year 1 (((0.361 × 32,556,929) × (370 minutes/60 minutes)) + ((0.361 × 6,578,732) × (105 minutes/60 minutes))) = 76,633,264. Companies with complex beneficial ownership structures account for an estimated 18,195,650 burden hours in Year 1 (((0.049 × 32,556,929) × (650/60)) + ((0.049 × 6,578,732 × (170 minutes/60 minutes))) = 18,195,650. 31,400,517 + 76,633,264 + 18,195,650 + 108,523 + 2,030 = 126,339,984.

[373] Regarding costs for BOI reports, companies with simple beneficial ownership structures account for an estimated $1,782,211,687.09 in Year 1 ((0.59 × 32,556,929) × 85.14)) + ((0.59 × 6,578,732) × 37.84) = $1,782,211,687.09. Companies with intermediate beneficial ownership structures account for an estimated $16,577,540,630.34 in Year 1 ((0.361 × 32,556,929) × 85.14)) + ((0.361 × 6,578,732) × 37.84) = $16,577,540,630.34. Companies with complex beneficial ownership structures account for an estimated $4,352,259,996.78 in Year 1 ((0.049 × 32,556,929) × 85.14)) + ((0.049 × 6,578,732) × 37.84) = $4,352,259,996.78. ($1,782,211,687.09 + $16,577,540,630.34 + $4,352,259,996.78 + $6,159,488.81 + $115,218.68 + $82,000,000= $22,800,287,021.69)

[374] Regarding burden hours for BOI reports, companies with simple beneficial ownership structures account for an estimated 10,109,849 burden hours in Years 2+ (((0.59 × 4,998,468) × (90 minutes/60 minutes)) + ((0.59 × 14,456,452) × (40 minutes/60 minutes))) = 10,109,849. Companies with intermediate beneficial ownership structures account for an estimated 20,260,286 burden hours in Years 2+ (((0.361 × 4,998,468) × (370 minutes/60 minutes)) + ((0.361 × 14,456,452 × (105/60))) = 20,260,286. Companies with complex beneficial ownership structures account for an estimated 4,660,391 burden hours in Years 2+ (((0.049 × 4,998,468) × (650 minutes/60 minutes)) + ((0.049 × 14,456,452) × (170/60))) = 4,660,391. 10,109,948 + 20,260,286 + 4,660,391 + 16,662 + 4,429 = 35,051,617.

[375] Regarding costs for BOI reports, companies with simple beneficial ownership structures account for $573,808,725.53 in estimated costs in Years 2+ ((0.59 × 4,998,468 × $85.14) + (0.59 × 14,456,452 × $37.84) = $573,808,725.53. Companies with intermediate beneficial ownership structures account for $3,998,123,986.98 in estimated costs in Years 2+ ((0.361 × 4,998,468 × $1,350) + (0.361 × 14,456,452 × $299.33) = $3,998,123,986.98. Companies with complex beneficial ownership structures account for $1,037,707,997.47 in estimated costs in Years 2+ ((0.049 × 4,998,468 × $2614.87 + (0.049 × 14,456,452 × $560.81)) = $1,037,707,997.47. ($574,808,725.53 + $3,998,123,986.98 + $1,037,707,997.47 + $945,666.84 + $251,386.22 + $35,600,000) = $5,646,437,763.04.

[376] These discount rates were applied based on OMB guidance in Circular A–4. *See* Office of Management and Budget, *Circular A–4* (Sept. 17, 2003), available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

professional expertise will decrease over time as professionals become familiarized with the rule and thus more efficient and effective in helping clients comply with the rule. However, FinCEN is not able to predict such efficiencies at this time.

FinCEN calculated the cost over a 10-year horizon to capture the immediate impact, but expects that from Year 2 onwards the annual aggregate costs would be the same in each subsequent year because the number of new entities each year are assumed to be the same for Years 2–10. However, FinCEN includes an alternative cost estimate in which FinCEN assumes that the rate of new entities created will grow at a rate of approximately 13.1 percent per year from 2020 through 2033.[377] This 13.1 percent growth is based on the calculated annualized growth factor in new entity creations in IACA's data from 2018 to 2020, and was incorporated to address NPRM comments that the assumption that growth and dissolution is likely to be equivalent throughout this time horizon may not be accurate. This results in a present value of cost for a 10-year horizon at discount rates of seven and three percent totaling approximately $84.1 billion and $102.6 billion, respectively.

The benefits of the rule are difficult to quantify, but the prior description of these benefits point to their significance. FinCEN's 2016 CDD Rule also did not quantify the benefits of collecting BOI, but rather included a breakeven analysis.[378] While the 2016 CDD Rule and this rule require submission of BOI under different circumstances and to different parties, the breakeven analysis of the 2016 CDD Rule suggests that even a small percentage reduction in money laundering activities as a result of this rule could result in economically significant net benefits. The U.S. 2018 NMLRA estimates that domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds for potential laundering annually.[379] In that light, a rule that imposes undoubtedly significant costs of approximately $22.8 billion in the first year and $5.6 billion each year thereafter, is still, relatively modest in comparison to the magnitude of money laundering as a factor affecting the U.S. economy. While many of the rule's benefits are not currently quantifiable, FinCEN assesses that the rule will have a significant positive impact and that the benefits justify the costs. .

B. Final Regulatory Flexibility Act Analysis

When an agency issues a rule proposal, the Regulatory Flexibility Act (RFA) requires the agency to either provide an IRFA or, in lieu of preparing an analysis, to certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities.[380] When FinCEN issued its NPRM, FinCEN believed that the proposed rule would have a significant economic impact on a substantial number of small entities, and provided an IRFA.[381] FinCEN received numerous comments related to the RIA, although only a couple specifically referenced the IRFA. Some of the comments related to the RIA were from small entities and associations representing small entities. FinCEN has discussed those comments relating to specific provisions in the proposed rule in Section III above, and those relating to the RIA in Section V.A. above.

The RFA requires each Final Regulatory Flexibility Analysis to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of and an estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[382]

i. Statement of the Reasons For, and Objectives of, the Rule

The CTA establishes a new federal framework for the reporting, storage, and disclosure of BOI. In enacting the CTA, Congress has stated that this new framework is needed to set a clear federal standard for incorporation practices; protect vital U.S. national security interests; protect interstate and foreign commerce; better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and bring the United States into compliance with international AML/CFT standards.[383] Section 6403 of the CTA amends the BSA by adding a new section at 31 U.S.C. 5336 that requires the reporting of BOI at the time of formation or registration of a reporting company, along with protections to ensure that the reported BOI is maintained securely and accessed only by authorized persons for limited uses. The CTA requires the Secretary to promulgate implementing regulations that prescribe procedures and standards governing the reporting and use of such information and to include procedures governing the issuance of FinCEN identifiers for BOI reporting. The CTA requires FinCEN to maintain BOI in a secure, non-public database that is highly useful to national security, intelligence, and law enforcement agencies, as well as federal functional regulators. The rule will require certain entities to report to FinCEN information about the reporting company, its beneficial owners (the individuals who ultimately own or control the reporting companies), and the company applicants of the reporting company, as required by the CTA.

ii. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

FinCEN has carefully considered the comment letters received in response to the NPRM. Section III provides a general overview of the comments and discusses the significant issues raised by

[377] This is in contrast to the main analysis that assumes 13.1 percent growth in new entities from 2020 through 2024, and then a stable same number of 5 million new entities each year thereafter through 2033. Modifying this growth assumption to equal 13.1 percent growth in new formations in years 2024 through 2033 results in a new entity annual formation estimate of 5 million in the year of implementation of the reporting rule (2024), increasing to approximately 5.6 million by 2033.

[378] 81 FR 29444–29446 (May 11, 2016).

[379] 2018 NMLRA, p. 2. The U.S. 2022 NMLRA did not include an estimate of the annual domestic financial crime proceeds generated for potential money laundering. *See* 2022 NMLRA.

[380] 5 U.S.C. 601–612.

[381] 86 FR 69951–69954 (Dec. 8, 2021).

[382] 5 U.S.C. 604(a).

[383] CTA, Section 6402(5).

comments. In addition, Section V.A. includes a discussion of the comments received with respect to the preliminary RIA and IRFA, including those with respect to the estimated cost imposed on small businesses from the rule. FinCEN has considered the comments received from small entities and from associations representing them, regardless of whether or not the comments referred to the IRFA. Commenters expressed concern about the cost of the requirement on small businesses. FinCEN considered the burden and costs of the specific requirements throughout the final rule, and has adjusted the analysis appropriately.

Numerous commenters discussed whether or how FinCEN should use its statutory authority to add more exemptions to the definition of ''reporting company.'' FinCEN discusses in detail in the preamble the exemptions to the rule, which are statutorily mandated, and FinCEN's decision to not propose additional exemptions of entities at this time. Some commenters suggested that small businesses should be exempt from the reporting requirements. As noted in the NPRM, FinCEN believes that the definition of reporting company requires small businesses to report beneficial ownership information to FinCEN. Given FinCEN's assessment that all reporting companies are likely to be small entities, such an exemption could result in no entities being subject to the rule. FinCEN will continue to consider suggestions for additional exemptions, subject to the process required by the CTA, and consider regulatory and other implications associated with a given discretionary exemption.

A couple comments to the NPRM specifically referenced the IRFA. One commenter stated that the proposed rule is silent on FinCEN's efforts to minimize burden on small businesses, explaining that the IRFA completely ignores entire issues that are required under the 5 U.S.C. 603, and opining that the IRFA is materially defective.[384] Another commenter stated that FinCEN must complete an IRFA, although the commenter cited to the IRFA in the NPRM. In response to these comments, FinCEN notes that an IRFA was included in the NPRM.[385] An IRFA is required to include the following points, each of which is discussed in the NPRM's IRFA:

- A description of the reasons why action by the agency is being considered; [386]
- A succinct statement of the objectives of, and legal basis for, the proposed rule; [387]
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; [388]
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; [389]
- An identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule; [390]
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. [391]

The other sections in this FRFA reference details from the IRFA when appropriate. In addition, more specific information regarding the estimated costs for small entities resulting from the final rule is set forth in Section V.B.v below, and other steps FinCEN has taken to minimize the economic impact of the rule on small entities are set forth in Section V.B.vi below.

iii. The Response of the Agency to a Comment Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comment

The Chief Counsel for Advocacy of the Small Business Administration (''Advocacy'') filed a comment to the NPRM on February 4, 2022, that stated that Advocacy is concerned about the economic impact of the NPRM on small entities, and encourages FinCEN to implement less costly alternatives. Advocacy noted that FinCEN prepared an IRFA for the NPRM.

Specifically, Advocacy stated that FinCEN should allow for maximum flexibility in reporting timelines to mitigate the costs of the rule. Advocacy noted that the CTA permits for two years for existing entities to file initial reports and one year to file updated reports, while the proposed rule requires one year and 30 days, respectively. Additionally, Advocacy notes that the CTA permits a 90 day safe harbor for inaccurate reports, while the proposed rule requires corrected reports to be filed within 14 days of the date the person knew, or should have known, that the information was inaccurate, thus adding an additional deadline requirement. Advocacy encourages FinCEN to allow for the maximum flexibility allowed in the statute and extend the compliance requirements accordingly. Other commenters reiterated the points raised by Advocacy and requested that these timelines be extended to the statutory maximum.

FinCEN has retained the proposed rule's reporting timeline of one year, rather than two years, for existing entities' initial reports. FinCEN assesses, in an alternative scenario analysis included herein, that small businesses that are reporting companies would incur the same cost one year from the rule's effective date as they would two years from its effective date. Therefore, FinCEN assesses that the alternate timeline will have little impact on most existing reporting companies, with regard to the cost of filing the report. Additionally, FinCEN's effective date of January 1, 2024, will allow for a substantial outreach effort to notify small businesses about the requirement, and will give existing reporting companies time to understand the requirement prior to the one-year timeline. Importantly, as discussed in the alternative scenario, FinCEN believes that the one year reporting timeline is valuable to law enforcement and to other authorized users that require access to accurate and timely BOI, given the time-sensitive nature of investigations. As such, FinCEN has retained the timeline in the proposed rule.

FinCEN has also retained the proposed rule's reporting timeline for updated reports as 30 days, rather than one year. FinCEN includes an alternative scenario analysis that assumes a one year timeline. While FinCEN acknowledges a potential aggregate cost savings to the public, the bureau does not view the savings as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with

[384] The comment referred to the ''IFRA'', but FinCEN assumes that the commenter is discussing the IRFA.

[385] 86 FR 69951–69954 (Dec. 8, 2021).

[386] *See* ''Statement of the Need for, and Objectives of, the Proposed Rule'' 86 FR 69951 (Dec. 8, 2021).

[387] *See* ''Statement of the Need for, and Objectives of, the Proposed Rule'' 86 FR 69951 (Dec. 8, 2021).

[388] *See* ''Small Entities Affected by the Proposed Rule'' 86 FR 69951–69952 (Dec. 8, 2021).

[389] *See* ''Compliance Requirements'' 86 FR 69952–69953 (Dec. 8, 2021).

[390] *See* ''Duplicative, Overlapping, or Conflicting Federal Rules'' 86 FR 69953 (Dec. 8, 2021).

[391] *See* ''Significant Alternatives that Reduce Burden on Small Entities'' 86 FR 69953–69954 (Dec. 8, 2021).

FinCEN. As noted in both the preamble to this rule and the NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While these risks are more difficult to quantify than cost estimates to reporting companies, these concerns justify the increased cost.

With respect to corrected reports, the final rule extends the filing deadline from 14 to 30 days in order to provide reporting companies with adequate time to obtain and report the correct information. The final rule reflects the concerns raised by commenters that the 14-day timeframe may not provide sufficient time for reporting companies to conduct adequate due diligence, consult with advisors, or conduct appropriate outreach, while at the same time providing a sufficiently short timeframe to ensure that errors are corrected quickly so that the database will remain accurate, complete, and highly useful.

Advocacy also encourages FinCEN to provide a clear and concise compliance guide that provides information about the requirements of the rule. Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires agencies to provide a compliance guide for each rule (or related series of rules) that requires a final regulatory flexibility analysis.[392] Agencies are required to publish the guides with publication of the final rule, post them to websites, distribute them to industry contacts, and report annually to Congress.[393] Advocacy notes that the rule could cause confusion and anxiety as small businesses try to determine whether they need to comply and, if so, what they need to do to comply. Small businesses could expend time and other resources that they may not have while attempting to comply with the requirements of the rulemaking. Advocacy also points out that FinCEN acknowledges in its IRFA that small businesses may not have the funds to obtain an attorney or other type of professional to assist them in understanding the requirements of the rule.

FinCEN anticipates issuing a Small Entity Compliance Guide, pursuant to section 212 of SBREFA, in order to assist small entities in complying with these reporting requirements. In addition, FinCEN has also adjusted its regulatory impact analysis herein to account for the cost of small businesses hiring an attorney or other type of professional to assist in the reporting requirements; however, FinCEN maintains that not all reporting companies will incur this expense. FinCEN concurs with Advocacy that guidance about the reporting requirement will be critical in assisting small businesses in complying with the rule.

iv. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

To assess the number of small entities affected by the rule, FinCEN separately considered whether any small businesses, small organizations, or small governmental jurisdictions, as defined by the RFA, will be impacted. FinCEN concludes that a substantial number of small businesses will be significantly impacted by the rule, which is consistent with the IRFA.

In defining ''small business'', the RFA points to the definition of ''small business concern'' from the Small Business Act.[394] This small business definition is based on size standards (either average annual receipts or number of employees) matched to industries.[395] The rule will apply to ''reporting companies'' required to submit BOI reports to FinCEN. There are 23 types of entities that are exempt from submitting BOI reports to FinCEN, but none of these exemptions apply directly to small businesses. In fact, many of the statutory exemptions, such as exemptions for large operating companies and highly regulated businesses, apply to larger businesses. For example, the large operating company exemption applies to entities that have more than 20 full-time employees in the United States, more than $5 million in gross receipts or sales from sources inside the United States, and have an operating presence at a physical office in the United States. Using the SBA's July 2022 definition of small business across all 1,037 industries (by 6-digit NAICS code), there are only 46 categories of industries whose SBA definition of small would be lower than $5 million in gross receipts/sales threshold in the rule's large operating company exemption (without considering whether entities in such industries would also meet the 20 employees portion of the exemption). These were predominantly related to agricultural categories. All other SBA definitions of small entity well exceeded the thresholds stated in the statutory exemption for large operating companies. Therefore, FinCEN assumes that all entities estimated to be reporting companies are small, for purposes of this analysis.

FinCEN estimates that there will be approximately 32.6 million existing reporting companies and 5 million new reporting companies formed each year.[396] FinCEN assumes that for purposes of estimating costs to small businesses, all reporting companies are small businesses. Such a general descriptive statement on the number of small businesses to which the rule will apply is specifically permitted under the RFA, when, as here, greater quantification is not practicable or reliable.[397] FinCEN has made this assumption in part to ensure that its FRFA does not underestimate the economic impact on small businesses.

[392] Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 212, 110 Stat. 857, 858 (1996).

[393] The Small Business and Work Opportunity Tax Act of 2007 added these additional requirements for agency compliance to SBREFA. *See* Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190 (2007).

[394] *See* 5 U.S.C. 601(3).

[395] *See* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 14, 2022), available at *https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.*

[396] FinCEN estimated these numbers by relying upon the most recent available data, 2020, of the international business registers report survey administered by the International Association of Commercial Administrators in which multiple states were asked the same series of questions on the number of total existing entities and total new entities in their jurisdictions by entity type. *See* International Association of Commercial Administrators, *2021 International Business Registers Report,* (2021), available at *https://www.iaca.org/ibrs-survey/.* Please note this underlying source does not provide information on the number of small businesses in the aggregate entity counts, or on the revenue or number of employees of the entities in the data. FinCEN used the reported state populations, total existing entities per state, and new entities in a given year per state to calculate per capita ratios of total existing and new entities in a year for each state. FinCEN then calculated an average of the per capita ratio of the states to estimate a per capita average for the entire United States. FinCEN then multiplied this estimated average by the current U.S. population to estimate the total number of existing entities and the number of new entities in a year. FinCEN then estimated the number of exempt entities by estimating each of the relevant 23 exempt entity types. Last, FinCEN subtracted the estimated number of exempt entities from its prior estimations. This results in an approximate estimate of 32.6 million reporting companies currently in existence and 5 million new reporting companies per year. To review this analysis, including all sources and numbers, please see the RIA.

[397] The RFA provides that an agency may provide a more general descriptive statement of the effects of a proposed rule if quantification is not practicable or reliable. 5 U.S.C. 607.

FinCEN requested comment in the NPRM on more precise ways to estimate the number of small businesses, and has discussed comments related to its entity estimates in the RIA.

In defining ''small organization,'' the RFA generally defines it as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.[398] FinCEN assesses that the rule will not affect ''small organizations,'' as defined by the RFA because it exempts any organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code. Therefore, any small organization, as defined by the RFA, will not be a reporting company.

In defining ''small governmental jurisdiction[s],'' the RFA generally defines it as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.[399] FinCEN assesses that the rule will not directly affect any ''small governmental jurisdictions,'' as defined by the RFA. The rule exempts entities that exercise governmental authority on behalf of the United States or any such Indian tribe, state, or political subdivision from the definition of reporting company. Therefore, small governmental jurisdictions will be uniformly exempt from reporting pursuant to the rule. Certain small governmental jurisdictions may be among the state and local authorities that incur indirect costs as they address questions on the BOI reporting rule. However, FinCEN does not have adequate information to estimate these possible burdens on small governmental jurisdictions in particular, and did not receive comments regarding these burdens. FinCEN will take all possible measures to minimize the costs associated with questions from the public directed at state and local government agencies and offices.

v. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The rule imposes a new reporting requirement on certain entities, including small entities, to file with FinCEN reports that identify the entities' beneficial owners, and in certain cases their company applicants. The report must contain information about the entity itself. The reporting company must also certify that the report is true, correct, and complete. The rule also requires that reporting companies update the information in these reports as needed, and that incorrectly reported information be corrected, within specific timeframes.

Many comments received in response to the NRPM stated that FinCEN had underestimated or failed to estimate the burden to reporting companies resulting from the proposal in the following areas: (1) gathering relevant information for both initial and updated reports; and (2) hiring or utilizing compliance, legal, or other resources for expert advice on filing requirements. Additional comments were received in the ANPRM process that discussed potential costs related to these reporting requirements, and were summarized in the IRFA in the NPRM.[400]

FinCEN reviewed and incorporated commenter suggestions into the analysis. FinCEN has also incorporated changes into the final rule to lessen the burden of such compliance activities. For example, as explained in the preamble, the final rule harmonizes the reporting timeframes at 30 days for initial reports by newly created or registered entities, updated reports, and corrected reports. A number of commenters advocated for these harmonized timeframes to ease administration for reporting companies and service providers that may support reporting companies, which FinCEN has adopted. Additionally, the final rule removes the requirement that entities created before the effective date of the regulations report company applicant information. Newly created entities will still be required to report company applicant information, but they will not be required to update it. FinCEN believes that these changes will relieve unique and potentially substantial burdens on reporting companies associated with company applicant information. The final rule also clarifies the certification language to be consistent with other FinCEN certifications, which require a certification that the reported information is ''true, correct, and complete.'' FinCEN anticipates issuing a Small Entity Compliance Guide, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, in order to assist small entities in complying with these reporting requirements.

FinCEN estimates that small businesses across multiple industries will be subject to these requirements. Therefore, FinCEN does not estimate what classes of small businesses would particularly be affected. FinCEN estimates 32.6 million domestic and foreign reporting companies will exist in 2024, and 5 million new reporting companies will be created each year thereafter. As discussed in connection with Table 1 above, for purposes of estimating costs, FinCEN applied a distribution of likely beneficial ownership structure of reporting companies: 59 percent will have a ''simple structure'', 36.1 percent will have an ''intermediate structure, and 4.9 percent will have a ''complex structure''. The data supporting this distribution is related to the number of owners reported in U.S. Census Bureau's *2020 Annual Business Survey*. FinCEN assumed for purposes of this analysis that simple structures will report one person on BOI reports; intermediate structures will report five people on BOI reports; and complex structures will report ten people on BOI reports.[401]

Assuming that all reporting companies are small businesses, the burden hours for filing BOI reports would be 126.3 million [402] in the first year of the reporting requirement (as existing small businesses come into compliance with the rule) and 35 million [403] in the years after. FinCEN estimates that the total cost of filing BOI reports is approximately $22.7

[398] 5 U.S.C. 601(4).

[399] 5 U.S.C. 601(5).

[400] *See* 86 FR 69952 (Dec. 8, 2021).

[401] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies, including how this distribution was identified. Though additional data was available related to the revenue and gross receipts of certain types and sizes of entities, such as Census Bureau's Statistics of U.S. Businesses and Nonemployer Statistics, FinCEN chose to rely upon the indicator most relevant to the compliance cost of reporting beneficial owners (*i.e.,* the number of owners). This approach allowed FinCEN to provide a lower bound and upper bound estimate and a likely cost based on the number of beneficial owners without having to make further assumptions about how compliance costs might vary across entities based on number and expertise of employees or the industry, geographical location, profitability, or age of the entity. FinCEN believes it is appropriate to focus on number of beneficial owners because this is likely to directly affect how burdensome the requirement is for reporting companies. The RIA includes a discussion of the other Census Bureau sources and their applicability to FinCEN's analysis.

[402] 118.6 million hours to file initial BOI reports + 7.7 million hours to file updated BOI reports. Please see the RIA cost analysis section for the underlying analysis related to these burden hour estimates.

[403] 18.2 million hours to file initial BOI reports + 16.8 million hours to file updated BOI reports. Please see the RIA cost analysis section for the underlying analysis related to these burden hour estimates.

billion [404] in the first year and $5.6 billion [405] in the years after. FinCEN estimates it would cost the 32.6 million domestic and foreign reporting companies that are estimated to exist in 2024 approximately $85.14–2,614.87 [406] each to prepare and submit an initial report for the first year that the BOI reporting requirements are in effect. These costs are summarized in Table 5—Total Burden and Cost. FinCEN estimates it would cost approximately $37.84–560.81 for entities to file updated BOI reports.[407]

The final rule provides an estimated range of the cost of professional expertise to the cost of both initial and updated BOI reports.[408] In the NPRM, FinCEN sought comment on whether small businesses anticipate requiring professional expertise to comply with the BOI requirements and what FinCEN could do to minimize the need for such expertise. The NPRM did not include the cost of hiring professionals in its cost estimate, but noted that FinCEN is aware that some reporting companies may seek legal or other professional advice in complying with the BOI requirements. Based on comments, professional expertise that will be sought out to comply with the reporting requirements are primarily lawyers and accountants. FinCEN has incorporated costs related to this expertise in its cost analysis.

[404] $21.7 billion to file initial BOI reports + $1 billion to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $56.76 per hour. Please see RIA cost analysis section for the underlying analysis related to these cost estimates.

[405] $3.3 billion to file initial BOI reports + $2.3 billion to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $56.76 per hour. Please see the RIA cost analysis section for the underlying analysis related to these cost estimates.

[406] *See* Table 2 in the RIA for details on this range and how the estimated time burden and cost of professional expertise is estimated to vary among reporting companies with simple, intermediate, and complex beneficial ownership structures.

[407] *See* Table 4 in the RIA for details on this range and how the estimated time burden and cost of professional expertise is estimated to vary among reporting companies with simple, intermediate, and complex beneficial ownership structures.

[408] As stated in the NPRM, FinCEN intends that the reporting requirement will be accessible to the personnel of reporting companies who will need to comply with these regulations and will not require specific professional skills or expertise to prepare the report. Therefore, the lower bound estimate for reporting companies with simple structures to complete initial and updated reports will be zero. In concurrence with comments that it is likely that some reporting companies will hire or consult professional experts, the upper bound estimate for reporting companies to engage professional expertise is $2,000 for initial BOI reports and $400 for updated BOI reports.

vi. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on the Small Entities Was Rejected

The steps FinCEN has taken to minimize the significant economic impact on small entities and the factual, policy, and legal reasons for selecting the final rule are described throughout the preamble. This section of the FRFA includes the alternative scenarios considered in the RIA, one of which would have increased the significant economic impact on small entities, and was thus rejected. FinCEN also explains in this section why other significant alternatives were not selected in the final rule.

The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered the following significant alternatives which affected the impact on small entities. The sources and analysis underlying the burden and cost estimates cited in these alternatives are explained in the RIA.

a. Reporting Timeline for Existing Entities

The CTA requires reporting companies already in existence when the final rule comes into effect to submit initial BOI reports to FinCEN ''in a timely manner, and not later than 2 years after'' that effective date.[409] In the NPRM, FinCEN proposed requiring existing reporting companies to submit initial reports within one year of the effective date, which is permissible given the CTA's two-year maximum timeframe. As noted in the NPRM, however, FinCEN considered giving existing reporting companies the entire two years to submit initial BOI reports as authorized by the statute, and compared the cost to the public under the one-year and two-year scenarios.

In both scenarios, the estimated cost per initial BOI report ranges from $85.14 to $2,614.87, depending on the complexity of a reporting company's beneficial ownership structure. That cost does not change depending on whether reporting companies have to incur it within one year or two years of the rule's effective date. If all 32,556,929 existing reporting companies have to incur it in the same single year, the aggregate cost to all existing reporting companies is approximately $21.7 billion for Year 1, after applying the beneficial ownership distribution assumption. FinCEN assumed that if the reporting deadline for existing reporting companies was two years from the final rule's effective date, then half of those entities would file their initial BOI report in the first year and the other half would file in the second, dividing that initial aggregate cost in half to produce average aggregate costs of approximately $10.8 billion in each year.[410]

According to FinCEN's analysis, requiring existing reporting companies to file initial BOI reports within two years of the rule's effective date instead of one results in a 10-year horizon present value at a three percent discount rate of approximately $60.3 billion instead of $64.8 billion—a difference of approximately $4.5 billion and a 10-year horizon present value at a seven percent discount rate of approximately $51.1 billion instead of $55.7 billion—a difference of approximately $4.6 billion. FinCEN assesses, however, that these long-term figures obscure the practical reality that having to incur the same cost one year from the rule's effective date instead of two years from its effective date will have little impact on most existing reporting companies. The cost is the same either way. Additionally, FinCEN's effective date of January 1, 2024, will allow for a substantial outreach effort to notify reporting companies about the requirement and give existing reporting companies time to understand the requirement prior to the one-year timeline. Because a year's difference for initial compliance does not change the per reporting company impact and because of the value to law enforcement and other authorized users of having access to accurate, timely BOI in the relatively near term, given the time-

[409] 31 U.S.C. 5336(b)(1)(B).

[410] Changing the estimated number of initial reports in Year 1 and Year 2 has downstream effects on other estimates in the analysis. FinCEN assumes that the estimated number of FinCEN identifier applications tied to initial report filings (the number is estimated to be 1 percent of reporting companies) would similarly extend from a one-year to two-year period. Half of the initial FinCEN identifier applications, which FinCEN assumes are linked to persons with ties to existing reporting companies, would be filed in Year 1, and the other half in Year 2. FinCEN also assumed that updated reports and FinCEN identifier information would increase at an incremental rate throughout the two-year period (rather than one-year), and therefore calculated the number of updated reports by extending its methodology to a 24-month timeframe (rather than a 12-month timeframe). From Year 3 onward, estimates related to initial BOI reports would be based on the number newly created reporting companies.

sensitive nature of investigations, FinCEN rejects this alternative.

b. Reporting Timeline for Updated BOI Reports

As in the NPRM, FinCEN considered whether to require reporting companies to update BOI reports within 30 days of a change to submitted BOI (as proposed in the NPRM) or within one year of such change (the maximum permitted under the CTA).[411] FinCEN compared the cost to the public of these two scenarios.

FinCEN assumed that allowing reporting companies to update reports within one year would result in ''bundled'' updates encompassing multiple changes. For example, a reporting company that knows one beneficial owner plans to dispose of ownership interests in two months while another plans to change residences in four might wait several months to report both changes to FinCEN. Meanwhile, law enforcement agencies and others with authorized access to—and interest in—the relevant reporting company's BOI would be operating with outdated information and potentially wasting time and resources. A shorter 30-day requirement, on the other hand, would be more likely to result in reporting companies filing discrete reports associated with each individual change, allowing those with authorized access to BOI to stay better updated.

From a cost perspective, FinCEN assumed that bundling would result in reporting companies submitting approximately half as many updated reports overall. FinCEN also assumed that bundled reports would have the same time burden per report as discrete updated reports, given that the expected BOSS functionality requires all information to be submitted on each updated report.

Were FinCEN to require updates within one year instead of 30 days, reporting companies that choose to regularly survey their beneficial owners for information changes would not have to reach out on a monthly basis to request any updates from beneficial owners. FinCEN has not accounted for this potentially reduced burden in its estimate other than in the time required to collect information for an updated report, but discusses this potential collection cost more in the cost analysis of this alternative. FinCEN's cost estimates for updated reports also do not currently account for the possibility that individuals using FinCEN identifiers might further reduce costs by alleviating reporting companies of the responsibility of filing updated BOI for those beneficial owners. This is because those beneficial owners would be responsible for keeping the BOI associated with their FinCEN identifiers updated, consistent with the requirements of the rule.

FinCEN estimated that requiring reporting companies to update reports in one year instead of 30 days results in an aggregate present value cost decrease of approximately $7.4 billion at a seven percent discount rate or $9.1 billion at a three percent discount rate over a 10-year horizon. The annual aggregate cost savings to reporting companies (which FinCEN assumes are small entities) would be approximately $519.3 million in the first year and $1.1 billion each year thereafter. These cost savings would be due to reporting companies filing fewer reports.

While FinCEN does not dismiss an aggregate cost savings to the public, the bureau does not view the savings in that amount as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with FinCEN. As noted in both the preamble and NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While risks such as this are difficult to quantify, these concerns justify the increased cost.

c. Company Applicant Reporting for Existing Reporting Companies and Updates for All Reporting Companies

In the NPRM, FinCEN considered requiring reporting companies in existence on the rule's effective date to report company applicant information with their initial reports. FinCEN further considered requiring all reporting companies to update changes to company applicant information as they occur in the future. Many comments criticized these requirements as overly burdensome. While the final rule does not include these requirements, this alternative analysis assesses what the cost would have been if those requirements had been retained.

Numerous comments to the NPRM noted that existing entities would bear a significant cost in identifying company applicants, who may not have had contact with the reporting company since its initial formation. Based on comments, FinCEN assesses that each existing reporting company, regardless of structure, would have incurred an additional burden of 60 minutes per initial report in locating and reaching out to the company applicant(s). This estimate represents the average amount of time to locate information for company applicants, taking into account there may be instances where the company applicant is known, with easily obtained information, as well as other instances where the company applicant is unknown and difficult or impossible to locate. Using the wage estimate from the cost analysis, this would total an additional $56.76 per initial report in Year 1. FinCEN only applies this burden to Year 1 to reflect that it would affect existing entities' initial BOI reports, which would be filed within Year 1. FinCEN acknowledges that some of the initial BOI reports in Year 1 will be from newly created entities that would likely not incur this additional time burden, but to be conservative, FinCEN applied the burden to all initial reports in Year 1 for this analysis. At least one commenter also noted that such a requirement could result in costs to state governments, as reporting companies may enlist secretaries of states or similar offices to help look for historical company applicants, which FinCEN has not separately calculated, but assumes is part of the 60 minutes added to the burden estimate.

In the NPRM, FinCEN estimated how many report updates would likely stem from changes to company applicant changes information.[412] This was based on an assumption that 90 percent of BOI reports would have one company applicant while 10 percent of reports would have two company applicants. The RIA includes an updated distribution of reporting companies' beneficial ownership structures, which is applied to this analysis. The updated distribution estimates that 59 percent of reporting companies would have no unique company applicant (the company applicant would be the beneficial owner); 36.1 percent would have one company applicant; and 4.9 percent would have two company applicants. Applying the estimated cost of an updated report from the cost analysis (which increased from the cost assessed in the NPRM), this would result in an additional cost in Year 1 of $2.3 billion and $1 billion each year thereafter.

In addition to the burden of submitting initial company applicant information and subsequent report updates, companies may have also

[411] 31 U.S.C. 5336(b)(1)(D).

[412] 86 FR 69963 (Dec. 8, 2021).

incurred a cost associated with monitoring changes to company applicant information. This cost may have been significant, especially given that company applicants are less likely to stay in regular contact with associated reporting companies. This additional burden from ongoing monitoring is not separately estimated and could result in an underestimation of the cost savings to reporting companies in this alternative scenario.

FinCEN estimated that requiring company applicant reporting and updates for existing entities results in a present value cost increase of approximately $8.3 billion at a seven percent discount rate or $9.9 billion at a three percent discount rate over a 10-year horizon. FinCEN did not select this scenario, and thereby reduced the cost to small businesses.

d. Alternative Definitions of Beneficial Owner

FinCEN considered many alternative definitions of ''beneficial owner'' due to comments received in the NPRM. Some of these comments proposed that the definition of beneficial owner should match the definition in the 2016 CDD Rule, under which one person must be identified as in substantial control, with up to four other beneficial owners identified by way of equity interests of 25 percent or more, for a maximum of 5 beneficial owners.

Using the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the time burden for some reporting companies reviewing which individuals to report as beneficial owners in their initial reports. This is because that definition is already known to most reporting companies, ties ownership to narrow ''equity interests'' rather than ''ownership interests,'' and caps the maximum number of beneficial owners a company can have for purposes of the rule at five. This combination would make it easier for some entities to identify individuals to report as beneficial owners, and would reduce the number of individuals they have to report. However, FinCEN assesses that the majority of reporting companies are unlikely to have more than five beneficial owners to report under the rule. FinCEN assumes that 59 percent of reporting companies will have one beneficial owner and an additional 36.1 percent of reporting companies will have four beneficial owners, and therefore would not significantly benefit in terms of reporting burden from the narrower definition.[413] Most of the benefits of using the 2016 CDD Rule's definition of beneficial owner therefore seem likely to accrue to reporting companies with more complex beneficial ownership structures, which FinCEN estimates at 4.9 percent of reporting companies. All reporting companies would benefit from being able to reuse information previously provided to financial institutions for compliance with a CDD rule with which they are already familiar (existing reporting companies) or that would have to be provided to financial institutions in order to obtain necessary financial services (new reporting companies).

Because reporting companies are already familiar with the 2016 CDD Rule and would not need to spend time understanding the requirement, FinCEN assumes that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would reduce the time burden of the first portion of initial BOI reports' time burden by a third for all reporting companies, regardless of beneficial ownership structure. In the cost analysis, the first portion of initial BOI reports' time burden is to ''read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition.'' However, if the 2016 CDD Rule definition was adopted, ''understanding the requirement'' would not apply, as reporting companies are already familiar with the requirement. The second portion of initial reports' time burden, ''identify . . . beneficial owners . . . ,'' would likely also be less burdensome given reporting companies may have already done this exercise to comply with the 2016 CDD Rule. However, FinCEN assumes the decreased burden in the first portion of the time burden will already account for this. Therefore, this decrease in burden will result in a per-report cost reduction of approximately $25.23 for reporting companies with a simple structure.

Additionally, reporting companies with complex beneficial ownership structures, which FinCEN assessed to be 4.9 percent of reporting companies, will have a decreased time burden for other steps related to filing initial BOI reports and updated reports. This is because FinCEN currently assesses the costs to such entities in the scenario in which they report 10 people on their BOI report (8 beneficial owners and 2 company applicants). If the 2016 CDD Rule definition of ''beneficial owner'' was adopted, then such entities would instead report the maximum of 5 beneficial owners and 2 company applicants, or 7 people. For consistency, FinCEN assumes that this would result in a reduction of a third of the time for ''identifying, collecting and reviewing information about beneficial owners and company applicants,'' and a reduction of 30 minutes in filling out and filing the report (10 minutes for each of the 3 beneficial owners no longer reported, given the definition's cap). With all of these time burden reductions included, the initial report time burden estimate for reporting companies with complex beneficial ownership structures would be reduced by 390 minutes (650 minutes versus 260 minutes), which results in a per report cost reduction of approximately $369 ($2,614.87 versus $2,245.95).[414]

In order to calculate the total cost change of the rule under this alternative, FinCEN assumes that all time burdens related to updated reports and FinCEN identifiers would remain the same with one exception. FinCEN applies the same time reduction for complexly structured reporting companies' updated report time burden as applied for initial reports (a decrease from 110 minutes to 80 minutes) to account for only 7 persons submitted on the form. Therefore, FinCEN assesses that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the cost in Year 1 by $3.4 billion and $614.5 million in each year thereafter. The present value cost decreases by approximately $7 billion at a seven percent discount rate or $8 billion at a three percent discount rate over a 10-year horizon. This benefit to small businesses would come at the significant cost of undermining the purpose of the CTA, which specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' without reference to a maximum number. As explained in the preamble, the 2016 CDD Rule's numerical limitation on beneficial owners contributes to the omission of persons that have substantial control of a reporting company, but are not reported. Replicating that approach in this rule would primarily benefit more complex entities, with the foreseeable consequence of allowing illicit actors to easily conceal their ownership or control of legal entities. This is a considerable cost to the U.S. economy that FinCEN assesses would not benefit

[413] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies.

[414] This cost analysis estimates an hourly wage rate of $56.76. Dividing this wage rate by 60 minutes yields a cost of approximately $0.95 per minute; if this rate is multiplied by 390 minutes, the cost is approximately $369.

most reporting companies. This lopsided balance led FinCEN to reject suggestions to adopt the 2016 CDD Rule's definition of ''beneficial ownership'' in the final reporting rule.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Reform Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation. FinCEN believes that the RIA provides the analysis required by the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

The new reporting requirement contained in this rule (31 CFR 1010.380) has been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* under control number 1506–ABXX. The PRA imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The rule includes two information collection requirements: BOI reports, which will be submitted to FinCEN via a form, and FinCEN identifier information for individuals, which will be submitted to FinCEN via a web-based application. FinCEN removed the separate PRA analysis for foreign pooled investment vehicles reports that was included in the NPRM because such reports are now included in the BOI report burden and cost estimates.

As discussed in the RIA, FinCEN revised estimates for the reporting requirements based on comments received in the NPRM and updates to underlying data sources. All revisions to the estimates are explained in the RIA.

i. BOI Reports

Reporting Requirements: In accordance with the CTA, the rule imposes a new reporting requirement on certain entities to file with FinCEN reports that identify the entities' beneficial owners, and in certain cases their company applicants.[415] The report must also contain information about the entity itself. The reporting company must certify that the report is true, correct, and complete. The rule also requires that reporting companies update the information in these reports as needed, and correct any previous incorrectly reported information, within specific timeframes. The collected information will be maintained by FinCEN and made accessible to authorized users.

OMB Control Number: 1506–0076.

Frequency: As required.[416]

Description of Affected Public: Domestic entities that are: (1) corporations; (2) limited liability companies; or (3) created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe, and foreign entities that are: (1) corporations, limited liability companies, or other entities; (2) formed under the law of a foreign country; and (3) registered to do business in any state or Tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the laws of a state or Indian tribe. The rule does not require corporations, limited liability companies, or other entities that are described in any of 23 specific exemptions to file BOI reports.

Estimated Number of Respondents: As explained in detail in the RIA, the number of entities that are reporting companies is difficult to estimate. FinCEN has updated the estimated number of entities that are reporting companies from the NPRM to account for comments and more recent sources of information. FinCEN assumes that existing entities that meet the definition of reporting company and are not exempt will submit their initial BOI reports in Year 1. Therefore, the estimated number of initial BOI reports in Year 1 is 32,556,929.[417] In Year 2 and beyond, FinCEN estimates that the number of initial BOI reports will be 4,998,468, which is the same estimate as the number of new entities per year that meet the definition of reporting company and are not exempt.[418] The total five-year average of expected BOI initial reports is 10,510,160. In order to estimate the total burden hours and costs associated with the reporting requirement, FinCEN further assesses a distribution of the reporting companies' beneficial ownership structure. FinCEN assumes that 59 percent of reporting companies will have a simple structure (*i.e.,* 1 beneficial owner who is also the company applicant), 36.1 percent will have an intermediate structure (*i.e.,* 4 beneficial owners and 1 company applicant), and 4.9 percent will have a complex structure (*i.e.,* 8 beneficial owners and 2 company applicants). FinCEN estimates that 6,578,732 updated reports would be filed in Year 1, and 14,456,452 such reports would be filed annually in Year 2 and beyond.[419] The total five-year average of expected BOI update reports is 12,880,908.

Estimated Time per Respondent: FinCEN has updated the estimated time burden per respondent to account for comments received to the NPRM. Considering the comments and the rule, it is apparent that the time burden for filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN therefore estimates a range of time burden associated with filing an initial BOI report to account for the likely variance among reporting companies. FinCEN estimates the average burden of reporting BOI as 90 minutes per response for reporting companies with simple beneficial ownership structures (40 minutes to read the form and understand the requirement, 30 minutes to identify and collect information about beneficial owners and company applicants, 20 minutes to fill out and file the report, including attaching an image of an acceptable identification document for each beneficial owner and company applicant). FinCEN estimates the average burden of reporting BOI as 650 minutes per response for reporting companies with complex beneficial ownership structures (300 minutes to read the form and understand the requirement, 240 minutes to identify and collect information about beneficial owners and company applicants, 110 minutes to fill out and file the report, including attaching an image of an acceptable identification document for each beneficial owner and company applicant). FinCEN estimates the

[415] 31 U.S.C. 5336(b) and 31 CFR 1010.380(b).

[416] For BOI reports, there is an initial filing and subsequent filings; the latter are required as information changes or if previously reported information was incorrect.

[417] Please see RIA cost analysis for the underlying sources and analysis related to this estimate.

[418] Please see RIA cost analysis for the underlying sources and analysis related to this estimate. As noted therein, for analysis purposes FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[419] Please see RIA cost analysis for the underlying sources and analysis related to these estimates.

average burden of updating such reports for reporting companies with simple beneficial ownership structures as 40 minutes per update (20 minutes to identify and collect information about beneficial owners or company applicants and 20 minutes to fill out and file the update). FinCEN estimates the average burden of updating such reports for reporting companies with complex beneficial ownership structures as 170 minutes per update (60 minutes to identify and collect information about beneficial owners or company applicants and 110 minutes to fill out and file the update). FinCEN also assesses that reporting companies with intermediate beneficial ownership structures will have a time burden that is the average of the time burden for reporting companies with simple and complex structures reporting companies.

Estimated Total Reporting Burden Hours: FinCEN estimates that during Year 1, the filing of initial BOI reports will result in approximately 118,572,335 burden hours for reporting companies.[420] In Year 2 and beyond, FinCEN estimates that the filing of initial BOI reports will result in 18,204,421 burden hours annually for new reporting companies.[421] The five-year average of burden hours for initial BOI reports is 38,278,004 hours. FinCEN estimates that filing BOI updated reports in Year 1 would result in approximately 7,657,096 burden hours for reporting companies.[422] In Year 2 and beyond, the estimated number of burden hours is 16,826,105.[423] The five-year average of burden hours for updated BOI reports is 14,992,203 hours. The total five-year average of burden hours for BOI reports is 53,270,307.

Estimated Total Reporting Cost: Considering the comments and the rule, it is apparent that the costs for filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN therefore estimates a range of costs associated with filing an initial BOI report to account for the likely variance among reporting companies. FinCEN estimates the average cost of filing an initial BOI report per reporting company to be a range of $85.14–$2,614.87.[424] FinCEN estimates the average cost of filing an updated BOI report per reporting company to be $37.84–$560.81.[425]

For initial BOI reports, the range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structures and assuming for the upper bound that all reporting companies are complex structures, is $2.8 billion–$85.1 billion.[426] Applying the distribution of reporting companies' structure explained in connection with Table 1, FinCEN calculates total costs in Year 1 of initial BOI reports to be $21.7 billion.[427] In Year 2 and onwards, in which FinCEN assumes that initial BOI reports will be filed by newly created entities, the range of total costs is $425.6 million–$13.1 billion annually.[428] Applying the reporting companies' structure distribution explained in connection with Table 1, the estimated total cost of initial BOI reports annually in Year 2 and onwards is $3.3 billion.[429] [430]

For updated BOI reports, the range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structures and assuming for the upper bound that all reporting companies are complex structures is $249 million–$3.7 billion.[431] Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of updated BOI reports to be $1 billion.[432] In Year 2 and onwards, the range of total costs is $547 million–$8.1 billion annually.[433] Applying the reporting companies' structure distribution, the estimated total cost of updated BOI reports annually in Year 2 and onwards is $2.3 billion.[434] The five-year average cost for initial reports is $6,996,732,512 and $2,033,391,518 for updated reports.

Please note, there are no non-labor costs associated with these collections of information because FinCEN assumes that reporting companies already have the necessary equipment and tools to comply with the regulatory requirements.

ii. Individual FinCEN Identifiers

Reporting Requirements: The rule would require the collection of information from individuals in order to issue them a FinCEN identifier.[435] This is a voluntary collection. The rule will require individuals to report to FinCEN certain information about themselves to receive a FinCEN identifier, in accordance with the CTA.[436] An individual is also required to submit updates of their identifying information as needed. FinCEN will store such information in its BOI database for access by authorized users.

OMB Control Number: 1506–0076.

Frequency: As required.

Description of Affected Public: The affected parties of this collection would overlap somewhat with parties required to submit BOI reports, given that reporting companies may request FinCEN identifiers. For individuals requesting FinCEN identifiers, FinCEN acknowledges that anyone who meets the statutory criteria could apply for a FinCEN identifier under the rule. However, the primary incentives for individual beneficial owners to apply for a FinCEN identifier are likely data security (an individual may see less risk in submitting personal identifiable information to FinCEN directly and

[420] $((0.59 \times 32,556,929) \times (90/60)) + ((0.361 \times 32,556,929) \times (370/60)) + ((0.049 \times 32,556,929) \times (650/60)) = 118,572,335$.

[421] $((0.59 \times 4,998,468) \times (90/60)) + ((0.361 \times 4,998,468) \times (370/60)) + ((0.049 \times 4,998,468) \times (650/60)) = 18,204,421$.

[422] $((0.59 \times 6,578,732) \times (40/60)) + ((0.361 \times 6,578,732) \times (105/60)) + ((0.049 \times 6,578,732) \times (170/60)) = 7,657,096$.

[423] $((0.59 \times 14,456,452) \times (40/60)) + ((0.361 \times 14,456,452) \times (105/60)) + ((0.049 \times 14,456,452) \times (170/60)) = 16,826,105$.

[424] $(90/60) \times \$56.76 = \$85.14$ and $((650/60) \times \$56.76) + \$2,000 = \$2,614.87$.

[425] $(40/60) \times \$56.76 = \$37.84$ and $((170/60) \times \$56.76) + \$400 = \$560.81$.

[426] $(32,556,929 \times \$85.14) = \$2,771,769,963.58$ and $(32,556,929 \times \$2,614.87) = \$85,132,196,638.53$.

[427] $((0.59 \times 32,556,929) \times \$85.14) + ((0.361 \times 32,556,929) \times \$1,350.00) + ((0.049 \times 32,556,929) \times \$2,614.87) = \$21,673,487,885.48$.

[428] $(4,998,468 \times \$85.14) = \$425,550,075.79$ and $(4,998,468 \times \$2,614.87) = \$13,070,353,315.07$.

[429] $((0.59 \times 4,998,468) \times \$85.14) + ((0.361 \times 4,998,468) \times \$1,350.00) + ((0.049 \times 4,998,468) \times \$2,614.87) = \$3,327,532,419.21$.

[430] FinCEN assumes that each reporting company will make one initial BOI report. Given the implementation period of one year to comply with the rule for entities that were formed or registered prior to the effective date of the final rule, FinCEN assumes that all of the entities that meet the definition of reporting company will submit their initial BOI reports in Year 1, totaling 32.6 million reports. Additionally, FinCEN has applied a 6.83 percent growth factor each year since the date of the underlying source (2020) to account for the creation of new entities. For analysis purposes, FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[431] $(6,578,732 \times \$37.84) = \$248,927,811.14$ and $(6,578,732 \times \$560.81) = \$3,689,435,948.74$.

[432] $((0.59 \times 6,578,732) \times \$37.84) + ((0.361 \times 6,578,732) \times \$299.33) + ((0.049 \times 6,578,732) \times \$560.81) = \$1,038,524,428.72$.

[433] $(14,456,452 \times \$37.84) = \$547,007,086.12$ and $(14,456,452 \times \$560.81) = \$8,107,360,919.04$.

[434] $((0.59 \times 14,456,452) \times \$37.84) + ((0.361 \times 14,456,452) \times \$299.33) + ((0.049 \times 14,456,452) \times \$560.81) = \$2,282,108,290.77$.

[435] FinCEN is not separately calculating a cost estimate for entities requesting a FinCEN identifier because FinCEN assumes this would already be accounted for in the process and cost of submitting the BOI reports.

[436] 31 U.S.C. 5336(b)(3)(A)(i) and 31 CFR 1010.380(b)(4).

exclusively than doing so indirectly through one or more individuals at one or more reporting companies) and administrative efficiency (where an individual is likely to be identified as a beneficial owner of numerous reporting companies). Company applicants that are responsible for registering many reporting companies may have a similar incentive to request a FinCEN identifier in order to limit the number of companies with access to their personal information. This reasoning assumes that there is a one-to-many relationship between the company applicant and reporting companies.

Estimated Number of Respondents: Given the incentives described in the previous paragraph, which are based on assumptions, FinCEN estimates that the number of individuals who will apply for a FinCEN identifier will likely be relatively low. FinCEN is estimating that number to be approximately 1 percent of the reporting company estimates. This is the same assumption made by FinCEN in the NPRM to estimate the number of individuals applying for a FinCEN identifier. Given that the number of reporting companies estimated in the RIA has increased, this estimate will increase proportionally. FinCEN assumes that, similar to reporting companies' initial filings, there would be an initial influx of applications for a FinCEN identifier that would then decrease to a smaller annual rate of requests after Year 1. Therefore, FinCEN estimates that 325,569 individuals will apply for a FinCEN identifier during Year 1 and 49,985 individuals will apply for on a FinCEN identifier annually thereafter.[437] The total five-year average of expected FinCEN identifier applications is 105,102. To estimate the number of updated reports for individuals' FinCEN identifier information per year, FinCEN used the same methodology explained in the BOI report estimate section to calculate, and then total, monthly updates based on the number of FinCEN identifier applications received in Year 1. However, FinCEN only applied the monthly probability of 0.0068021 (8.16 percent, the annual likelihood of a change in address, divided by 12 to find a monthly rate), as this was the sole probability of those previously estimated that would result in a change to an individual's identifying information. This analysis estimated 12,180 updates in Year 1 and 26,575 annually thereafter.[438] The total five-year average of estimated FinCEN identifier updates is 23,696.

Estimated Time per Respondent: FinCEN anticipates that initial FinCEN identifier applications would require approximately 20 minutes (10 minutes to read the form and understand the information required and 10 minutes to fill out and file the request, including attaching an image of an acceptable identification document), given that the information to be submitted to FinCEN would be readily available to the person requesting the FinCEN identifier. FinCEN estimates that updates would require 10 minutes (10 minutes to fill out and file the update).

Estimated Total Reporting Burden Hours: FinCEN estimates the total burden hours of individuals initially applying for a FinCEN identifier during Year 1 to be 108,535,[439] with an annual burden of 16,662 hours thereafter.[440] The five-year average of initial application burden is 35,034 hours. FinCEN estimates the burden hours of individuals updating FinCEN identifier related information to be 2,030 in Year 1,[441] with an annual burden of 4,429 hours thereafter.[442] The five-year average of updated application burden is 3,949 hours. The total five-year average of time burden is 38,983.

Estimated Total Reporting Cost: The total cost of FinCEN identifier applications for individuals in Year 1 is estimated to be $6.2 million, with an annual cost of $945,667 thereafter.[443] The five-year average of initial applications cost is $1,988,431. The total cost of FinCEN identifier updates for individuals in Year 1 is estimated to be $115,219, with an annual cost of $251,386 thereafter.[444] The five-year average of updated applications cost is $224,153. The total five-year average cost is $2,212,584.

E. Congressional Review Act

Pursuant to the Congressional Review Act (CRA), OMB's Office of Information and Regulatory Affairs has designated this rule a ''major rule,'' for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA).[445] Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**.[446]

List of Subjects in 31 CFR Parts 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Foreign persons, Holding companies, Indian-law, Indians, Indians—tribal government, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Time.

Authority and Issuance

For the reasons set forth in the preamble, the U.S. Department of the Treasury and Financial Crimes Enforcement Network amend 31 CFR part 1010 as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is amended to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Add § 1010.380 to subpart C to read as follows:

§ 1010.380 Reports of beneficial ownership information

(a) *Reports required; timing of reports*—(1) *Initial report.* Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i) Any domestic reporting company created on or after January 1, 2024 shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(ii) Any entity that becomes a foreign reporting company on or after January 1, 2024 shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public

[437] 32,556,929 × 0.01 = 325,569 and 4,998,468 × 0.01 = 49,985, respectively.

[438] Please see RIA cost analysis for the underlying sources and analysis related to these estimates.

[439] 325,569 × (20/60) = 108,535.

[440] 49,985 × (20/60) = 16,662.

[441] 12,180 × (10/60) = 2,030.

[442] 26,575 × (10/60) = 4,429.

[443] ($56.76 × (20/60)) × 325,569 = $6,159,488.81 and ($56.76 × (20/60)) × 49,985 = $945,666.84.

[444] ($56.76 × (10/60)) × 12,180 = $115,218.68 and ($56.76 × (10/60)) × 26,575 = $251,386.22.

[445] 5 U.S.C. 804(2) *et seq.*

[446] 5 U.S.C. 801(a)(3).

notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(iii) Any domestic reporting company created before January 1, 2024 and any entity that became a foreign reporting company before January 1, 2024 shall file a report not later than January 1, 2025.

(iv) Any entity that no longer meets the criteria for any exemption under paragraph (c)(2) of this section shall file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.

(2) *Updated report.* (i) If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified in paragraph (b)(3) of this section within 30 calendar days after the date on which such change occurs.

(ii) If a reporting company meets the criteria for any exemption under paragraph (c)(2) of this section subsequent to the filing of an initial report, this change will be deemed a change with respect to information previously submitted to FinCEN, and the entity shall file an updated report.

(iii) If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.

(iv) If a reporting company has reported information with respect to a parent or legal guardian of a minor child pursuant to paragraphs (b)(2)(ii) and (d)(3)(i) of this section, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.

(v) With respect to an image of an identifying document required to be reported pursuant to paragraph (b)(1)(ii)(E) of this section, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes.

(3) *Corrected report.* If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report in the form and manner specified in paragraph (b) of this section within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy. A corrected report filed under this paragraph (a)(3) within this 30-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate report was filed.

(b) *Content, form, and manner of reports.* Each report or application submitted under this section shall be filed with FinCEN in the form and manner that FinCEN shall prescribe in the forms and instructions for such report or application, and each person filing such report or application shall certify that the report or application is true, correct, and complete.

(1) *Initial report.* An initial report of a reporting company shall include the following information:

(i) For the reporting company:

(A) The full legal name of the reporting company;

(B) Any trade name or ''doing business as'' name of the reporting company;

(C) A complete current address consisting of:

(1) In the case of a reporting company with a principal place of business in the United States, the street address of such principal place of business; and

(2) In all other cases, the street address of the primary location in the United States where the reporting company conducts business;

(D) The State, Tribal, or foreign jurisdiction of formation of the reporting company;

(E) For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and

(F) The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) For every individual who is a beneficial owner of such reporting company, and every individual who is a company applicant with respect to such reporting company:

(A) The full legal name of the individual;

(B) The date of birth of the individual;

(C) A complete current address consisting of:

(1) In the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business; or

(2) In any other case, the individual's residential street address;

(D) A unique identifying number and the issuing jurisdiction from one of the following documents:

(1) A non-expired passport issued to the individual by the United States government;

(2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;

(3) A non-expired driver's license issued to the individual by a State; or

(4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (b)(1)(ii)(D)(*1*), (b)(1)(ii)(D)(*2*), or (b)(1)(ii)(D)(*3*) of this section; and

(E) An image of the document from which the unique identifying number in paragraph (b)(1)(ii)(D) of this section was obtained.

(2) *Special rules*—(i) *Reporting company owned by exempt entity.* If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.

(ii) *Minor child.* If a reporting company reports the information required under paragraph (b)(1) of this section with respect to a parent or legal guardian of a minor child consistent with paragraph (d)(3)(i) of this section, then the report shall indicate that such information relates to a parent or legal guardian.

(iii) *Foreign pooled investment vehicle.* If an entity would be a reporting company but for paragraph (c)(2)(xviii) of this section, and is formed under the laws of a foreign country, such entity shall be deemed a reporting company for purposes of paragraphs (a) and (b) of this section, except the report shall include the information required under paragraph (b)(1) of this section solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the

entity, the entity shall report information with respect to the individual who has the greatest authority over the strategic management of the entity.

(iv) *Company applicant for existing companies.* Notwithstanding paragraph (b)(1)(ii) of this section, if a reporting company was created or registered before January 1, 2024, the reporting company shall report that fact, but is not required to report information with respect to any company applicant.

(3) *Contents of updated or corrected reports*—(i) *Updated reports—in general.* An updated report required to be filed pursuant to paragraph (a)(2) of this section shall reflect any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.

(ii) *Updated reports—newly exempt entities.* An updated report required to be filed pursuant to paragraph (a)(2)(ii) of this section shall indicate that the filing entity is no longer a reporting company.

(iii) *Corrected reports.* A corrected report required to be filed pursuant to paragraph (a)(3) of this section shall correct all inaccuracies in the information previously reported to FinCEN.

(4) *FinCEN identifier*—(i) *Application.* (A) An individual may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about the individual described in paragraph (b)(1) of this section.

(B) A reporting company may obtain a FinCEN identifier by submitting to FinCEN an application at or after the time that the entity submits an initial report required under paragraph (b)(1) of this section.

(C) Each FinCEN identifier shall be specific to each such individual or reporting company, and each such individual or reporting company (including any successor reporting company) may obtain only one FinCEN identifier.

(ii) *Use of the FinCEN identifier.* (A) If an individual has obtained a FinCEN identifier and provided such FinCEN identifier to a reporting company, the reporting company may include such FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.

(B) [Reserved]

(iii) *Updates and corrections.* (A) Any individual that has obtained a FinCEN identifier shall update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier.

(1) If there is any change with respect to required information previously submitted to FinCEN in such application, the individual shall file an updated application reflecting such change within 30 calendar days after the date on which such change occurs.

(2) If any such application was inaccurate when filed and remains inaccurate, the individual shall file a corrected application correcting all inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy. A corrected application filed under this paragraph within this 30-day period will be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate application was submitted.

(B) Any reporting company that has obtained a FinCEN identifier shall file an updated or corrected report to update or correct any information previously submitted to FinCEN. Such updated or corrected report shall be filed at the same time and in the same manner as updated or corrected reports filed under paragraph (a) of this section.

(c) *Reporting company*—(1) *Definition of reporting company.* For purposes of this section, the term ''reporting company'' means either a domestic reporting company or a foreign reporting company.

(i) The term ''domestic reporting company'' means any entity that is:

(A) A corporation;

(B) A limited liability company; or

(C) Created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(ii) The term ''foreign reporting company'' means any entity that is:

(A) A corporation, limited liability company, or other entity;

(B) Formed under the law of a foreign country; and

(C) Registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(2) *Exemptions.* Notwithstanding paragraph (c)(1) of this section, the term ''reporting company'' does not include:

(i) *Securities reporting issuer.* Any issuer of securities that is:

(A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(ii) *Governmental authority.* Any entity that:

(A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

(iii) *Bank.* Any bank, as defined in:

(A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)); or

(C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)).

(iv) *Credit union.* Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(v) *Depository institution holding company.* Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(vi) *Money services business.* Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

(vii) *Broker or dealer in securities.* Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

(viii) *Securities exchange or clearing agency.* Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q–1).

(ix) *Other Exchange Act registered entity.* Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(x) *Investment company or investment adviser.* Any entity that is:

(A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); and

(B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or the Investment

Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(xi) *Venture capital fund adviser.* Any investment adviser that:

(A) Is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l)); and

(B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

(xii) *Insurance company.* Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

(xiii) *State-licensed insurance producer.* Any entity that:

(A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(B) Has an operating presence at a physical office within the United States.

(xiv) *Commodity Exchange Act registered entity.* Any entity that:

(A) Is a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

(B) Is:

(1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B); and

(2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

(xv) *Accounting firm.* Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

(xvi) *Public utility.* Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

(xvii) *Financial market utility.* Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

(xviii) *Pooled investment vehicle.* Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

(xix) *Tax-exempt entity.* Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

(xx) *Entity assisting a tax-exempt entity.* Any entity that:

(A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of this section;

(B) Is a United States person;

(C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

(xxi) *Large operating company.* Any entity that:

(A) Employs more than 20 full time employees in the United States, with ''full time employee in the United States'' having the meaning provided in 26 CFR 54.4980H–1(a) and 54.4980H–3, except that the term ''United States'' as used in 26 CFR 54.4980H–1(a) and 54.4980H–3 has the meaning provided in § 1010.100(hhh);

(B) Has an operating presence at a physical office within the United States; and

(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than $5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120–S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

(xxii) *Subsidiary of certain exempt entities.* Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of this section.

(xxiii) *Inactive entity.* Any entity that:

(A) Was in existence on or before January 1, 2020;

(B) Is not engaged in active business;

(C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;

(D) Has not experienced any change in ownership in the preceding twelve month period;

(E) Has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve month period; and

(F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

(d) *Beneficial owner.* For purposes of this section, the term ''beneficial owner,'' with respect to a reporting company, means any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.

(1) *Substantial control*—(i) *Definition of substantial control.* An individual exercises substantial control over a reporting company if the individual:

(A) Serves as a senior officer of the reporting company;

(B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:

(1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;

(2) The reorganization, dissolution, or merger of the reporting company;

(3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

(4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

(5) Compensation schemes and incentive programs for senior officers;

(6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

(7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or

(D) Has any other form of substantial control over the reporting company.

(ii) *Direct or indirect exercise of substantial control.* An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

(A) Board representation;

(B) Ownership or control of a majority of the voting power or voting rights of the reporting company;

(C) Rights associated with any financing arrangement or interest in a company;

(D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

(E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) any other contract, arrangement, understanding, relationship, or otherwise.

(2) *Ownership Interests*—(i) *Definition of ownership interest.* The term ''ownership interest'' means:

(A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;

(B) Any capital or profit interest in an entity;

(C) Any instrument convertible, with or without consideration, into any share or instrument described in paragraph (d)(2)(i)(A), or (B) of this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in paragraph (d)(2)(i)(A), or (B) of this section, regardless of whether characterized as debt;

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(2)(i)(A), (B), or (C) of this section without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

(E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

(ii) *Ownership or control of ownership interest.* An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

(A) Joint ownership with one or more other persons of an undivided interest in such ownership interest;

(B) Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

(C) With regard to a trust or similar arrangement that holds such ownership interest:

(1) As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;

(2) As a beneficiary who:

(i) Is the sole permissible recipient of income and principal from the trust; or

(ii) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

(3) As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or

(D) Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

(iii) *Calculation of the total ownership interests of a reporting company.* In determining whether an individual owns or controls at least 25 percent of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

(A) Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;

(B) For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

(C) For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:

(1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or

(2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

(D) If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

(3) *Exceptions.* Notwithstanding any other provision of this paragraph (d), the term ''beneficial owner'' does not include:

(i) A minor child, as defined under the law of the State or Indian tribe in which a domestic reporting company is created or a foreign reporting company is first registered, provided the reporting company reports the required information of a parent or legal guardian of the minor child as specified in paragraph (b)(2)(ii) of this section;

(ii) An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

(iii) An employee of a reporting company, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer as defined in paragraph (f)(8) of this section;

(iv) An individual whose only interest in a reporting company is a future interest through a right of inheritance;

(v) A creditor of a reporting company. For purposes of this paragraph (d)(3)(v), a creditor is an individual who meets the requirements of paragraph (d) of this section solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

(e) *Company applicant.* For purposes of this section, the term ''company applicant'' means:

(1) For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company as described in paragraph (c)(1)(i) of this section;

(2) For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company as described in paragraph (c)(1)(ii) of this section; and

(3) Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.

(f) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Employee.* The term ''employee'' has the meaning given the term in 26 CFR 54.4980H–1(a)(15).

(2) *FinCEN identifier.* The term ''FinCEN identifier'' means the unique identifying number assigned by FinCEN to an individual or reporting company under this section.

(3) *Foreign person.* The term ''foreign person'' means a person who is not a United States person.

(4) *Indian tribe.* The term ''Indian tribe'' has the meaning given the term ''Indian tribe'' in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(5) *Lawfully admitted for permanent residence.* The term ''lawfully admitted for permanent residence'' has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(6) *Operating presence at a physical office within the United States.* The term ''has an operating presence at a physical office within the United States'' means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

(7) *Pooled investment vehicle.* The term ''pooled investment vehicle'' means:

(i) Any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)); or

(ii) Any company that:

(A) Would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)); and

(B) Is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to rule 204–1 under the Investment Advisers Act of 1940 (17 CFR 275.204–1).

(8) *Senior officer.* The term ''senior officer'' means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function.

(9) *State.* The term ''State'' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

(10) *United States person.* The term ''United States person'' has the meaning given the term in section 7701(a)(30) of the Internal Revenue Code of 1986.

(g) *Reporting violations.* It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):

(1) The term ''person'' includes any individual, reporting company, or other entity.

(2) The term ''beneficial ownership information'' includes any information provided to FinCEN under this section.

(3) A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.

(4) A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:

(i) such entity is required, pursuant to title 31, United States Code, section 5336, or its implementing regulations, to report information to FinCEN;

(ii) the reporting company fails to report such information to FinCEN; and

(iii) such person either causes the failure, or is a senior officer of the entity at the time of the failure.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13 and 22

Permits for Incidental Take of Eagles and Eagle Nests; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–HQ–MB–2020–0023; FF09M30000–223–FXMB12320900000]

RIN 1018–BE70

Permits for Incidental Take of Eagles and Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose the following revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take. The purpose of these revisions is to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. In addition to continuing to authorize specific permits, we propose the creation of general permits for certain activities under prescribed conditions. We propose a general permit option for qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take. We propose to remove the current third-party monitoring requirement from eagle incidental take permits. We also propose to update current permit fees and clarify definitions.

DATES: *Comment submission:* This proposed rule, draft environmental review, and accompanying documents in the docket are available for public review and comment through November 29, 2022.

Information sessions: We will hold four information sessions in webinar format: two for members of federally recognized Native American Tribes and two for the general public. See Public Comments below under **SUPPLEMENTARY INFORMATION** for details.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by November 29, 2022.

ADDRESSES: *Document availability:* Supplementary documents to this rulemaking action, including a draft environmental review and list of references cited, are available at *https://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0023. Documents and additional information can also be found at: *https://www.fws.gov/regulations/eagle.*

Comment submission: You may submit written comments on this proposed rule and draft environmental review by one of the following methods:

- *Electronically at the Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2020–0023.
- *By hard copy via U.S. mail:* Public Comments Processing, Attn: FWS–HQ–MB–2020–0023; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov,* including any personal information you provide. See *Public Availability of Comments* below under **SUPPLEMENTARY INFORMATION** for further information.

Information collection requirements: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018–0167 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: (703) 358–2606, email: *jerome_ford@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated with the primary responsibility for managing bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) under the Bald and Golden Eagle Protection Act 16 U.S.C. 668–668d; [hereinafter the ''Eagle Act'']). The Eagle Act prohibits the take, possession, and transportation of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the ''taking'' of eagles for various purposes, including when ''necessary . . . for the protection of other interests in any particular locality,'' provided the taking is compatible with the preservation of eagles (16 U.S.C. 668a). Regulations pertaining to eagle permits are set forth in title 50 of the Code of Federal Regulations (CFR) at 50 CFR part 22.

In 2009, subsequent to the delisting of the bald eagle from the List of Endangered and Threatened Wildlife at 50 CFR 17.11, the Service promulgated regulations (74 FR 46836, Sept. 11, 2009 [hereinafter the ''2009 Eagle Rule'']) at 50 CFR part 22 that established two new permit types for the incidental take of eagles and eagle nests. Incidental take means foreseeable take that results from, but is not the purpose of, the activity. These regulations were originally located at 50 CFR 22.26 and 22.27 but were later moved to 50 CFR 22.80 and 22.85 during a general reorganization of our migratory bird and eagle permit regulations (87 FR 876, January 7, 2022).

In 2016, the Service finalized a rule (81 FR 91494, December 16, 2016 [hereinafter the ''2016 Eagle Rule'']) revising the 2009 Eagle Rule that, among other things:

(1) extended the maximum tenure of permits for the incidental take of eagles from 5 to 30 years;

(2) updated the boundaries to the Service's Eagle Management Units (EMUs) to better reflect regional populations and migration patterns of both eagle species;

(3) imposed preconstruction monitoring requirements for wind-energy projects applying for incidental take permits;

(4) amended the preservation standard (discussed below); and

(5) imposed a new requirement to analyze cumulative-authorized and known-unauthorized take at local scales to ensure compliance with the preservation standard. This rulemaking was supported by a programmatic environmental impact statement (PEIS), and the Service's final decision was described in a record of decision, both of which are available at *https://www.regulations.gov* in Docket No. FWS–R9–MB–2011–0094.

On September 14, 2021, the Service published an advance notice of proposed rulemaking (ANPR) to inform the public of changes the Service is

considering that expedite and simplify the permit process authorizing incidental take of eagles (86 FR 51094). The ANPR also advised the public that the Service may prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. In the ANPR, we invited input from Tribes, as well as Federal agencies, State agencies, nongovernmental organizations, and the general public for any pertinent issues we should address, including alternatives to our proposed approach for authorizing eagle incidental take. The public comment period closed on October 29, 2021.

During the public comment period, we received 1,899 distinct comments on the ANPR. Many comments included additional attachments (*e.g.,* scanned letters and supporting documents). These comments represented the views of Native American Tribes, multiple Federal and State agencies, private industries, nongovernmental organizations, and private citizens. In addition to the individual comments received, multiple organizations submitted attachments representing individuals' comments, form letters, and signatories to petition-like letters representing 1,804 signers.

Many comments expressed concerns with the efficiency of the current permitting process, including the lack of capacity within the Service to review and issue permits and the extensive processing times. Similarly, most comments supported the idea of a general permit program to streamline the process and provide more timely and cost-effective coverage for industry. Concerns were also raised about monitoring and reporting requirements. Several comments expressed opposition to third-party or pooled monitoring approaches, while others suggested the Service require permittees to implement a regular, standardized monitoring protocol with annual reporting requirements.

In drafting this proposed rule, we considered the comments received on the ANPR.

Preservation Standard

For this proposed rulemaking, we do not propose any changes to the current preservation standard or management objectives. The Eagle Act requires that any authorized take of eagles be ''compatible with the preservation'' of bald and golden eagles (16 U.S.C. 668a). Under existing regulations, the preservation standard is defined as consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species (50 CFR 22.6). The timeframe the Service used for modeling and assessing eagle population demographics is 100 years (at least eight generations) for both eagle species relative to the baseline set in the 2009 Eagle Rule. ''Eagle management unit'' is defined as a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald or golden eagles (see 2016 PEIS). The 2016 PEIS and 2016 Eagle Rule describe two management objectives for ensuring the Service's 2016 preservation standard is met for eagles. These management objectives are: (1) maintain stable or increasing populations of both eagle species within EMUs, and (2) maintain the persistence of local area populations of both eagle species. Both objectives continue to use 2009 as the baseline, for 100 years into the future.

Population Status of Bald Eagles and Golden Eagles

We propose different management criteria for bald eagles and golden eagles because of the different population statuses and growth rates of each species. We determined this approach is necessary both to achieve the preservation standard and to avoid being unnecessarily restrictive. The Service recently updated population size estimates and allowable take limits for bald eagles (87 FR 5493, February 1, 2022). That document included data from 2019 estimating the population of bald eagles in the coterminous United States to be 316,708, a four-fold increase above our previously published estimate in 2016. Bald eagle populations in most EMUs have been growing at the rate of 10 percent per year. The current population size estimate for the coterminous United States is approximately 336,000, with a nationwide take limit of 19,623 bald eagles. Conversely, golden eagle population trends through 2016 appear relatively stable. However, information on anthropogenic mortality rates suggests unpermitted take likely exceeds what is compatible with long-term population stability of golden eagles. The estimated U.S. population size for golden eagles remains approximately 38,000, which is less than the bald eagle population of 336,000 by an order of magnitude. The golden eagle take limit remains set at zero, unless offset with compensatory mitigation, because available information indicates that additional take of golden eagles without offsetting compensatory mitigation is likely to decrease the population and not be compatible with the preservation of golden eagles (Analysis of the effects of potential general permit scenarios on bald and golden eagles, (2022). Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC, USA.).

This Rulemaking

Overview

The Service proposes a new subpart E within 50 CFR part 22 for eagle permit regulations authorizing take that is necessary for the protection of other interests in any particular locality (eagle take for other interests). This proposed new subpart includes revised provisions for processing specific permits (sometimes called individual permits) and adds a general-permit alternative for qualifying activities. General permits would be available to authorize incidental take by activities, consistent with the preservation standard, that occur frequently enough for the Service to have developed a standardized approach to permitting. The proposed regulations also restructure the existing specific permit regulations for eagle take that is associated with, but not the purpose of, an activity (50 CFR 22.80) and removal of eagle nests (50 CFR 22.85). We propose amendments to these regulations to better align with the purpose and need described in the 2016 PEIS. In the 2016 Eagle Rule, the Service sought to:

(1) increase compliance by simplifying the permitting framework and increasing certainty;

(2) allow for consistent and efficient administration of the program by Service staff;

(3) regulate based on best available science and data; and

(4) enhance protection of eagles throughout their ranges by increasing implementation of avoidance, minimization, and mitigation of adverse impacts from human activities.

Since implementation of the 2016 Eagle Rule, it has become clear that the Service's amended permitting structure did not fully achieve the goals of the 2016 PEIS. For bald eagles, populations have continued to grow. While this is good news in terms of preserving the species, it also means that bald eagles are interacting more often with human activities and infrastructure, resulting in a higher demand for permits authorizing the disturbance take and nest take of bald eagles. The current permit framework places an administrative burden on the public and the Service that is not commensurate with what is

required to effectively preserve bald eagles. For golden eagles, a goal of the 2016 Eagle Rule was to increase compliance and improve consistency and efficiency relating to permitting golden eagle take at wind-energy projects. However, those goals have not been realized. While participation in the permit program by wind energy projects has increased since 2016, it still remains well below our expectations. Low application rates and permit-processing requirements that some have perceived as burdensome have resulted in few permits being issued for wind projects as compared to the number of operational wind projects in areas where golden eagles occur. As a result, golden eagles continue to be taken without implementation of conservation actions to offset that take.

In this rulemaking, we propose a new subpart E for regulations governing the permitting of eagle take for other interests. We propose two regulations for administering permitting: specific permits (proposed § 22.200) and general permits (proposed § 22.210). We further propose to specify activity-specific eligibility criteria and permit requirements in four sections based on activity and type of eagle take:

□ incidental take for permitting wind energy (proposed § 22.250),

□ incidental take for permitting power lines (proposed § 22.260),

□ disturbance take (proposed § 22.280), and

□ nest take (proposed § 22.300).

The specific permit and general permit regulations are the governing regulations and contain the information that is the same for all activities and types of take. Currently, multiple different activities are consolidated into one regulation. This has resulted in complex and potentially confusing regulations. To improve clarity and transparency, we propose four additional regulations for these activities that contain activity-specific provisions beyond the general requirements for administering specific permits and general permits. We incorporated most of the existing requirements currently authorized under §§ 22.80 and 22.85 in the proposed subpart E regulations—the notable exception being the third-party monitoring requirement, which is currently in § 22.80, which we are not carrying over for the reasons discussed below.

For clarity and consistency, we also propose to move regulatory content on permit conditions to a new section (§ 22.215) and to move content on compensatory mitigation standards to a new section (§ 22.220). We propose new definitions to define ''general permit'' and ''incidental take'' and clarifying modifications to the definitions of ''eagle management unit,'' ''eagle nest,'' and ''in-use nest'' (§ 22.6). We propose redesignation of related regulations pertaining to permit requirements for take of golden eagle nests (currently at § 22.75 and proposed to move to § 22.325) and permits for bald eagle take exempted under the Endangered Species Act (currently at § 22.90 and proposed to move to § 22.400) to a new subpart E, with only the modification of a non-substantive change to the section title for proposed § 22.325. Finally, we propose administrative updates to 50 CFR part 13, General Permit Procedures, to update the text regarding information collection requirements and the table of application fees. These proposed changes to the locations of current regulations are as follows:

Current regulations now in 50 CFR part 22	Regulatory subject matter	Proposed new sections in 50 CFR part 22, subpart E
§§ 22.80 and 22.85	Specific permits	§ 22.200
	General permits	§ 22.210
§§ 22.80 and 22.85	Permit conditions	§ 22.215
§ 22.80	Compensatory mitigation	§ 22.220
§ 22.80	Wind energy project incidental take	§ 22.250
§ 22.80	Power line incidental take	§ 22.260
§ 22.80	Eagle disturbance take	§ 22.280
§ 22.85	Eagle nest take	§ 22.300
§ 22.75	Golden eagle nest take for resource development	§ 22.325
§ 22.90	Bald eagle take exempted under the Endangered Species Act	§ 22.400

Specific Permits and General Permits for Eagle Take

Specific permits are the current approach to permitting eagle take. An applicant prepares an application, which is submitted to the Service. The Service reviews the application and determines whether to issue a permit. If the Service issues a permit, it includes permit conditions specific to the project. The Service proposes to retain the specific-permit approach for situations that have high or uncertain risks to eagles, thus maintaining an administrative burden that is commensurate with meeting the preservation standard for eagles.

The Service proposes general permits as an alternative approach to authorization for projects that meet eligibility criteria. The purpose of general permits is to simplify and expedite the permitting process for activities that have relatively consistent and low effects on eagles and well-established avoidance, minimization, compensatory mitigation, monitoring, and other permit conditions where take may be authorized without site-specific analysis. General-permit applicants would self-identify eligibility and register with the Service, including providing required application information and fees, as well as certify that they meet eligibility criteria and will implement permit conditions and reporting requirements. We will continue to fine-tune, and consider public input on, eligibility criteria for all general-permit categories included in this proposed rule to ensure that general permits effectively simplify and expedite the permit process for eligible projects while meeting the Eagle Protection Act's preservation standard. Service review is not required prior to obtaining a permit. Instead, a general permit is generated using permit conditions and reporting requirements for the activity. The Service intends to conduct annual audits for a small percentage of all general permits to ensure applicants are appropriately interpreting and applying eligibility criteria. The general-permit approach to authorizing eagle take requires the same compliance with the Eagle Act's preservation standard as specific permits but reduces the administrative burden in obtaining a permit. The

Service proposes to make general-permit conditions publicly available, so applicants understand permit requirements prior to application.

The Service proposes using general permits for the following activities: (1) certain categories of bald eagle nest take, (2) certain activities that may cause bald eagle disturbance take, (3) eagle incidental take associated with power-line infrastructure, and (4) eagle incidental take associated with certain wind-energy projects. We will use the following mechanisms to ensure that general permits remain consistent with the preservation of bald and golden eagles: eligibility criteria, program-scale monitoring, reporting, compensatory-mitigation requirements, and a program-suspension clause if concern arises regarding the preservation of eagles. We propose to include Service monitoring costs necessary to support implementation of the general permit framework as part of the proposed general permit application and administration fees. We would use those fees for program-scale monitoring (in place of current project-scale monitoring required of the permittee) to verify that the general-permit program is compatible with the preservation of eagles and to better understand program impacts. The Service intends to compile information on general permits issued on an annual basis. This information, in accordance with privacy laws, may be made available to Tribes, States, and other interested parties that wish to know more about general-permit activities occurring in their area. If monitoring or other information indicates that continuing implementation of a general permit is inconsistent with the preservation of bald eagles or golden eagles, the Service may suspend the general program temporarily or indefinitely. This suspension may apply to all or part of general-permit authorizations.

Consistency With 2016 PEIS

We would implement continued population and program-wide monitoring and require project-scale reporting conducted by permittees to ensure that the proposed general-permit program will be consistent with our eagle preservation standard. Consistent with our 2016 Eagle Rule and the 2016 PEIS, we will continue to require compensatory mitigation for any authorized take of eagles exceeding EMU take limits and assess whether additional compensatory mitigation is necessary to ensure authorized take in excess of local area population (LAP) thresholds is compatible with the preservation of eagles. The best available information indicates that, although golden eagle populations over much of the United States were stable through 2016, ongoing levels of human-caused mortality likely exceed levels compatible with maintaining population stability, potentially substantially. Further increases in mortality would very likely cause population decline and therefore not meet the Service's preservation goal of a stable or increasing breeding population. As a result, the Service will maintain take limits for golden eagles at zero throughout their U.S. range and require compensatory mitigation to offset any authorized take of golden eagles. We will continue to require the current minimum offset ratio of 1.2 to 1 for any authorized killing/injury of golden eagles. This baseline mitigation ratio appropriately balances our obligations under the Eagle Act with reasonable, fair, and practicable requirements for permittees.

The 2016 PEIS described how the Service would consider permitted take at the LAP scale and when compensatory mitigation might be appropriate. We will continue to track estimates of authorized take spatially under the general permits and use this information to identify potential LAPs of concern. In the event an LAP of concern is identified, the Service would direct Service-approved in-lieu fee programs to target investments in compensatory mitigation to the LAP of concern. LAP mitigation is built into the required mitigation cost under all general permits for wind facilities; thus, the cost of this mitigation is shared across general permittees. We propose to continue site-specific evaluation of a project's impacts on eagles for specific permits.

The 2016 Eagle Rule introduced a requirement that independent third parties must conduct monitoring associated with long-term permits for incidental take of eagles. In implementing the 2016 Eagle Rule, this requirement has proven impracticable to implement at some projects for a variety of factors, including health, safety, liability, and access issues for project sites that are leased from multiple private landowners. The Service proposes to remove this requirement. Instead, the Service would rely on the requirement in 50 CFR 13.12(a)(5) that the permittee must certify that the information submitted is complete and accurate to the best of their knowledge and belief subject to criminal penalty under 18 U.S.C. 1001. All information submitted with applications for permits from the Federal Government or required reports is subject to this statutory provision. Any demonstration or finding of falsified reports or underreporting will result in general permit suspension or revocation and referral to the Service's Office of Law Enforcement. We anticipate reference to this criminal provision will ensure that permittees provide the Service with accurate monitoring information without the need to require third-party monitoring.

The 2016 Eagle Rule, along with the availability of permits with a tenure up to 30 years, also introduced a requirement that permittees will participate in permit reviews with the Service at intervals not to exceed once every 5 years. The Service introduced these mandatory reviews to ensure that the Service had an opportunity to receive and review all existing data related to a long-term activity's impacts on eagles. It was intended that the Service would use this information to, if necessary, recalculate fatality estimates and authorization levels, and amend permit conditions such as mitigation requirements. Over the last several years, the Service has heard complaints from the regulated community that these scheduled reviews introduced uncertainty into project planning and funding and have discouraged potential applicants from participating or have influenced the permit tenure requested by the applicant. The Service proposes to remove this regulatory requirement. Removal of these administrative check-ins would increase certainty for applicants that are concerned about the potential for unknown amendments to permit conditions every 5 years and is intended to increase participation in eagle take permitting. The Service instead intends to hold the amount of take authorized under a long-term specific permit constant unless the permittee requests an amendment, or unless the Service determines that an amendment is necessary and required under 50 CFR 22.200(e). Third parties, including Tribes, States, and the general public, may contact the Service if they have concerns about compliance with permit terms at a particular project or new information that may bear on the conditions of the permit. The Service may initiate a permit review based on information received from third parties.

Eagle Incidental Take Permits for Wind Energy

Wind energy facilities incidentally take bald and golden eagles by injuring or killing eagles that collide with turbines. Applications for and issuance of permits authorizing incidental take of eagles at wind-energy projects has not

kept pace with this rapidly growing industry. While there are more than 1,000 wind-energy projects on the landscape, the Service has received fewer than 100 applications from those projects and has currently issued only 26 permits since promulgation of the 2016 Eagle Rule. We propose amendments to the current regulations to encourage broader participation in permitting by providing applicants with greater certainty and simplicity in applying for both general and specific permits. We anticipate in turn that eagle populations will benefit significantly from many more projects complying with avoidance, minimization, and mitigation requirements.

We propose new regulations at 50 CFR 22.250 to authorize the incidental take of eagles as part of wind-energy project operations. This proposed regulation would include the provisions of the regulations currently at 50 CFR 22.80 (permits for eagle take associated with, but not the purpose of, an activity) that apply to wind-energy generation activities with revisions. We also propose general permit eligibility criteria for projects located in areas where the risk to eagles is lower. We propose these changes to improve clarity and reduce complexity while retaining the core requirements of implementing practicable avoidance and minimization measures to reduce impacts, implementing appropriate compensatory mitigation, and ensuring the permitted take is compatible with the preservation of bald eagles and golden eagles. The Service will continue to consider revisions to our proposed general-permit eligibility criteria and other possible criteria that meet the preservation standard. With the creation of this new wind-energy regulation and other regulations described below, we also propose removal of 50 CFR 22.80.

The Service proposes to use relative eagle abundance as an eligibility standard for wind-energy general permits. Siting of wind energy projects in areas where fewer eagles occur remains the best method to avoid and minimize eagle take. The greater the abundance of eagles in the area where a project is located, the greater the likelihood of eagle take. The Service proposes the following relative abundance thresholds for golden eagles and for bald eagles, below which a project is eligible for a general permit (table 1). For a project to be eligible, seasonal eagle abundance at all existing or proposed turbine locations must be lower than all five thresholds listed. These relative abundance thresholds were derived using available data from eBird (eBird is an online database of bird distribution and abundance. Cornell Lab of Ornithology, *http://www.ebird.org*). These data are publicly available and geographically distributed and allow the Service to establish these eligibility criteria without the need for collecting site-specific information.

TABLE 1—RELATIVE ABUNDANCE THRESHOLDS FOR WIND ENERGY GENERAL PERMITS

Period	Date range	Bald eagle abundance
1	Feb 22–Apr 13	1.272
2	Apr 12–Sept 6	0.812
3	Sept 7–Dec 13	0.973
4	Dec 14–Feb 21	1.151
5	Average of period 1 and 3.	1.018

Period	Date range	Golden eagle abundance
1	Feb 15–May 16	0.206
2	May 17–Sep 27	0.118
3	Sep 28–Dec 13	0.168
4	Dec 14–Feb 14	0.229
5	Average of period 1 and 3.	0.145

The date ranges reflect the seasons where the species' population is generally moving or not moving. Periods 1 and 3 are the periods of movement between the breeding and non-breeding seasons (*i.e.,* spring and fall migration). Periods 2 and 4 are the periods when the species' population is generally static during breeding or wintering. Period 5 represents the spring and fall movement periods, pooled together. The pooled value is included to account for areas that may not experience the highest use by eagles in spring or fall but cumulatively represent relatively high use during the combined migration period. Migration paths and eagle destinations during migration may differ between the spring and fall. Including each migration period independently and the average of both by including ''migration'' is a conservative approach to ensure areas that experience high levels of eagle use across spring and fall migration cumulatively would be considered high eagle abundance areas.

We chose relative abundance thresholds during these periods as the basis for general-permit eligibility because the known life histories of both species suggest that the local presence of either species may change dramatically throughout the year as they breed, forage, migrate, or disperse. We define relative abundance as the average number of eagles of each species expected to be seen by a qualified person who observes for eagles for one hour at the optimal time of the day for detecting the species, and who travels no more than one kilometer during the observation session. Relative abundance values determined for a project must be based on publicly available eBird data for bald eagle and golden eagle abundance. To be eligible, the relative abundance of eagles at a project location must fall below all the relative abundance thresholds listed in the eligibility criteria for each species and season. The Service intends to review eagle thresholds as new eBird data become available and update thresholds when appropriate through rulemaking.

To assist project proponents in determining whether they qualify for general permits based on the relative abundance thresholds listed above, the Service will offer publicly available, online-mapping resources depicting areas that qualify (see *https://www.fws.gov/regulations/eagle*). Applicants that use the Service's published maps would not have to make the calculations described above. We estimate that nearly 80 percent of all existing wind-energy turbines in the coterminous United States are located in areas under the proposed relative abundance thresholds for both species and thus eligible for a general permit under this proposal. The Service proposes to not include Alaska in wind energy general permits at this time because existing data limit the ability to identify relative abundance thresholds for Alaska with confidence and there is currently limited wind development in Alaska and thus low demand for wind energy permits. Thus, at this time we propose that all wind energy projects in Alaska would have to apply for specific permits.

Because abundance is a coarse-scale measure for the potential impacts of a project on eagles, we propose pairing eagle abundance thresholds with a requirement that projects be sited greater than 660 feet from bald eagle nests and greater than 2 miles from golden eagle nests to be eligible for a general permit. This additional requirement provides a protective measure for eagles at a finer, project-level scale. Previous Service analysis found that breeding golden eagles regularly range 2 miles from their nest sites. Consequently, projects sited within 2 miles of a golden eagle nest have an elevated risk of taking breeding golden eagles or their young fledglings. A 2-mile buffer is required regardless of nest status because golden eagles commonly reuse nesting sites across years and can even reoccupy nests after decades of vacancy. Additionally, the presence of a nest site has been shown

to indicate good habitat for golden eagles and correlate with increased abundance, even if the nest is not in-use. If a new nest is constructed within 2 miles of project infrastructure after issuance of a general permit, the permit holder will no longer meet eligibility criteria for a general permit. The project may continue to operate under the general permit through the duration of the permit term. However, the project would no longer be eligible for obtaining future general permits.

We propose a 660-feet buffer from bald eagle nests to avoid disturbance of nests consistent with what is asked of other project construction and operation activities. We anticipate that our proposed relative-abundance threshold would exclude the highest density bald eagle nesting areas from eligibility for a general permit. We did not propose a larger buffer distance that would have reduced the likelihood of collision because of the overall increasing populations of bald eagles and the increasing number of nonbreeding adult eagles that are ready to assume vacant territories. Bald eagle populations can sustain occasional incidental take from wind-energy projects where we propose to authorize general permits. The Service will further ensure protection of bald eagles in lower density areas through tracking EMU and LAP take. To ensure the preservation of eagles, including the persistence of LAPs, for general permits that require compensatory mitigation, the Service proposes to require a portion of the eagle compensatory mitigation credit be pooled and directed to LAPs of concern.

The Service recognizes the need to address existing projects where not all turbines are located within an area of relative abundance below designated thresholds that qualify for a general permit. We propose defining existing projects to include all infrastructure that was operational prior to the effective date of the final rule as well as infrastructure that was sufficiently far along in the planning process on that date that complying with new requirements would be impracticable, including if land agreements were already in place, site preparation was already underway, or infrastructure was partially constructed. We propose that when a portion of the turbines at an existing project does not qualify for a general permit, the project operator must apply for a specific permit, but may request consideration for a general permit in the specific permit application. The Service will review the project and will issue a letter of authorization if we determine it is appropriate to designate that project as eligible for a general permit. We may refund the specific-permit application fee, but we will not refund the administration fee. The Service anticipates issuing a letter of authorization for most existing projects where only a small percentage of existing turbines do not qualify under the relative-abundance thresholds or when an existing project has conducted and provides monitoring data demonstrating fatality rates consistent with those expected for general permits. The letter of authorization may require additional compensatory mitigation requirements if appropriate. During the rulemaking process, we will consider revisions to the proposed eligibility criteria, as well as other possible eligibility criteria, such as those analyzed in Alternative 2 of the draft environmental assessment (DEA). In Alternative 2, the wind energy general permit eligibility criteria would require all turbines be greater than one mile from a bald eagle nest and greater than two miles from a golden eagle nest. There would be no eligibility criteria based on eagle relative abundance. Our final rule may include eligibility criteria different from those proposed here, providing that those criteria are consistent with the Eagle Act and the current preservation standard.

For both general and specific permits, the Service proposes to continue requiring implementation of all practicable avoidance and minimization measures to reduce the likelihood of take. These conditions would likely include reducing eagle attractants at a site (*e.g.,* minimizing prey populations or perch locations), minimizing human-caused food sources at a site (*e.g.,* roadkill, livestock), and implementing adaptive-management plans that modify facility operations at a site if certain circumstances occur, such as when a certain number of eagle mortalities are detected. In developing the permit conditions and subsequent recommendations and guidance for complying with permit conditions, we will rely on our regional knowledge and expertise gained from processing and issuing previous programmatic (see the 2009 Eagle Rule) and long-term (see the 2016 Eagle Rule) eagle incidental take permits. General permit conditions will be nonnegotiable and fixed for the term of the permit. However, any Service revisions to the general-permit conditions for incidental take of eagles would supersede prior conditions if a project entity applied for a subsequent general permit. The Service proposes to continue standardizing certain elements of specific permit conditions for eagle take to improve transparency and efficiency while also adapting conditions to unique permit situations on a case-by-case basis.

The Service proposes retaining a maximum 30-year tenure for specific permits for wind projects, consistent with current regulations. This tenure is appropriate given the amount of time that wind-energy projects are expected to operate on the landscape. Specific permits may be requested and authorized for any duration (in one-year increments) up to 30 years. The Service proposes a maximum tenure of 5 years for general permits. Upon expiration, project applicants may reapply and obtain a new 5-year general permit. We propose that general permits for eagle take cannot be amended during each 5-year term.

The proposed general permit will require permittees to monitor eagle take. We propose that project proponents must train relevant employees to recognize and report eagle take as part of their regular duties. This monitoring requirement includes visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at and around project infrastructure. Scans must occur a minimum of once every three months corresponding to the highest eagle-use, seasonal periods to the maximum extent practicable. Any dead or injured eagle discovered within the project, regardless of cause, must be promptly reported to the Service (*i.e.,* within 2 weeks). All eagles must be reported, regardless of suspected cause of death, but may include explanatory information if alternate cause of death is suspected. The Service will determine whether a given eagle injury or mortality is attributable to a participating project. Disposal of eagles must be in accordance with Service instructions, which may include shipping eagles to the National Eagle Repository or other designated facility. If a project is located within Indian Country, the Service may direct eagle remains to be returned to the Tribe, in accordance with a Tribal Eagle Remains permit. These requirements are detailed in the general permit conditions under supplementary materials at *https://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0023.

The Service is aware that this proposed four-eagle threshold under general permits may not represent the same levels of realized fatality rates across all generally permitted projects; for instance, some permittees with projects in denser vegetation or rougher terrain may have a more difficult time spotting eagle fatalities, resulting in

fewer reported takes and a greater likelihood of remaining in the general-permit program. To overcome this, the Service could either (a) require more rigorous fatality monitoring for all general permits, or (b) attempt to classify projects based on assumptions about the probability of detection at each site and require different thresholds under each classification. The Service did not propose (a) because requiring such a rigorous level of site-specific monitoring would undermine the purpose of a general-permit program, or (b) because it would add significant complexity to the general-permitting process, which would also undermine the purpose of offering a general-permit option. Both options would also be much more costly. We encourage public comment on these proposed general-permit, detected-take thresholds.

If three bald-eagle injuries or mortalities, or three golden-eagle injuries or mortalities attributable to the project are discovered at a project during the 5-year general permit tenure, within 2 weeks of this discovery the permittee must provide the Service with an adaptive management plan. The permittee would specify which avoidance and minimization measures it will implement in the short term (after finding the remains of a third eagle of a species) and which it will implement if remains of a fourth eagle of that same species is found. If an injury or mortality of a fourth eagle of that species attributable to the project is discovered, the permittee must again notify the Service of that discovery within 2 weeks and confirm that it will implement the avoidance and minimization measures outlined in the adaptive management plan, including any modifications to the plan. The project may continue to operate under the general permit if the permittee implements its adaptive management plan through the duration of the permit term. However, the project would no longer be eligible for obtaining future general permits. The permittee may request reconsideration as authorized under 50 CFR 13.29, including a description of extenuating circumstances. Otherwise, the project proponent would have to apply for a specific permit for eagle take.

The purpose of including this discovered-eagles provision in general permits is so the Service can identify what should be the rare wind project that qualifies for a general permit but, based on realized take, ought to have gone through the more rigorous specific permit process. By requiring notification from projects operating under general permits if three and four eagles are found, we seek to ensure that the overall take authorized by the general-permit program remains within the range we predict and is appropriately offset to the degree necessary for the species' preservation. It is important to note that the finding of eagle remains at any project represents only the minimum number of eagles that may have been killed by a project. Depending on the probability of detection, which is determined by such factors as site topography and vegetation, the number of eagles actually taken may be close to the number of eagles found, or the number actually taken could be substantially higher than the number found. We anticipate that the operations and management staff conducting the monitoring as outlined in the proposed general permit conditions will detect approximately 15–20 percent of all eagles injured or killed at an average project. If four eagles are discovered at this detection rate, we estimate that as many as 16–23 eagles may have gone undiscovered. This estimate, based on a proposed detection rate of 15–20 percent and four eagles found, is comparable to the number of eagles we estimate (conservatively; see appendix A) will be taken at projects that are only eligible for specific permits over a 5-year period (because of the conservative nature of our take estimates, many projects will take substantially fewer than these projected numbers of eagles). For these reasons, discovered take of four golden eagles or four bald eagles appropriately distinguishes between projects that we intend to cover under general permits and higher risk projects that are better managed under specific permits.

Projects that receive general permits and reach the four-eagle threshold for either species will have shown evidence that they are taking eagles at a rate consistent with projects eligible for specific permits. We estimate that the average 100-turbine project that qualifies for a specific permit will take approximately 6.9 golden eagles per year (at the 80th quantile), or approximately 35 golden eagles over a 5-year period, and approximately 1.6 bald eagles per year (at the 60th quantile), or approximately 8 bald eagles over a 5-year period (see the DEA for additional information and methodology), Note that we expect the average wind project receiving a specific permit will take fewer bald eagles than golden eagles. Based on this, we considered making the detected-take threshold for general permit removal lower for bald eagles than it is for golden eagles. However, given the increasing and relatively robust nationwide populations of bald eagles, we concluded that it was not appropriate to make this threshold lower for bald eagles than for golden eagles. Thus, we set the threshold for general permit removal at the same level for bald eagles as we did for golden eagles.

We propose an administration fee for wind-energy general permits to cover the unique costs of implementing the general-permit program for wind-energy projects. The project-level monitoring required of general permittees is not adequate on its own to administer the program. The administration fee would be included in the application fee and cover the costs to the Service to perform more rigorous systematic fatality monitoring on a program-wide basis to ensure the preservation of eagles instead of individual applicants being required to fund and conduct more rigorous fatality monitoring on every project. By utilizing a systematic approach to fatality monitoring, not every site has to be surveyed every year, which reduces costs to the regulated community. The Service proposes a fee of $525 per turbine per year or $2,625 per turbine for a 5-year permit to cover the costs of this systematic monitoring.

To complete this systematic fatality monitoring program, the Service must have reasonable access to wind-energy projects. As part of their participation in the general permit program, project proponents will consent to allow systematic monitoring at their projects by Service staff or Service contractors. The Service would negotiate the logistics of access to project sites with the permittee. Service monitoring data will be used to inform EMU and national estimates of take rates and is not intended to assess project-by-project compliance under the general-permit program. To ensure the general accuracy of estimates and tracking of take over time, we may use project-scale monitoring with a standardized approach, such as randomized and stratified monitoring by relevant factors such as geography, project size, and eagle abundance. The Service will use the information collected through programmatic monitoring to (1) ensure the general-permit program is compatible with the preservation of eagles by assessing overall eagle mortality at the EMU and LAP scale and (2) inform all relevant aspects of the administration of the program to guide future regulatory and implementation policy revisions.

For general permits for wind-energy activities, the Service proposes

authorizing the incidental take of bald eagles and golden eagles without authorizing a specific number of eagles on the face of the permit. Wind energy activities pose risks to both species of eagles at large geographic scales and over long periods of time. To enable the development of an efficient general permit, we propose to authorize the take of both species for each general permit.

The Service will require offsetting compensatory mitigation at a fixed rate for each EMU. This rate will be in the form of eagle credits per cubic kilometer of hazardous volume (rounded to thousandths). The Service calculated the appropriate rates based on estimated take across all general permits, the Service's required 1.2:1 ratio for golden eagles, and a component designed to offset authorized take at the LAP scale should that be necessary. By scaling compensatory mitigation cost to hazardous volume, we would require compensatory mitigation that is proportionate to a project's potential impacts on eagles, which could also encourage broader participation in the program, particularly smaller projects. The Service considered a flat-fee approach where all projects are responsible for the same fee regardless of size; however, we were concerned about the cost disincentive to smaller projects. Wind-energy projects operating under a general permit must obtain eagle credits to the nearest tenth of an eagle for every cubic-kilometer of hazardous volume of the project from a Service-approved conservation bank or in-lieu fee program at the following rates:

☐ Atlantic/Mississippi EMUs: 6.56 eagles/km^3;

☐ Central EMU: 7.88 eagles/km^3; and

☐ Pacific EMU: 11.48 eagles/km^3.

These different rates reflect the different abundances and modeled fatality rates of golden eagles and bald eagles in each EMU. Records must be kept to document compliance with this requirement and provided to the Service upon request or upon submission of each annual report. In accordance with the 2016 PEIS, the Service-approved in-lieu fee programs must provide credits for authorized eagle take within the same EMU where the permitted take occurs, unless reliable data support that compensatory mitigation performed outside the EMU will similarly protect the affected population. Service-approved in-lieu fee programs may be directed by the Service to provide credits in a particular LAP if LAP concerns arise during periodic reviews of the general permit program.

For specific permits for eagle take by the wind industry, the Service will include a fatality estimate for each project based on the best available information and published procedures. From that fatality estimate, the Service will specify the number of eagle credits that must be obtained from a Service-approved conservation bank or in-lieu fee program or implemented by the permittee under a Service-approved mitigation plan.

Eagle Incidental Take Permits for Power Lines

The Service proposes a general-permit option for power lines at 50 CFR 22.260. Multiple power-line entities have expressed interest in obtaining an eagle incidental take permit, and we have sufficient understanding of how eagles interact with power lines to develop a general permit appropriate for this industry. We propose a general permit for eagle take resulting from power-line infrastructure. We would retain provisions for a specific permit for power-line entities that qualify but do not wish to obtain a general permit or have been notified by the Service to obtain a specific permit.

We propose that the general permit for power-line entities will require the following six conditions:

First, all new construction and reconstruction of pole infrastructure must be electrocution-safe for bald eagles and golden eagles, except as limited by human health and safety. ''Electrocution-safe'' means a pole configuration designed to minimize the risk of eagle electrocution (1) by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of eagles, or (2) by covering exposed parts with insulators to physically separate electricity from birds. If insulators are used, they must be in good condition and regularly maintained. Buried lines are considered ''electrocution-safe.'' We recommend buried lines when feasible because they completely eliminate the risks of electrocution, collision, and shooting.

Second, all new construction and reconstruction of transmission lines must consider eagle nesting, foraging, and roosting areas in siting and design, as limited by human health and safety. We recommend utility infrastructure siting at least 2 miles from golden eagle nests, 660 feet from a bald eagle nest, 660 feet from a bald eagle roost, and 1 mile from a bald eagle or golden eagle foraging area. Within each of these distance ranges, we expect elevated eagle use and increased risk of interaction with power and transmission line infrastructure.

Third, a reactive retrofit strategy must be developed that governs retrofitting of high-risk poles when an eagle electrocution is discovered. A reactive retrofit strategy responds to incidents in which eagles are killed or injured by electrocution. The reactive retrofit strategy must include how electrocutions are detected and identified. Poles selected for retrofits must be based only on risk to eagles, regardless of other factors, such as convenience to the permittee. The permittee must retrofit the pole that caused the electrocution, unless the pole already provides sufficient separation by design or is fully insulated by insulators in good condition. The permittee must retrofit a total of 11 poles or a half-mile segment of poles, whichever is less. The most typical pole selection would be the pole that caused the electrocution and five poles in each direction. However, if it is better for eagles for the project proponent to retrofit other poles in the circuit that are not electrocution-safe, those poles may be retrofit, prioritizing the least safe poles most adjacent to the electrocution. Poles outside of the circuit that caused the electrocution may be retrofit only if all poles in the circuit are already electrocution-safe. The Service estimates that retrofitting 11 power poles of high risk to eagles offsets the take of one eagle over 30 years at a ratio of 1.2:1. This estimate assumes that the permittee implements mitigation immediately and retrofits remain effective for 30 years.

Fourth, a proactive retrofit strategy must be developed and implemented to convert all existing infrastructure to be electrocution-safe, prioritizing poles that the permittee identifies as the highest risk to eagles. The permittee must establish annual targets for pole retrofits that result in the con version of one-tenth of non-electrocution-safe infrastructure to electrocution-safe by the expiration of the 5-year general permit term.

Fifth, a collision-response strategy must be implemented for all eagle collisions with power lines. If an eagle collision is detected, a strategy must outline the steps to identify and assess the collision, consider options for response, and implement a response. The assessment should include the species, habitat, daily, and seasonal migration patterns, concentration areas, and other local factors that might have contributed to the collision. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), habitat modification,

and marking the line. Sixth, an eagle-shooting-response strategy must be developed and implemented when an eagle shooting is discovered near power-line infrastructure. To be clear, it is not the fault of the power-line entity when eagles are illegally shot on power-line infrastructure. However, it benefits both eagles and the power-line entity to reduce shooting at eagles and other migratory birds on power-line infrastructure. Shooting eagles on power-line infrastructure can also reduce reliability of power delivery as stray ammunition can damage infrastructure. The strategy should outline the steps to determine whether discovered eagles have been shot or electrocuted and may include necropsying eagles at a qualified laboratory to determine the cause of death if necessary. If shooting is identified, the strategy would outline options for response. This response should include notifying the applicable Service Office of Law Enforcement. However, the Service also encourages power-line entities to develop other response options, such as offering incentives for information regarding eagle shooting incidents on power-line infrastructure, practicable access restrictions, or burying lines. This proposal would be a new request of the power-line industry, and the Service is seeking creativity and ingenuity as power-line entities and the Service work together to address this leading cause of eagle mortality.

If possible, applicants would create one plan with the strategies described above: incorporating eagles into new equipment design and siting, reactive and proactive retrofit strategies, a collision-response strategy, and an eagle-shooting-response strategy. For example, many power-line entities currently operate under avian protection plans (APPs), in which most of these elements already exist. For entities that currently have APPs, we expect applying for this general permit would require relatively minor additions and modifications. The Service would not require the applicant to submit this information when applying for a general permit, but it must be provided upon request.

We propose a tenure of 5 years for general permits. Applicants may apply for a new general permit at the end of the 5-year term. We propose a monitoring requirement that would require power-line entities to train relevant employees to recognize and report eagle take as part of their regular duties. This activity would include visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at permitted infrastructure. You must immediately notify the Service of any eagle discovered near power-line infrastructure, regardless of cause. We propose to require submission of an annual report of eagles discovered to the Service.

We propose a general-permit administration fee of $5,000 for each State for which the power-line entity is seeking authorization. We propose to use the number of States as the relevant factor to scale the administration fee to the size of the power-line entity's operations. The administration fee will be used to monitor the general-permit program. We do not propose requiring additional off-setting compensatory mitigation beyond reactive and proactive retrofits for general permits for power lines. Under the current PEIS, off-setting compensatory mitigation is required only for golden eagle mortality caused by infrastructure installed on or after the 2009 baseline conditions. Mortality on pre-2009 infrastructure is considered part of the baseline and is not applied to EMU take limits. With the wide availability of the guidelines developed by the Avian Power Line Interaction Committee (*Suggested Practices for Avian Protection on Power Lines* (2006) and *Reducing Avian Collisions with Power Lines* (2012)), the Service estimates that power-line infrastructure installed after 2009 takes relatively few eagles.

Conversely, the Service estimates significant benefits will accrue to golden eagles from implementing the measures required as part of the proposed general-permit conditions. The Service estimates that approximately 500 golden eagles are killed annually as a result of electrocutions. Approximately 600 more die from collisions, a portion of which are probably collisions with powerlines (USFWS 2016; Millsap et al. 2022 (in press)). We expect that the proposed combination of requiring new power lines to be electrocution-safe, reconstruction of old power lines to make poles electrocution-safe, the creation and implementation of a reactive retrofit strategy, and the creation and implementation of a proactive retrofit strategy will be an effective approach to reducing the take of eagles on power-line infrastructure across the landscape over time. We expect that these approaches to reduce take at older infrastructure will more than offset take occurring on non-electrocution-safe poles constructed after 2009—the baseline year after which we require compensatory mitigation for golden eagle take for new construction. Therefore, the Service anticipates a net benefit to eagles from utilities participating in the general permit program as proposed and is not proposing to require additional compensatory mitigation for this type of permit.

Furthermore, illegal shooting of eagles kills approximately 670 golden eagles per year (Millsap et al. 2022). We expect that power-line-industry assistance in reducing illegal shooting could significantly advance golden-eagle preservation, although we cannot currently quantify the expected magnitude of that benefit.

Eagle Disturbance Take Permits

More than two-thirds of the eagle take permits the Service currently issues are for incidental disturbance due to activities conducted near bald eagle nests. The current regulations at 50 CFR 22.80 govern both disturbance take and incidental killing of eagles. Accommodating the substantive difference in effects to eagles from these two different types of take has created an overly complex regulation. Therefore, we propose to authorize the incidental disturbance take of eagles in a new stand-alone regulatory section, 50 CFR 22.280. This proposed regulation extracts portions of the existing regulation (50 CFR 22.80) that relate to disturbance take. This proposed change will reduce the complexity of the current regulation, making permitting of incidental disturbance of eagles clearer and easier to understand. We also propose to clarify what does and does not constitute disturbance.

The Service proposes to retain the existing definition of ''disturb'' (50 CFR 22.6). We propose authorizing disturbance of bald eagles under general permits for most activities currently described in the 2007 Activity-Specific Guidelines of the National Bald Eagle Management Guidelines (hereinafter the ''Guidelines''). In 2009, following the delisting of the bald eagle from the Endangered Species Act, the Service published the Guidelines to help landowners and project proponents avoid disturbing breeding bald eagles when conducting activities near nest sites. The Guidelines created activity categories A–H, which we generally propose to adopt as eligibility criteria for general permits for eagle disturbance take. These categories include construction activities, linear utilities, alteration of shorelines, vegetation and timber practices, motorized recreational activities, nonmotorized recreational activities, aircraft operations, and blasting and other loud noises. At this time, disturbance caused by agriculture, mining, and oil and gas operations will

not be eligible for general permits, as requests for these activities have been received infrequently and standard avoidance and minimization measures have not yet been developed. Operators of these and other activities may apply for specific permits.

Between publication of the Guidelines in 2007 and nationwide eagle population surveys in 2018, we estimate that bald eagle populations have quadrupled in the Lower 48 United States (USFWS. 2021. Final Report: Bald Eagle Population Size: 2020 Update. December 2020. Division of Migratory Bird Management, Washington D.C. U.S.A.). This includes growth into environments that are developed or in the process of being developed, increasing the demand for permits for eagle disturbance. The demand for eagle-disturbance take permits has placed a significant administrative burden on the regulated public and the Service.

However, a recent analysis of monitoring reports submitted under nest-disturbance permits reveals that most bald eagles with breeding territories permitted for disturbance do not, in fact, end up being disturbed by permitted activities when avoidance and minimization measures are followed. Rather, the success rates of populations subject to a high prevalence of disturbance permits do not appear to differ significantly from bald eagle breeding populations subject to few or no disturbance permits. Therefore, the Service proposes reducing the administrative burden to the public and the Service by creating a general permit for common activities. We estimate that the general-permit-eligibility criteria proposed will address more than 85 percent of the demand for eagle disturbance permits. We propose standardized avoidance and minimization measures to reduce the disruptive impacts from these activities based on our experience since 2009 with permitting eagle disturbance. The Service proposes requiring specific permits for all other activities that may cause disturbance take of bald eagles and any activity that may cause disturbance take of golden eagles.

We propose to retain the tenure of 5 years for specific permits for incidental disturbance. However, we propose limiting the tenure of general permits for incidental disturbance to one year, expiring at the beginning of the regional breeding season. Permit conditions will include the applicable start dates. General permits could be renewed for subsequent years for activities conducted longer than 1 year. The Service proposes to continue to require monitoring as appropriate for both specific and general disturbance permits. Monitoring would be standardized for general permits and required as necessary to evaluate whether disturbance occurs by determining the effects of general permitted activities on eagle nest outcomes, such as a single report of whether the nest does or does not fledge young.

For both specific and general disturbance permits, we propose to require that applicants provide the coordinates of the nest(s) for which they are requesting disturbance authorization. Precise location information is necessary for both the Service staff who conduct eagle population management and law enforcement. For both specific and general permits, we propose permit conditions that include implementation of measures to avoid and minimize to the extent practicable the risk that authorized activities disturb breeding bald eagles. To determine practicability, the Service will consider eagle population status, the known efficacy of the measure, and the potential burden to the permittee. For specific permits, applicants will have the opportunity to provide input into these permit conditions; however, conditions for general permits will be standardized for all disturbance take of that type of activity and designed to achieve compliance with the standard conditions in these proposed regulations. General permit conditions include effective techniques that have been consistently and successfully used in specific permits for the past 10 years or more.

The Service expects the streamlined general-permit-application process for authorizing disturbance will significantly reduce compliance burdens for project proponents. The application process for disturbance permits has often challenged the capacity and means of some project proponents, particularly homeowners who cannot afford the services of environmental consultants. A general permit will also increase transparency and certainty for project proponents and the public. With standardized authorizations and requirements for disturbance, proponents will know precisely what restrictions may apply to their activity allowing greater certainty during project planning. The public, too, will have a greater understanding of the responsibilities and obligations of permitted projects in their area. Through this general permit process, the Service will continue to sustainably manage bald eagles and potentially benefit populations through the agency's ability to redirect resources to other, more significant, conservation concerns.

As part of this rulemaking, the Service proposes clarifying when disturbance is likely to occur and when obtaining a permit is advisable. The topic of when a permit is necessary for disturbance of breeding eagles has generated confusion among the regulated community and the public in general. Based on its experience in processing disturbance permits since 2009, the Service has determined that certain activities are unlikely to result in disturbance.

We propose to clarify that using non-lethal methods to disperse eagles away from a site, known as hazing, does not constitute eagle disturbance in most circumstances and does not require a permit. Eagle hazing is most often necessary at airfields, landfills, and livestock or poultry farms. The intent of hazing is to deter eagle depredation (*i.e.,* substantial injury to wildlife or agriculture) or reduce threats to human or eagle health and safety by temporarily displacing individual eagles from a location. In over a decade of annual reports from eagle depredation permits authorizing hazing of eagles, the Service has found no evidence that hazing results in disturbance of eagles, as defined. In other words, hazing is not known to cause injury to eagles, nest abandonment, or a decrease in productivity at eagle nests when conducted away from in-use eagle nests. In the several national and regional GPS telemetry studies of golden eagles, we are aware of no golden eagle injury or mortality arising from hazing. Therefore, we propose that eagle hazing does not constitute disturbance unless it is adjacent to an in-use nest sufficient to disrupt eagle breeding activity. The Service will continue to recommend a buffer distance for hazing activities conducted near in-use nests that reflects the latest information available. We currently recommend a buffer distance of 660 feet.

We also propose to clarify that activities conducted adjacent to a communal roost or foraging area do not constitute eagle disturbance and do not require a permit. ''Communal roost site'' and ''foraging area'' are defined by regulation (50 CFR 22.6). In our 2007 Guidelines, we stated that human activity near communal roost sites or foraging areas could prevent eagles from feeding or taking shelter, thus resulting in disturbance take. However, since publication of the Guidelines, we have received little to no documentation that confirms take from activities near roosts, particularly bald eagle roosts.

Temporary or permanent impacts to an individual communal roost site may displace eagles but are unlikely to cause death of or injury to eagles or affect the breeding, feeding, or sheltering of eagles to a degree that qualifies as disturbance. Therefore, we propose to clarify that activities adjacent to communal roosts do not constitute disturbance. Removal of a foraging area has greater potential to cause disturbance; therefore, we propose to clarify that activities that fully prevent use of a foraging area may cause disturbance and the project proponent should apply for a specific permit, particularly if the activity will remove all foraging opportunities within one mile of an in-use nest.

We may deny permit applications for disturbance take of eagles where we determine that disturbance is unlikely to occur. The Service also proposes to clarify that activities in compliance with the Service's current guidance are unlikely to result in disturbance and do not require a permit. As bald eagle populations continue to grow, the Service will focus permitting for nest disturbance on activities that are moderately to highly likely to result in disruption of breeding activity to the degree that it is likely to result in disturbance.

Eagle Nest Take Permits

We propose eagle nest take regulations at 50 CFR 22.300 to authorize the take of eagle nests. This proposed section would update the existing regulations pertaining to removal of eagle nests (50 CFR 22.85) to include a general permit option. We also propose the following modifications to these regulations: (1) clarify that obstruction of a nest constitutes nest take; (2) establish a 1-year maximum tenure for general permits for nest take; and (3) add a justification for authorizing the take of eagle nests to protect threatened or endangered species.

We propose the eagle nest take regulation to include relocation or obstruction of nests. Relocation of all or part of an eagle nest to a new location can be an appropriate alternative to destroying the nest, especially for bald eagles. Placement of an obstruction in an eagle nest, such as a traffic cone, can be an effective technique to prevent use of a nest. Obstructions can be used permanently if a nest is unsafe or otherwise difficult to remove. Obstructions can also be used temporarily to prevent the use of a nest adjacent to a temporary activity, allowing eagles to return in future years after completion of the activity.

Currently, the Service authorizes eagle nest take for four purposes: emergency, health and safety, removal from human-engineered structures, and other purposes (50 CFR 22.85(a)(1)(i) through (iv)). The Service proposes authorizing general permits for nest take only for bald eagles and only for the first three of the current justifications (50 CFR 22.85(a)(1)(i) through (iii): emergency, health and safety, and human-engineered structures). As described above, bald eagle populations have grown significantly since publication of the 2009 Eagle Rule, and populations continue to grow. Additionally, after more than 10 years of issuing permits to remove bald eagle nests, the Service has developed standard permit conditions that can be applied to authorizing the take of bald eagle nests using general permits. We will continue to require specific permits for any take of golden eagle nests because of the population status of golden eagles. We will also continue to require a specific permit for take of eagle nests under the ''other purposes'' justification (current regulation at § 22.85(a)(1)(iv)) because the Service must ensure that those permits provide a net benefit to eagles. This determination must be made on a case-by-case basis and depends on the circumstances of the other purpose requiring nest take. However, we propose to make one exception to this specific-permit requirement for other purposes by authorizing a general permit only in Alaska for bald eagle nest take for other purposes (currently 50 CFR 22.85(a)(1)(iv)). In Alaska, the Service has already developed and implemented standard conditions to meet these requirements considering the robust Alaska bald eagle population.

The Service proposes adding a fifth justification for authorizing the take of eagle nests when necessary for the protection of species on the List of Endangered and Threatened Wildlife (50 CFR 17.11) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544). This activity would require a specific permit. With expanding bald eagle populations, the Service foresees situations arising where the take of an eagle nest may be necessary for the recovery of a threatened or endangered species. Examples include transmitters from threatened marbled murrelets found in bald eagle nests and bald eagles attacking endangered whooping cranes. As many seabird and waterbird populations continue to decline and bald eagle populations continue to increase, the Service anticipates an increase in situations where bald eagle management may be a necessary part of implementing recovery plans. Moreover, nest take is an important tool that can reduce the need for other types of take, such as trap-and-relocate or lethal removal.

We propose to retain the tenure of 5 years for specific permits along with the ability to authorize the take of multiple nests. However, we propose limiting the tenure of general permits to a maximum of 1 year, expiring at the beginning of the regional breeding season. Permit conditions will include the applicable regional breeding season start date. Additionally, the general permit would authorize the removal of one specific nest. The general permit would also authorize removal of subsequent nesting attempts on the same nesting substrate and within one-half-mile of that location for the duration of the permit if the subsequent nests recreate the emergency, safety, or functional hazard that the permittee certified applied to the original nest. However, additional general permits would be required to remove subsequent nesting attempts more than one-half-mile away. We propose these reduced tenure and permit-per-nest requirements to better ensure general permits for nest take are compatible with the preservation of eagles.

For both specific and general nest-take permits, applicants must provide the coordinates of the nest(s) they are requesting to take. Precise location information is necessary for both the Service staff responsible for eagle population management and for law enforcement. To ensure consistency with the Eagle Act, applicants for both specific and general nest-take permits must certify which of the eligibility criteria they meet and certify that there is no practicable alternative to nest removal that would protect the interest to be served. Finally, applicants for both specific and general permits must agree to implement permit conditions. Specific-permit applicants may provide input into these permit conditions; however, general-permit conditions will be standardized for all general permits of that type. General-permit conditions represent effective techniques that have consistently and successfully been used in specific nest-take permits for the past 10 years or more.

Currently, the Service typically requires permittees to monitor the area near where the nest was removed for one or more seasons to determine whether the affected eagles relocate and successfully fledge young. We propose retaining the possibility of requiring monitoring under specific permits on a

case-by-case basis. However, given current knowledge and the population status of bald eagles, we do not propose to require monitoring for general permits. After more than a decade of annual monitoring reports, a one-year permit tenure is expected to better capture the necessary information to meet the preservation standard than requiring monitoring and is less burdensome to the applicant. However, by reducing the level of monitoring and reporting, the Service could lose the potential to make case-specific determinations on the likelihood of lost breeding productivity. Therefore, we will conservatively assume that each nest take authorized by the general permit will result in a loss of breeding productivity for one breeding season. We may change this practice in the future if data warrants a change in our assumption.

The Service does not propose compensatory mitigation for nest-take general permits. General permits for nest take are limited to bald eagle nests in the following circumstances: emergency or human or eagle safety situations, or when constructed on human-engineered structures. These situations are typically hazardous to eagles, so that eagles also benefit from resolving the situation. Compensatory mitigation is not considered warranted for this reason and because of the population status of bald eagles. The Service proposes to continue requiring compensatory mitigation for specific permits that authorize nest take for golden eagles or when needed to meet the net-benefit requirement. Compensatory mitigation for specific permits will be scaled to the permitted take and the population status of the species for which nest take is requested. A specific permit applicant may meet this requirement by obtaining the Service-approved amount of eagle credits from a Service-approved conservation bank or in-lieu fee program. The applicant may also propose other types of compensatory mitigation for Service approval.

Changes to Definitions

As part of this rulemaking, we propose narrowing the definition of ''eagle nest'' to exclude nest structures on failed nesting substrate. Currently, we define ''eagle nest'' to mean any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. We propose adding the qualification that it must be possible for eagles to reuse the nesting substrate for breeding purposes. Nesting substrate that, due to natural circumstances, is no longer and will never again be available to eagles for functional use will no longer meet the regulatory definition of an eagle nest. We propose revising this definition to address uncommon but occasional instances in which eagle nests or nesting substrate are impacted by weather or other natural factors to such a degree that they become permanently unusable to eagles for reproductive purposes. For example, if a nest tree falls and the bald eagle nest retains its structure, the nest would no longer retain the official designation of an eagle nest as the substrate was substantively changed by the nest tree falling. Individuals and organizations may destroy and remove, without a permit, materials that formerly held the designation of an eagle nest but no longer meet the definition based on utility. However, individuals and organizations may not possess or collect these materials beyond what is necessary to dispose of the nest. Eggs, feathers, and other eagle parts are often naturally incorporated into nests with time. The Eagle Act prohibits possession, transportation, and sale of these items, either individually or in their incorporated state with former nesting materials, without Federal authorization.

This proposed definition of ''eagle nest'' does not allow for modification of alternate (unused) nest substrate to a degree that prevents future breeding activity. Such activities will continue to constitute nest take.

We also propose revising the definition of ''in-use nest'' to clarify that the eggs referred to in the definition of in-use nest must be viable. As with our proposed revision of the definition for ''eagle nest,'' we intend this change to ensure our definition is more relevant to what is biologically important to eagles. Nonviable eggs may persist in a nest or even become incorporated into a nest's structure. However, by their nature, these eggs have no promise of hatching. Under current definitions, permittees have been prevented from removing what is otherwise an alternate nest because of the presence of nonviable eggs. In implementing the revised definition, we would presume that eggs are viable unless documented evidence (*e.g.,* absence of adults for several days, presence out of season) indicates otherwise.

For clarity, we propose adding a definition of ''general permit'' to 50 CFR part 22 to distinguish general permits from the definition of ''permit'' in 50 CFR 10.12. We interpret the statutory language requiring a permit to be procured from the Service for take of bald eagles for any purpose to include general permits proposed in this document as well as the more typical individual or specific permits (see 16 U.S.C. 668a).

We propose clarifying in the regulation pertaining to illegal activities (50 CFR 22.12) that obtaining an eagle permit of any type for a continuing activity does not in and of itself resolve take that occurred before issuance of the permit. This provision is currently in § 22.80(e)(8) but applies to all of the regulations in part 22 and is therefore better located in § 22.12.

We propose updating the definition of ''eagle management unit'' to include the current boundaries for those units to improve transparency to the public and general permit applicants. We also propose adding a definition of ''incidental take,'' as this term is used throughout these regulations and not defined.

Changes to Fees

The Service proposes to retain the existing fees for specific permits with the following exceptions (proposed § 13.11(d)(4)). The administration fee will be charged at the same time as the application fee. Thus, the cost of the Specific Permit, Eagle Incidental Take, is adjusted from $36,000 in the application fee column to a $28,000 application fee and $8,000 administration fee. Additional $8,000 administration fees are currently required every 5 years as part of a 5-year permit reviews. We propose replacing 5-year permit reviews with as-needed permit reviews and requiring the $8,000 administration fee if significant changes are required as a result. Potential modifications that are likely to require this administration fee include updates to authorized take, reevaluation of compensatory mitigation requirements, evaluation of impacts of a new project size or arrangement (*e.g.,* increased hazardous volume), or additional environmental review. The $500 amendment fee would be charged for substantive amendments to permit conditions that do not result in the significant changes that require an administration fee. Otherwise, permitting fees for specific permits remain unchanged.

The Service proposes to create a fee structure for general permits (proposed § 13.11(d)(4)). The application fee and administration fee would be charged at the time of application. We do not propose amendment fees as the automated nature of general permits would make substantive amendments unnecessary. We separate application and administration fees due to the different functions these fees serve.

Application fees pertain to processing a particular application whereas administration fees pertain to administering the permitting program as a whole. Consistent with this distinction, we propose not to waive administration fees when multiple permits are consolidated into a single permit (50 CFR 13.11(d)(2)) or for government agencies (50 CFR 13.11(d)(3)). Pooled administration fees are necessary for us to administer the program as a whole and loss of those fees would jeopardize our ability to implement the proposed general-permit structure.

Administrative Changes

Finally, the Service proposes the following administrative changes to the organizational structure of our eagle-take-authorization regulations to improve clarity. To reduce confusion, we propose redesignating the current subpart C ''Specific Eagle Permit Provisions'' as ''Eagle Possession Permits.'' We propose creating a new subpart E pertaining to ''Take of Eagles for Other Interests.'' This subpart will house regulations that authorize permits for the taking of eagles for the protection of other interests in any particular locality. We propose relocating the current regulations at § 22.75 (What are the requirements concerning permits to take golden eagle nests?) to § 22.325 in subpart E and giving the section a new heading pertaining to golden eagle nest take for resource development. We also propose relocating the current regulations at § 22.90 pertaining to permits for bald eagle take exempted under the Endangered Species Act to § 22.400 in subpart E.

Public Comments

The public comment period begins with the publication of this document in the **Federal Register** and will continue through the date set forth above in **DATES**. We will consider all comments on the proposed rulemaking and draft environmental review that are received or postmarked by that date. Comments received or postmarked after that date will be considered to the extent practicable. Federally recognized Native American Tribes can request government-to-government consultation via letter submitted at any time during this rulemaking process.

The Service is interested in public comments on all aspects of the proposed rule. Comments that were submitted on the ANPR were considered in the preparation of this proposed rule, are included in the rulemaking docket, and do not need to be resubmitted. In addition, the Service is specifically seeking information on the following:

1. Are the anticipated number of annual permits to be issued for each permit type a reasonable estimate?
2. Are the costs associated with each permit type reasonable estimates?
3. For electric utilities, at what rate are power poles and other infrastructure planned for regular maintenance, rehabilitation, or reconstruction? What is the assumed life cycle of a typical power pole? How many utilities have an avian protection plan in place? At what rate do utilities schedule retrofits specifically of non-electrocution-safe equipment? Are the estimated costs associated with power-pole-retrofit strategies reasonable?
4. We propose the use of abundance criteria as a threshold qualification for a wind energy general permit. Are there other eligibility criteria for wind-energy general permits, either based solely on population abundance or beyond population abundance, we should consider adopting that would provide certainty and simplicity in the permit process for eligible projects while still meeting the Eagle Protection Act's preservation standard, including the criteria analyzed in Alternative 2 of the DEA?
5. Should the relative abundance thresholds for wind energy general permits (listed in table 1) be updated automatically based on new data, and if so, how often?
6. Should the Service consider different thresholds for when a project is disqualified from general-permit eligibility, such as creating categories based on the generalized probability of detection?
7. Is the amount of compensatory mitigation required under this proposed rule sufficient to meet the preservation standard, considering risk, and uncertainty?
8. How should the Service analyze the potential cost savings to industry from this rulemaking, and does the public have data to bolster this analysis in the final rule?
9. Are there estimates or projections of the spatial distribution of anticipated wind energy industry growth that are relevant to this proposed rulemaking?
10. In the DEA, the Service estimates that retrofitting 11 power poles is required to offset one eagle. Assuming a retrofit costs $7,500, each credit is therefore assumed to cost $82,500 in the marketplace. Are these assumptions, the retrofit cost, and the market price of an ''eagle credit'' reasonable?
11. How should the Service implement the proposed audit program? Are there costs we should consider that ensure accuracy of the results while reducing the burden to the public?

Information Sessions

The Service will present information explaining this action in virtual information sessions during the public comment period. The purpose of each of these sessions is to provide the public with a general understanding of the background for this proposed rulemaking action, activities it would cover, alternative proposals under consideration, and the draft environmental documents for the proposed action. Unlike a public hearing, a public information session is not a forum for the submission of public comments.

We will hold the following information sessions in webinar format. Sessions will start at the time noted. Sessions will last for up to 2 hours but may end early if there are no further comments.

Sessions for federally recognized Native American Tribes:

☐ On October 19, 2022, at 2 p.m. Eastern Time.

☐ On November 2, 2022, at 12 p.m. Eastern Time.

Sessions for the general public:

☐ On October 20, 2022, at 12 p.m. Eastern Time.

☐ On November 3, 2022, at 2 p.m. Eastern Time.

Registration instructions and updated session information can be accessed on the Service web page at *https://www.fws.gov/regulations/eagle* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please note that the Service will ensure that the information sessions will be accessible to members of the public with disabilities.

To promulgate a final rule and prepare a final environmental assessment pursuant to the National Environmental Policy Act, we will take into consideration all comments and any additional information received. Please note that submissions merely stating support for or opposition to the proposed action and alternatives under consideration, without providing supporting information, will be noted but not considered by the Service in the final rule and environmental analysis. Please consider the following when preparing your comments:

(a) Be as succinct as possible.

(b) Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.

(c) State suggestions and recommendations clearly with an expectation of what you would like the Service to do.

(d) If you propose an additional alternative for consideration, please provide supporting rationale and why you believe it to be a reasonable alternative that would meet the purpose and need for our proposed action.

(e) If you provide alternate interpretations of science, please support your analysis with appropriate citations.

Public Availability of Comments

Written comments we receive become part of the public record associated with

this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the 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. Comments and materials we receive, as well as supporting documentation we use in preparing the environmental analysis, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**, above).

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Table 2 below shows the permit count and cost for the current permitting program, the expected number of permits and average permit costs under the proposed rule, and the estimated marginal costs and impacts between the existing and the proposed rule. Additional analysis is available in the supporting environmental assessment.

TABLE 2—AVERAGE ANNUAL COST AND PERMIT COUNT COMPARISON BETWEEN EXISTING PROGRAM AND PROPOSED RULE

Type of permit	Factors	Current program		Proposed Rule		Marginal cost change from existing program to proposed rule
		Number of annual permits	Fees and costs per permit	Number of annual permits	Fees and costs per permit	
Wind Energy Project (General) [1].	Permit Application Costs.	0	$0	74	$500	$500
	Average Compensatory Mitigation Costs.		0		42,000	42,000
	Average Administration (Monitoring) Costs.		0		97,500	97,500
	Average Cost Per Permit.		0		140,000	140,000
	Average Annual Cost to Industry.		0		10,360,000	10,360,000
Wind Energy Project (Specific).	Permit Application Costs.	6	36,000	6	36,000	0
	Average Compensatory Mitigation Costs.		578,000		1,000,000	422,000
	Average Administration (Monitoring) Costs.		2,100,000		2,100,000	0
	Average Cost Per Permit.		2,714,000		3,136,000	422,000
	Average Annual Cost to Industry.		16,284,000		18,816,000	2,532,000
Power Line Entities [2]	Permit Application Costs.	0	0	4	500	500
	Average Administration (Monitoring) Costs.		0		5,000–25,000	5,000–25,000
	Average Power Pole Retrofit Costs.		0		1,100,000 (if no existing retrofit strategy exists, to be paid over 5 years).	0–275,000
	Average Cost Per Permit.		0		5,500–300,500	5,500–300,500
	Average Annual Cost to Industry.		0		22,000–1,202,000	22,000–1,202,000
Nest Disturbance [3]	Permit Application Costs.	96	100–500	96	100	0–(400)
	Compensatory Mitigation Costs.		0		0	0
	Administration (Monitoring) Fee.		0		0	0
	Average Cost Per Permit.		100–$500		100	0–($400)
	Average Annual Cost to Industry.		9,600–$48,000		9,600	0–(38,400)
Nest Take [3]	Permit Application Costs.	40	100–500	40	100	0–(400)

TABLE 2—AVERAGE ANNUAL COST AND PERMIT COUNT COMPARISON BETWEEN EXISTING PROGRAM AND PROPOSED RULE—Continued

Type of permit	Factors	Current program		Proposed Rule		Marginal cost change from existing program to proposed rule
		Number of annual permits	Fees and costs per permit	Number of annual permits	Fees and costs per permit	
	Compensatory Mitigation Costs.		0		0	0
	Administration (Monitoring) Costs.		0		0	0
	Average Cost Per Permit.		100–500		100	0–(400)
	Average Annual Cost to Industry.		4,000–20,000		4,000	0–(16,000)
Average Annual Permits Counts and Costs[4].		142	16,297,600–16,352,000	220	29,211,600–30,391,600	12,859,600–14,094,000

1. There are no general permits for wind energy projects under the existing rule. For our analysis, we used a 36-turbine project example to calculate the fees and costs.
2. There are permits designed for power line entities under the existing rule. Under the proposed rule, these entities will not be required to pay compensatory mitigation costs but will be required to pay costs associated with retrofitting power poles. We estimate that 25% of power line entities will not have an existing retrofit strategy and will therefore be required to pay this cost
3. Compensatory mitigation rates for Nest Disturbance and Nest Take for golden eagles are required at a 1.2:1 ratio, however the take limit is zero.
4. Total costs for the existing and the marginal cost difference is expressed as a range of values based on estimating the total number of nest take and nest disturbance permits as either non-commercial or commercial. The actual value is likely somewhere between these figures.

The maximum total estimated annual cost to industry for the proposed rule is $30,391,600. The maximum total estimated cost over 5 years for all permits is $151,958,000. The average annual equivalent cost is $24,922,312 with a total net present value cost of $124,611,560 using a 7% discount rate. The average annual equivalent cost is $27,836,926 with a total net present value of $139,184,629 at a 3% discount rate. These discount rates represent a range of values that the Office of Management and Budget recommend as a Federal program discount rate for benefit cost analysis for most Federal programs. The above costs represent the total gross cost of the proposed rule and do not reflect the costs associated with the existing regulations. The proposed rule is expected to create an estimated maximum $14,094,000 dollars in new costs annually and $70,470,000 in new marginal costs over 5 years, as compared to the existing regulations. However, these new marginal costs are more than offset by savings to both industry and the Service in terms of reduced Eagle Protection Act enforcement costs and removed requirements for preconstruction monitoring and third-party monitoring. The anticipated 74 wind energy projects and 4 power line entities that annually receive and comply with a permit will no longer be subject to potential enforcement under the Eagle Protection Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that such savings exceeds the total new costs associated with the proposed rule. The costs of the proposed rule are also offset by the ecosystem-services benefits associated with potential decreased take and increased populations of eagles. The Service requests specific public comment and data on the specific costs associated with existing enforcement frameworks and the ecosystem-services values associated with eagles.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121, 201, 110 Stat. 847)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action will not have a significant economic impact on a substantial number of small entities. This analysis first estimates the number of businesses potentially impacted and then estimates the economic impact of the rule.

To assess the effects of the proposed rule on small entities, we focus on home-construction companies, wind-energy facilities, and electric-transmission companies. Although small, noncommercial, wind-energy facilities such as single turbine facilities tied to public buildings could seek permits, we anticipate that most of the applications for wind-energy facilities will be for those that are commercial or utility in scale. Although businesses in other sectors, such as railroads, timber companies, and pipeline companies, could also apply for permits, we anticipate the number of permit applicants in such sectors would be very small, on the order of one to thirteen per year for each sector.

Using the North American Industry Classification System (NAICS), the U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard, which is:

□ fewer than 250 employees for ''Wind Electric Power Generation (NAICS sector 221115),

☐ fewer than 1,000 employees for ''Electric Power Distribution'' (NAICS sector 221122),

☐ fewer than 500 employees for ''Logging'' (NAICS sector 113310),

☐ less than $36.5 million of average annual receipts for ''Construction of Buildings'' (NAICS sectors 236115, 236116, 236117, 236210, and 236220),

☐ less than $36.5 million of average annual receipts for ''Highway, Street, and Bridge Construction'' (NAICS sector 237310),

☐ less than $15.0 million of average annual receipts for ''Support Activities for Rail Transportation'' (NAICS sector 488210), and

☐ fewer than 1,500 employees for ''Gold Ore Mining'' (NAICS sector 212221).

Table 3 below indicates the number of businesses within each industry and the estimated percentage of small businesses impacted by this rule.

TABLE 3—DISTRIBUTION AND POTENTIAL IMPACT TO BUSINESSES [1]

NAICS code	Description	Total firms/establishments		Small businesses potentially impacted by rule	
		Number of all businesses	Number of small businesses	Number	Percentage
221115	Wind Electric Power Generation [2]	459	135	22	16
221122	Electric Power Distribution [3]	1,233	1,169	0	0
113310	Logging [4]	7,992	7,977	up to 13	<1
236115	New Single-family Housing Construction (Except For-Sale Builders) [4].	49,215	49,143	up to 13	<1
236116	New Multifamily Housing Construction (Except For-Sale Builders) [4].	3,175	2,851	up to 13	<1
236117	New Housing For-Sale Builders [4]	15,483	15,099	up to 13	<1
236118	Residential Remodelers [4]	103,079	102,998	up to 13	<1
236210	Industrial Building Construction [4]	2,997	2,847	up to 13	1
236220	Commercial and Institutional Building Construction [4].	38,079	36,100	up to 13	<1
237310	Highway, Street, and Bridge Construction [4]	8,826	8,198	up to 13	<1
237990	Other Heavy and Civil Engineering Construction [4].	4,165	4,052	up to 13	<1
488210	Support Activities for Rail Transportation [4]	564	484	up to 13	3
212221	Gold Ore Mining [4]	147	132	up to 2	2

[1] Data is from the latest SUSB tables that contain information on receipts, which is from 2017.

[2] The number of potentially impacted small businesses is based on the distribution of businesses by enterprise size from 2017 SUSB data tables, the total number of estimated annual permits, and the small business standards threshold from SBA.

[3] Permitting will be required at a large utility scale similar to existing Special Purpose Utility permits (SPUT permits) that the Service issues.

[4] We estimate that the number of nest disturbance and nest take permits will be similar to the number issued over the last 5 years, 677. The non-electric and wind power generation NAICS represent sectors that have historically requested permits. We evenly distributed the estimated total amount of disturbance and take permits across all sectors, with the exception of Gold Ore Mining, for the 5-year period, which comes to 67 permits. Gold Ore Mining entities have historically only applied for 1 to 2 permits per year, or up to 10 over a 5-year period. We also assumed an evenly distributed number of permits across each year, 13, for the remainder of the sectors.

In the last 5 years (2017 through 2022), the Service has issued 26 permits to wind-generation facilities and 677 specific permits to other entities, which averages about 141 permits annually. For the 677 non-wind specific permits, most were issued to businesses and to government agencies, and the remaining were issued to individuals. The number of specific permits over the first 5 years may be higher or lower than the existing permit program due to the creation of general permits and the remaining complexity associated with specific permits. General permits would allow the regulated community to apply for and obtain a permit more easily, particularly when projects are designed to comply with general-permit eligibility criteria. Specific permits would be available to wind energy project applicants that do not meet general permit eligibility criteria. Based on these assumptions, we are estimating that the number of specific permits under the proposed rule will be similar to the number of existing permits over the last 5 years, which is close to 30 permits.

Businesses that apply for nest take and nest disturbance permits typically include home construction, road construction, and various other construction projects. We are assuming that the number of nest take and nest disturbance permits will continue along this trend over the next 5 years. For this analysis, we evenly distributed those permits across industry sectors that best represent the NAICS industry sectors that have applied for permits historically, with the exception of Gold Ore Mining, which has historically only applied for 1 to 2 permits annually. As a result, less than 1 to 2.5 percent of small businesses in NAICS sectors 236115, 236116, 236117, 236118, 236210, 236220, 237310, 237990, 488210, 212221 will be impacted by this rule. The cost per entity for nest take and nest disturbance permitting under the proposed rule is minimal, totaling $100 per eagle/nest, per year. The minimal permit cost of these permits is not expected to result in a significant impact to small businesses in these sectors, regardless of the total percentage of small businesses impacted as a whole.

The largest expected impacts to small businesses under the proposed rule would be an increase in the number of permits issued to wind-generation facilities due to the changes being made in the application requirements and processes and the inclusion of power-line entities as eligible recipients of permits. It is expected that 16 percent of wind generation small businesses would be impacted by this rule, with the expected breakdown of permits by enterprise size category shown below in Table 5.

Table 4 below shows the expected difference between 5-year costs for existing permits and 5-year costs for the proposed general permits for wind generation facilities. Wind generation facilities will pay less for a general permit under the proposed rule when

compared to the current costs associated with a standard permit under the existing regulations. The permit application fee would be reduced from $36,000 to $500 for a general permit. For our analysis, we used a 36-turbine project as an example to calculate the fees and costs. The fees in the tables below are not flat fees but averages based on the turbine count. Section 5.2.5 in the Environmental Assessment found in the docket associated with this rule explains how these costs were calculated. Compensatory mitigation costs for general permits for a wind energy project with 36 turbines would average $42,000, a significant decrease from the existing specific permit cost of $578,000 (assuming mitigation for 1.4 golden eagles per year, using our calculation from the EA of $82,500 as the cost of an eagle credit). The average costs for non-compensatory mitigation, monitoring, and other administrative tasks (permit application, record keeping, auditing, etc.) for a wind-energy project will average $97,500, a cost savings of nearly $2,000,000 from the existing specific permit cost of $2,100,000. The total estimated cost savings between an existing permit and proposed general permit is approximately $2,500,000. The total number of estimated permits shows an estimated overall increase in industry costs associated with permitting under this proposed rule, but only because the Service expects a substantial jump in participation across industry due to the improvements in the permit process and reduction in costs and time required per permit.

TABLE 4—WIND GENERAL PERMIT COSTS AND SAVINGS

Cost category	Existing specific (average)	New general (average)	Cost savings (average)
Permit Application Costs	$36,000	$500	$35,500
Compensatory Mitigation Costs	578,000	42,000	536,000
Administration (Monitoring) Costs	2,100,000	97,500	2,002,500
Total Cost	2,714,000	140,000	2,574,000

Table 5 below displays the proposed new cost for specific permits under the proposed rule compared to the existing cost for specific permits under current regulations. Under the proposed rule, entities will pay $1,000,000 for compensatory mitigation, an increase of $422,000 from the existing $578,000 cost. These costs have increased due to updates in the estimated amount of required mitigation for projects in the specific permit category, which equate to 2.5 golden eagles annually. Using the calculation described in the EA that uses $82,500 as the cost of an eagle credit, this results in an average total of approximately $1,000,000 per project over a 5-year period for compensatory mitigation. There are no proposed changes to the permit application fee and entities will continue to pay their own monitoring costs estimated at $2.1 million over life of the permit. The total cost increase to entities getting a specific permit is $422,000.

TABLE 5—WIND ENERGY SPECIFIC PERMIT COSTS AND SAVINGS

Cost category	Existing specific (average)	New specific (average)	Cost savings (average)
Permit Application Costs	$36,000	$36,000	$0
Compensatory Mitigation Costs	578,000	1,000,000	(422,000)
Administration (Monitoring) Costs	2,100,000	2,100,000	0
Total Cost	2,714,000	3,136,000	(422,000)

Businesses in the ''wind electric power generation industry'' are defined as small if they have less than 250 employees. 2017 SUSB Annual Data Tables report the annual payroll amounts by industry that fall within enterprise size categories. The data for wind electric power generation does not contain a range for establishments under 250 employees, the closest reporting range is less than 500 employees. The table below shows a range of receipts by enterprise size and establishment count as well as the projected percentage of receipts impacted by the proposed rule both at the individual establishments level and the total for that enterprise size. The wind energy project general permit cost is assumed to be paid in full at the time of the permit application, therefore the 5-year cost of $131,000 is assessed in the first year. This cost would then be assessed again at the renewal of their permit in 5 years. Due to this being a one-time cost that covers a 5-year period, this equates to at most one percent of total annual receipts by enterprise size (Table 6). As a result, this will not create a substantial impact on small businesses or specific industries. We base this determination on permit costs for general permits. The number of specific permits issued is expected to follow the same trend as under the current regulations, and permits are likely to be issued in areas of higher risk to eagles to large, complex facilities that are well above the industry standard payroll amount.

TABLE 6—RANGE OF RECEIPTS IMPACTED BY PROPOSED RULE: WIND ELECTRIC POWER GENERATION
[Using 2017 SUSB Annual Data Table]

Enterprise size [1]	Establishments	Annual receipts ($1,000)	Average receipt for size (= receipt/ establishments) ($1,000)	Annual cost per permit for establishment ($1,000)	Number of establishments impacted annually [2]	Total annual % of receipts impacted by proposed rule	Annual % of receipts for impacted establishments
01: Total	459	8,001,761	17,433	130	74	0.12	0.75
02: <5 employees	45	80,905	1,798	130	7	1.12	7.23
03: 5–9 employees	8	14,478	1,810	130	1	0.90	7.18
04:10–14 employees	7	15,873	2,268	130	1	0.82	5.73
05: 15–19 employees	8	39,960	4,995	130	1	0.33	2.60
06: <20 employees	68	151,216	2,224	130	11	0.95	5.85
12: 50–74 employees	9	98,897	10,989	130	1	0.13	1.18
19: <500 employees	135	1,469,292	10,884	130	22	0.19	1.19
24: 2,000–2,499 employees	12	75,879	6,323	130	2	0.34	2.06
25: 2,500–4,999 employees	11	91,973	8,361	130	2	0.28	1.55
26: 5,000+ employees	240	5,368,670	22,369	130	39	0.09	0.58

[1] NAICS thresholds for "Wind Electric Power Generation" (NAICS 221115) define small businesses as having fewer than 250 employees.
[2] The number of establishments impacted annually is based on the weighting of the number of establishments in that enterprise size compared to the total number of establishments. That weight value was multiplied by the total number of estimated annual permits (74) to derive the figures shown. Note that the total sum of <500 and the enterprise sizes greater than 500 will not total 74 due to missing enterprise size categories from the SUSB 2017 data tables.

While electric power distribution companies are currently eligible to apply for a specific permit, under the proposed rule these entities will become eligible to apply for general permits. The permit application fee for these general permits is $500 and the monitoring fee is $5000 per State within which the utility operates. The costs for power pole retrofits called for under the pro-active retrofit strategy are estimated to average $1.1 million over the 5-year permit period and would be evenly distributed annually for an average annual total of $220,000. Many larger utilities have existing avian protection and retrofit strategies in place, and we expect that the retrofit requirement for a general permit will not create substantial new costs for those entities. However, the Service does not have data on the number of utilities that have avian protection or retrofit strategies. For our analysis, we are assuming that 25% of entities do not have an avian protection/retrofit strategy in place. The total assessed cost per entity is expected to range from $5,500 to $225,100 within the first year of the permit term based on whether a retrofit strategy is required. Costs would be further ameliorated by completing required retrofits during regularly scheduled maintenance, reconstruction, and rehabilitation of infrastructure. The marginal costs of making power poles electrocution-safe when work is already planned on those poles is relatively low. The Service assumes that the primary interest in permits in the first 5 years would be from firms with existing special-purpose-utility permits to salvage dead birds. These firms with known incidental take of eagles would benefit from a permit authorizing that take. No existing special-purpose-utility permit holder is a small business, and therefore there would not be a substantial impact to small businesses from this proposed rule.

Table 7 below shows the difference between existing permit program and the 5-year costs under the proposed rule which does incorporate power line entities.

TABLE 7—POWER LINE ENTITIES PERMIT COSTS AND SAVINGS

Cost category	Existing permit program	Proposed rule	Cost savings
Permit Application Costs	$36,000	$500	$35,500
Power Pole Retrofit Costs [1]	0	1,100,000	(1,100,000)
Administration (Monitoring) Costs	0	5,000–$25,000	
Total	36,000	5,500–1,125,500	30,500–(1,089,500)

[1] We are assuming 25% of permittees will not have a retrofit strategy in place, and therefore will be required to pay this cost.

There is no change in the amount homeowners would pay per nest per year. Commercial businesses would pay the same fees as homeowners under this rule. A commercial business applying for what is currently termed a standard permit would have to pay $100 per nest per year (a decrease of $400). Businesses in the construction industry are defined as small if they have annual revenue less than $36.5 million. Depending on the type of permit applications submitted by an individual small business, the permit fees would represent less than one percent of revenue for this size of business. Thus, the changes in standard permit fees would not have a significant economic effect on a substantial number of small businesses in the construction sectors. The changes in permit application fees are shown in tables 8 and 9.

Table 8 shows the expected difference between the existing nest disturbance permit annual costs and the proposed specific permit annual costs.

TABLE 8—ANNUAL NEST DISTURBANCE PERMIT COSTS AND SAVINGS

Cost category	Existing nest disturbance	New nest disturbance	Cost savings
Permit Application Costs	$100–500	$100	$0–$400

Table 9 shows the expected difference between the existing nest take permit annual costs and the proposed specific permit annual costs.

TABLE 9—NEST TAKE PERMIT COSTS AND SAVINGS

Cost category	Existing nest take	New nest take	Cost savings
Permit Application Costs	$100–500	$100	$0–$400

The proposed rule is expected to create an overall savings due to reduced costs for general permits compared to existing individual permits. The proposed rule is expected to create additional savings to both industry and the Service in terms of reduced Eagle Act enforcement costs. Entities that receive and comply with a permit will no longer be subject to potential enforcement under the Eagle Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that it exceeds the total of new costs associated with the proposed rule.

For these reasons, we certify that this rule will not have a significant impact on a substantial number of small entities. The proposed rule impacts a substantial number of small businesses in NAICS sector 221115, ''Wind Electric Power Generation''; however, the financial impacts to individual businesses are not significant. The number of businesses belonging to other industries impacted is not substantial and the magnitude of those impacts is not significant. For these reasons, we certify that this rule will not have a significant impact on a substantial number of small entities. Based on the available information, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, an initial regulatory flexibility analysis is not required, and a small entity compliance guide is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we have determined the following:

a. This proposed rule will not ''significantly or uniquely'' affect small governments in a negative way. A small government agency plan is not required.

b. This proposed rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings (E.O. 12630)

In accordance with E.O. 12630, the rule will not have significant takings implications. This rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism (E.O. 13132)

This rule will not have sufficient federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the proposed regulations changes.

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). 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. The OMB has reviewed and approved the information collection requirements associated with eagle permits and fees and assigned the OMB Control Number 1018–0167.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0167. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668d) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the CFR define the ''take'' of an eagle to include the following broad range of actions: To ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.'' The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. Service permit applications associated with eagles are each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications. In accordance with Federal regulations at 50 CFR 13.12, we collect standard identifier information for all permits, such as:

☐ Applicant's full name and address (street address, city, county, State, and zip code; and mailing address if different from street address); home and work telephone numbers; and a fax number and email address (if available), and

☐ If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

☐ If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

☐ If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the business type, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);

☐ Location where the requested permitted activity is to occur;

☐ Certification containing the following language:

☐ I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

☐ Desired effective date of permit (except where issuance date is fixed by the part under which the permit is issued);

☐ Date;

☐ Signature of the applicant; and

☐ Such other information as the Director determines relevant to the processing of the application, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 Department Manual (DM) 6, appendix 1.3A.

In addition to the general permitting requirements outlined in Federal regulations at 50 CFR 13.12, applications for any permit under 50 CFR part 22 must contain:

☐ Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

☐ Specific locality in which taking is proposed, if any;

☐ Method of proposed take, if any;

☐ If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

☐ Name and address of the public museum, public scientific society, or public zoological park for which they are intended; and

☐ Complete explanation and justification of the request, nature of project or study, number of specimens now at the institution, reason these are inadequate, and other appropriate explanations.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *Administrative Updates*—On January 7, 2022, the Service published a final rule (87 FR 876) making administrative updates to 50 CFR parts 21 and 22. We captured the associated administrative updates to the CFR references for part 22 in the updated versions of the forms in this collection being submitted to OMB for approval with this renewal/revision request.

(2) *Revision to Form 3–200–71*—We are proposing to split the currently approved Form 3–200–71, ''*Eagle Take Associated with but not the Purpose of an Activity (Incidental Take)*'' into three separate forms as follows:

a. *Form 3–200–71,* ''*Eagle Incidental Take*''*—General and Specific*,

b. *Form 3–200–91,* ''*Eagle Disturbance Take*''*—General and Specific*. and

c. *Form 3–200–92,* ''*Eagle Incidental Take (Power Lines)*''*—General*.

We further describe the proposed changes below:

a. *(Revised Title) Form 3–200–71,* ''*Eagle Incidental Take*''*—General and Specific*—The revision to Form 3–200–71 would authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind energy projects. General eagle permits are valid for 5 years from the date of registration. Specific eagle permits may be valid for up to 30 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: requested permit duration; description of the activity that will incidentally take eagles; justification for why the take is necessary; location; description of eagle activity in the area and location and history of eagle use of known nests, foraging areas, and roost sites; factors that may contribute to the disturbance of eagles (if applicable); measures to minimize impacts to eagles; and names of persons that may be carrying out the activity that will incidentally take eagles.

In addition, permit applications associated with wind energy incidental take permits may require the following:

☐ *Post-Construction Monitoring*—Post-construction monitoring fatality estimation must be based on 2 or more years of eagle fatality monitoring that meet the Service's minimum fatality monitoring requirements for specific eagle permits.

☐ *Adaptive Management Plan*—Upon the discovery of the third and fourth bald eagle or three golden eagle injuries or mortalities at a project, the permittee must provide the Service with their adaptive management plan and a description and justification of which adaptive management approaches will be implemented.

☐ *Annual Report*—Permit conditions may require the submission of annual reports to the Service.

☐ *Compensatory Mitigation*—For wind energy specific eagle permits, the permittee must implement the compensatory mitigation requirements on the face of their permit. For wind energy general eagle permits, the permittee must obtain eagle credits to the nearest tenth of an eagle for every cubic-meter of hazardous volume of their project from a Service-approved conservation bank or in-lieu fee program.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

b. *(Proposed Title—NEW) Form 3–200–91, ''Eagle Disturbance Take''—General and Specific*—Applicants may apply for an Eagle Disturbance Permit if their activity may result in incidental disturbance of a golden eagle nest, incidental disturbance of a bald eagle nest, or disturbance to a foraging area. Disturbance General Eagle Permits issued under this section are valid for a maximum of 1 year. The tenure of Disturbance Specific Eagle Permits is set forth on the face of the permit and may not exceed 5 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: the species of eagle sought to be covered by the permit, as well as the method of take (such as kill/injure, disturbance, alternate nest, or in-use nest take); a description of the activity to be authorized, including the location, seasonality, and duration of the activity; the description must include a justification of why there is no practicable alternative to take that would protect the interest to be served; duration of the permit requested; payment of required application and administration fee(s) (see § 13.11(d)(4)); and, if required, implementation of eagle credits by a Service-approved in-lieu fee program.

The Service will use the information via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

c. *(Proposed Title—NEW) Form 3–200–92, ''Eagle Incidental Take (Power Lines)''—General*—The purpose of this new permit application is to authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Power line general eagle permits are valid for 5 years. Specific eagle permits may be valid for up to 30 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: the species of eagle sought to be covered by the permit, as well as the method of take; a description of the activity for which take of eagles is to be authorized, including the location, seasonality, and duration of the activity, and a justification of why there is no practicable alternative to take that would protect the interest to be served; duration of the permit requested; payment of required application and administration fee(s) (see 50 CFR 13.11(d)(4)); and, if required, implementation of eagle credits by a Service-approved in-lieu fee program.

In addition, permit applications associated with incidental take permits for power lines may require the following:

☐ *Avian Protection Plan*—An Avian Protection Plan (APP) is developed through a cooperative partnership between power companies and the Service. The Service does not review or approve the APP, but we will reference it if there is enforcement action or in cases in which we use discretion and do not enforce the take issue. The APP delineates a program designed to reduce the operational and avian risks that result from avian interactions with power line infrastructure with the overall goal of reducing avian mortality. The four strategies defined below (collision response, eagle shooting response, proactive retrofit, and reactive retrofit) may be components of an avian protection plan:

☐ *Collision Response Strategy*—A plan that describes the steps the permittee will take to identify, assess, and respond to eagle collisions with power line infrastructure. The assessment should include the species, habitat, daily and seasonal migration patterns, eagle concentration areas, and other local factors that might be contributing to eagle collisions. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), habitat modification, and marking the line.

☐ *Eagle Shooting Response Strategy*—A plan to respond to eagle shooting events where one or more eagles are discovered near power line infrastructure and the cause of death is shooting. The strategy must outline the steps to identify eagle shooting, options for response, and implementation of response.

☐ *Proactive Retrofit Strategy*—A plan to convert existing infrastructure to electrocution-safe. The proactive retrofit strategy must include how poles are identified as not electrocution-safe, prioritized for retrofit, designed, and implemented. The proactive retrofit strategy must identify annual targets for retrofitting.

☐ *Reactive Retrofit Strategy*—A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include how electrocutions are detected and identified. Reactive-retrofit poles must be based on risk to eagles and not other factors, such as convenience. The pole that caused the electrocution must be retrofit, unless the pole already provides sufficient separation by design or is fully insulated by insulators in good condition. A total of 11 poles or a ½-mile segment must be retrofit, whichever is less. The most typical pole selection is the pole that caused the electrocution and five poles in each direction. However, if it is better for eagles for the project proponent to retrofit other poles in the circuit that are not electrocution-safe, those poles may be retrofit, prioritizing the least safe poles most adjacent to the electrocution. Poles outside of the circuit that caused the electrocution may be retrofit only if all poles in the circuit are already electrocution-safe.

☐ Annual Report—Permit conditions may require the submission of annual reports to the Service.

The Service will use the information via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

(3) *Revision to Form 3–200–72*—We are proposing to revise Form 3–200–72, ''*Eagle Nest Take*'' as described below:

Form 3–200–72 is used to apply for authorized take of bald eagle nests or golden eagle nests, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure under definitions in proposed 50 CFR 22.300(b). General permits are available for bald eagle nest take for emergency, health and safety, or a human-engineered structure, or, if located in Alaska, bald eagle nest take for other purposes. General permits authorize bald eagle nest removal as well as subsequent nesting attempts on the same nesting substrate and within ½ mile of that substrate for the duration of

the permit. Take of an additional eagle nest(s) more than a ½ mile away requires additional permit(s). General permits issued under this proposed section are valid until the start of the next breeding season, not to exceed 1 year. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

☐ Apply as Federal, State, or Tribal agency responsible for implementing actions for species protection.

☐ Include documentation demonstrating the following:

☐ Describe relevant management efforts to protect the species of concern.

☐ Identify how eagles are a limiting factor to survival of the species using the best available scientific information and data. Include a description of the mechanism of that threat.

☐ Explain how take of eagle nest(s) is likely to have a positive outcome on recovery for the species.

☐ Arborist reports (in the case of hazard tree removal).

In addition, permit applications associated with eagle nest take may require the following:

☐ *Monitoring*—If a foster nest is used, the permittee may be required to monitor the nest to ensure nestlings or eggs are accepted by the foster eagles. We updated the burden for monitoring requirements associated with eagle nest take in the separate monitoring information collection requirement.

Proposed Changes—We propose changes in the general permit questions as follows:

☐ The species of eagle sought to be covered by the permit, as well as the method of take (such as kill/injure, disturbance, alternate nest, or in-use nest take).

☐ A description of the activity for which take of eagles is to be authorized, including the location, seasonality, and duration of the activity. The description must include a justification of why there is no practicable alternative to take that would protect the interest to be served.

☐ Duration of the permit requested.

☐ Payment of required application and administration fee(s) (see 50 CFR 13.11(d)(4)); and

☐ If required, implementation of eagle credits by a Service-approved in-lieu fee program.

The Service will use the information via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

(4) *Reporting Requirements*—Submission of reports is generally on an annual basis, although some are dependent on specific transactions. Additional monitoring and report requirements exist for permits issued under 50 CFR part 22. Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed.

a. *(New Reporting Requirement) Report Take of Eagles (3rd and 4th Eagles) (50 CFR 22.250(d)(2) and (3))*—Permittees must notify the Service in writing within 2 weeks of discovering the take of a third or fourth eagle of either species. The notification must include the reporting data required in their permit conditions, their adaptive management plan, and a description and justification of which adaptive management approaches they will be implementing. Upon notification of the take of the fourth eagle of either species, the project may continue to operate through the term of the existing general permit, but the project proponent is denied from obtaining future general permits for incidental take for that project.

(5) *Change in Administration Fees* (State, Local, Tribal, or Federal Agencies)—State, local, Tribal, and Federal government agencies, and those acting on their behalf, are exempt from processing fees.

Proposed Change—This rule proposes a change to the Service's practice of not charging administration fees for eagle permits under 50 CFR part 22 to any State, local, Tribal, or Federal government agency, or to any individual or institution acting on behalf of such agency. With this proposed rule, these government agencies would be required to pay administrative fees to cover the costs associated with Service-led program monitoring.

(6) *(NEW—Existing In Use Without OMB Approval) Labeling Requirement*—Regulations at 50 CFR 22.4 require all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs to be labeled. The shipments must be labeled with the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the name of each species.

(7) *(NEW—Existing In Use Without OMB Approval) Requests for Reconsideration Associated with Eagle Permits (Suspension and Revocation)*—Persons notified of the Service's intention to suspend or revoke their permit may request reconsideration by complying with the following:

☐ Within 45 calendar days of the date of notification, submit their request for reconsideration to the issuing officer in writing, signed by the person requesting reconsideration or by the legal representative of that person.

☐ The request for reconsideration must state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

☐ The request for reconsideration shall contain a certification in substantially the same form as that provided by 50 CFR 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(8) *(NEW—Existing In Use Without OMB Approval) Compensatory Mitigation*—Compensatory mitigation will be required for any permit authorizing take that would exceed the applicable eagle management unit take limits. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by reducing another ongoing form of mortality by an amount equal to or greater than the unavoidable mortality or increasing the eagle population by an equal or greater amount. Compensatory mitigation may also be required when there is concern regarding the persistence of the local-area population of the project area, based on publicly available information. Except as restricted otherwise, compensatory mitigation may include in-lieu fee programs, conservation banks, other third-party mitigation projects, or arrangements and permittee-responsible mitigation. Except as restricted otherwise, compensatory mitigation may include in-lieu fee programs, conservation banks, other third-party mitigation projects, or arrangements and permittee-responsible mitigation.

Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, other third-party mitigation projects, or arrangements and permittee-responsible mitigation. To obtain approval, the permittee must submit a mitigation plan to the Service sufficient to demonstrate that the standards set

forth in proposed § 22.220(b) can be met, including a description of the number of credits to be provided, the Service's Eagle Management Units (EMU's) that will be implemented, and an explanation of the rationale for this determination. The Service must approve the mitigation plan before credits can be issued.

(9) *(NEW—Existing In Use Without OMB Approval) Single Application for Multiple Activities* (50 CFR 13.11(d)(1))—When regulations require more than one type of permit, applicants may submit a single application, provided the single application contains all of the information required by the separate applications for each permitted activity. In instances where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted. If the activity spans multiple regions, applications should be submitted to the region of the applicant's U.S. mailing address. Administration fees are not waived for single applications covering multiple activities.

We also propose to renew the existing reporting and/or recordkeeping requirements identified below:

(1) *Form 3–200–14, ''Eagle Exhibition*''—This form is used to apply for a permit to possess and use eagles and eagle specimens for educational purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: type of eagle(s) or eagle specimens; status of other required authorizations (State, local, Tribal); description of the programs that will be offered and how the eagles will be displayed; experience of handlers; and information about enclosures, diet, and enrichment for the eagles. The Service uses the information collected via the form to determine that the eagles are legally acquired and will be used for bona fide conservation education, and in the case of live eagles, will be housed and handled under safe and healthy conditions.

(2) *Form 3–200–15a, ''Eagle Parts for Native American Religious Purposes*''—This application form is used by enrolled members of federally recognized Tribes to provide them authorization to acquire and possess eagle feathers and parts from the Service's National Eagle Repository (NER). The permittee also uses the form to make additional requests for eagle parts and feathers from the NER. The form collects the following information: name of the Tribe; Tribal enrollment number of the individual applicant; a signed Certification of Enrollment; inmate specific information in cases where applicants are incarcerated (inmate number, institution, contact information for the institute's chaplain); and the specific eagle parts and/or feathers desired by the applicant. The Service uses the information collected via the form to verify that the applicant is an enrolled member of a federally recognized Tribe, and what parts and/or feathers the applicant is requesting.

(3) *Form 3–200–16, ''Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety—Annual Report*''—Applicants use this form to obtain authorization to take (trap, collect, haze) eagles that depredate on wildlife or livestock, as well as eagles situated where they pose a threat to human or their own safety. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations (State, local, Tribal); the species and estimated number of eagles causing the problem; what the damage or risk consists of; location; method of take; alternatives taken that were not effective; and a description of the proposed long-term remedy. The Service uses the information collected via the form to determine the take is necessary to protect the interest; other alternatives have been considered; and the method of take is humane and compatible with the preservation of eagles.

(4) *Form 3–200–18, ''Take of Golden Eagle Nests During Resource Development or Recovery*''—This application is used by commercial entities engaged in resource development or recovery operations, such as mining or drilling to obtain authorization to remove or destroy golden eagle nests. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: location of the property; the status of other required authorizations; the type of development or recovery operation; the number of nests to be taken; the activity that involves the take of the nest; the disposition of the nests once removed (or destroyed); the duration for which the authorization in requested; and a description of the mitigation measures that will be implemented. The Service uses the information collected via the form to determine that the take is necessary and will be compatible with the preservation of eagles.

(5) *Form 3–200–77, ''Native American Eagle Take for Religious Purposes*''—Federally recognized Native American Tribes use this form to apply for authorization to take eagles from the wild for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations; location of proposed take; statement of consent by the land owner or land manager if not on Tribal land; species, number, and age class of eagles; whether the eagles will be collected alive and held in captivity; intended disposition of parts and feathers; and the reason why eagles obtained by other means do not meet the Tribe's religious needs. The Service uses the information obtained via the form to determine the take is necessary to meet the Tribe's religious needs, that they received consent of the landowner, the take is compatible with the preservation of eagles, and any eagles kept alive will be held under humane conditions.

(6) *Form 3–200–78, ''Native American Tribal Eagle Aviary*''—Federally recognized Native American Tribes use this form to apply for authorization to keep live eagles for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: descriptions, photographs and/or diagrams of the enclosures where the eagles will be housed, and number of eagles that will be kept in each; status of other required authorizations; names and eagle-handling experience of caretakers; veterinarian who will provide medical care; and description of the diet and enrichment the Tribe will provide the eagles. The Service uses the information collected via the form to ensure the Tribe has the appropriate facilities and experience to keep live eagles safely and humanely.

(7) *Form 3–200–82, ''Bald Eagle or Golden Eagle Transport into the United States for Scientific or Exhibition Purposes*''—This application is used by researchers and museums to obtain authorization to temporarily bring eagle specimens into, or take such specimens out of, the United States. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: documentation that the specimen was legally obtained; documentation that the applicant meets the definition of a ''public'' institution as required under statute; status of other

required authorizations (State, local, Tribal); description of the specimen(s); country of origin; name of and contact information for the foreign institution; scientific or exhibition purposes for the transport of specimens; locations where the item will be exhibited (if applicable); dates and ports of departure/arrival; and names of persons acting as agents for the applicant. The Service uses the information collected via the form to ensure the specimens were legally acquired will be transported through U.S. ports that can legally authorize the transport, the transport will be temporary, as required by statute, and the specimens will be used for purposes authorized by statute.

(8) *Form 3–202–11, ''Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety—Annual Report''*—Permittees use this form to report the outcome of their action involving take of depredating eagles or eagles that pose a risk to human or eagle health or safety. The form collects the following information: species, location, date of take, number of eagles, method of take, and final disposition. The Service uses the information reported via the form to ascertain that the planned take was implemented, track how much authorized take occurred in the eagle management unit and local population area, and verify the disposition of any eagles taken under the permit.

(9) *Form 3–202–13, ''Eagle Exhibition—Annual Report''*—Permittees use this form to report activities conducted under an Eagle Exhibition Permit for both Live and Dead Eagles. The form collects the following information: list of eagles and eagle specimens held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; total number of programs each eagle was used in, or if statically displayed, such as in a museum setting, the number of days the facility was open to the public. The Service uses the information reported through this form to verify that eagles held under the permit are used for conservation education.

(10) *Form 3–202–14, ''Native American Tribal Eagle Aviary—Annual Report''*—Permittees use this form to report activities conducted under a Native American Eagle Aviary Permit. The form collects the following information: a list of eagles held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; or other disposition. The Service uses the information collected via the form to track the live eagles held by federally recognized Tribes for spiritual and cultural practices.

(11) *Form 3–1552 ''Native American Tribal Eagle Retention''*—A Federal Eagle Remains Tribal Use permit authorizes a federally recognized Tribe to acquire, possess, and distribute to Tribal members whole eagle remains found by a Tribal member or employee on the Tribe's Tribal land for Indian religious use. The applicant must be a federally recognized Tribal entity under the Federally Recognized Tribal List Act of 1994, 25 U.S.C. 479a–1, 108 Stat. 4791 (1994). In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: name of the Tribe; name and contact information for the Tribal leader and primary contact person; whether the Tribe has already discovered an eagle to hold under the permit; and if different than what's listed for the primary contact, the address of the physical location where records will be kept. The Service uses the information collected via the form to identify which Tribe is applying for the permit and informs the Service as to whether the Tribe is applying before or subsequent to finding the first eagle they wish to retain, allowing the Service to choose the appropriate course of action.

(12) *Form 3–1591, ''Tribal Eagle Retention—Acquisition Form''*—This form provides the Service information needed to track the chain of custody of eagle remains and ensure the Tribe takes possession of them as authorized under the permit. The first part of the form (completed by a Service Office of Law Enforcement (OLE) Officer) collects: species; sex; age class of eagle; date and location discovered; date the information was reported to track eagle mortalities; date the remains were transferred to the Tribe; name and contact information for the Tribe; and OLE officer name and contact information. The second part of the form (competed by the Tribe) collects: permit number; date the Tribe took possession of the eagle; and Principal Tribal Officer's name, title, and contact information.

(13) *Form 3–2480, ''Eagle Recovery Tag''*—The form is used to track dead eagles as they move through the process of laboratory examination to determine cause of death and are sent to the NER for distribution to Native Americans for use in religious ceremonies. In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: U.S. Geological Survey band data; unique ID number assigned; mortality date; species, age, and sex of the eagle; date recovered; name of person(s) who found and recovered the eagle; and names and contact information of persons who received the eagle throughout the chain of custody. The Service uses the information collected to maintain chain of custody for law enforcement and scientific purposes.

(14) *Monitoring Requirements*—Most permits that authorize take of eagles or eagle nests require monitoring. We do not require monitoring for intentional take such as when Native American Tribes take an eagle as part of a religious ceremony or when falconers trap golden eagles that are depredating on livestock. A fundamental purpose of monitoring under take permits is to track levels of take for population management. For disturbance permits, monitoring also provides information about whether the permitted activity actually disturbed eagles, allowing the Service to better understand when these types of permits may not be needed. In addition to tracking take at population management scales, the Service uses data from monitoring lethal take permits to adjust authorized take levels, compensatory mitigation requirements, and conservation measures as spelled out under the terms of the permit. With regard to wind industry permits, these data also enable the Service to improve future fatality estimates through enhanced understanding of exposure and collision.

(15) *Required Notifications*—Most permits that authorize take or possession of eagles require a timely notification to the Service by email or phone when an eagle possessed under a possession permit or taken under a permit to take eagles dies or is found dead. These fatalities are later recorded in reports submitted to the Service as described above. The timely notifications allow the Service to better track take and possession levels, and to ensure eagle remains are sent to either a forensics lab or the NER. Incidental take permittees are also required to notify the Service via email or phone if a threatened or endangered species is found in the vicinity of the activity for which take is permitted. There is no notification requirement for that beyond reporting each occurrence where take is discovered to have occurred. The Service tracks whether the take level is exceeded or is likely to be exceeded.

(16) Permit Reviews—We propose to remove the regulatory requirement for long-term specific permits to mandate an administrative check-in with the Service at least every 5 years during the permit tenure (termed 5-year Permit Review, above). The Service introduced these mandatory 5-year permit reviews

as part of the 2016 Eagle Rule to ensure that the Service had an opportunity to ask for and review all existing data related to a long-term activity's impacts on eagles. It was intended that the Service would use this information to, if necessary, re-calculate fatality estimates and authorization levels, and amend permit conditions such as mitigation requirements. However, over the last several years the Service has heard complaints from wind companies, and comments were submitted in response to the ANPR, that these scheduled reviews introduced uncertainty into project planning and funding and has discouraged participating or influenced the permit tenure that is requested by the applicant.

Removal of these administrative check-ins would increase certainty for applicants that are concerned about amendments to permit conditions every 5 years, and is intended to increase participating in eagle take permitting. The Service instead intends to hold the amount of take authorized under a long-term specific permit constant unless the permittee requests an amendment, or unless the Service determines that an amendment is necessary and required under 50 CFR 22.200(e). Such a change replaces scheduled check-ins and potential amendments resulting from those check-ins with unscheduled check-ins and amendments that the permittee or Service could initiate at any time as situations arise that may warrant them.

(17) *Recordkeeping Requirements*—As required by 50 CFR 13.46, permittees must keep records of the activity as it relates to eagles and any data gathered through surveys and monitoring, to include records associated with the required internal incident reporting system for bald eagle and golden eagle remains found and the disposition of the remains. This information retained by permittees is described above under reporting requirements.

(18) *Amendments*—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. Such changes may include an increase or decrease in the authorized take or possession of eagles, proposed adjustment of permit conditions, or changes to the activity involving eagles. The permit will specify circumstances under which modifications to avoidance, minimization, or compensatory mitigation measures or monitoring protocols will be required, which may include, but are not limited to take levels, location of take, and/or changes in eagle use of the activity area.

At a minimum, the permit must specify actions to be taken if take approaches or reaches the amount authorized and anticipated within a given timeframe. The permittee applies for amendments to the permit by submitting a description of the modified activity and the changed conditions affecting eagles. Substantive amendments incur a processing fee. A permittee is not required to pay a processing fee for minor changes, such as the legal individual or business name or mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change.

(19) *Transfers*—In general, permits issued under 50 CFR part 22 are not transferable. However, when authorized, permits issued under § 22.80 may be transferred by the transferee providing written assurances of sufficient funding of the conservation measures and commitment to carry out the terms and conditions of the permit.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Eagle Permits and Fees, 50 CFR parts 10, 13, and 22.

OMB Control Number: 1018–0167

Form Numbers: FWS Forms 3–200–14, 3–200–15a, 3–200–16, 3–200–18, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–200–82, 3–202–11, 3–202–13, 3–202–14, 3–202–15, 3–202–16, 3–1552, 3–1591, 3–2480, 3–202–91 (New), and 3–202–92 (New).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, businesses, and State/local/Tribal governments. We expect the majority of applicants seeking long-term permits will be in the energy production and electrical distribution business.

Total Estimated Number of Annual Respondents: 8,469.

Total Estimated Number of Annual Responses: 8,469.

Estimated Completion Time per Response: Varies from 15 minutes to 200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 38,991.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Non-hour Burden Cost: $7,249,980 (primarily associated with application processing and administrative fees).

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0167 in the subject line of your comments.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We are evaluating the environmental impacts of the changes to the regulations and are accepting public comments on a draft environmental review document, as described above in **DATES** and **ADDRESSES**.

Endangered and Threatened Species

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–43), requires Federal agencies to ''ensure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). Before issuance of the final regulations and final environmental assessment (EA), the Service will comply with provisions of the Endangered Species Act to ensure that the rulemaking has no effect on or is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same

controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We continue to seek information from Tribes to determine whether the proposed rule will have effects on Tribes or Tribal lands, sacred sites, or resources may be affected by the proposed changes in this rule. Federally recognized Native American Tribes can request government-to-government consultation via letter submitted at any time during this rulemaking process. The Service conducted a Tribal webinar on September 22, 2021, during the ANPR public comment period as well as prior to publication of this proposed rule. SevenTribal representatives provided written comments.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule is a significant regulatory action under E.O. 12866; however, it will not significantly affect energy supplies, distribution, or use. The proposed permitting process streamlines permitting for wind energy and power distribution; therefore, the rule is intended to ease administrative burden on energy development and will not impact it negatively. Therefore, this action is not a significant energy action and no statement of energy effects is required.

Signing Authority

On September 23, 2022, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On September 23, 2022, Shannon Estenoz also authorized the undersigned to sign this document electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend parts 13 and 22 of subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Revise § 13.5 to read as follows:

§ 13.5 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part and assigned OMB Control Number 1018–0022, 1018–0070, 1018–0092, 1018–0093, or 1018–0167 (unless otherwise indicated). Federal agencies 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. Direct comments regarding the burden estimates or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

■ 3. Amend § 13.11 by:

■ a. Revising paragraphs (d)(2) and (d)(3)(i); and

■ b. In the table in paragraph (d)(4):

■ i. Removing the 15 entries under ''Bald and Golden Eagle Protection Act'' and adding 19 entries in their place; and

■ ii. Revising footnote 1.

The revisions and additions read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing take caused by the activity in accordance with § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each activity. Where more than one activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity for which take is permitted. Administration fees are not waived.

(3) * * *

(i) We will not charge a permit application fee to any Federal, Tribal, State, or local government agency or to any individual or institution acting on behalf of such agency, except that administration fees for permits issued under subpart E of part 22 of this subchapter will not be waived. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

* * * * *

(4) * * *

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
* * * * *			*	*
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR part 22	100		
Eagle Exhibition	50 CFR part 22	75		
Eagle—Native American Religion	50 CFR part 22	No fee		
Eagle Take Permits—Depredation and Protection of Health and Safety.	50 CFR part 22	100		
Golden Eagle Nest Take	50 CFR part 22	100		50
Eagle Transport—Scientific or Exhibition	50 CFR part 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR part 22	No fee		
Specific Permit Eagle Disturbance Take—Commercial	50 CFR part 22	2,500		500
Specific Permit Eagle Disturbance Take—Noncommercial	50 CFR part 22	500		150
Specific Permit Eagle Incidental Take	50 CFR part 22	28,000	8,000	500
Transfer of a Subpart E Eagle Permit	50 CFR part 22	1,000		
Specific Permit Eagle Nest Take—Single nest, Commercial.	50 CFR part 22	2,500		500

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Specific Permit Eagle Nest Take—Single nest, Non-commercial.	50 CFR part 22	500		150
Specific Permit Eagle Nest Take—Multiple nests	50 CFR part 22	5,000		500
General Permit—1 year	50 CFR part 22	100		
General Permit—5 years	50 CFR part 22	500		
General Permit—Power lines incidental take	50 CFR part 22	500	5,000 per State	
General Permit—Wind incidental take	50 CFR part 22	500	2,625 per turbine	500
Eagle Take—Exempted under ESA	50 CFR part 22		No fee	
* * * * * * *				

[1] An additional Administration Fee will be assessed at the time of application.

* * * * *

■ 4. Amend § 13.12 by:

■ a. Revising paragraph (a)(1)(ii); and

■ b. Removing the 8 entries in table 1 to paragraph (b) under ''Eagle permits'' and adding in their place 10 entries.

The revisions and additions read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) * * *

(ii) If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

Type of permit	Section
* * * * * * *	
Eagle permits:	
Scientific or exhibition	22.50
Indian religious use	22.60
Falconry purposes	22.70
Depredation and protection of health and safety	22.100
Permits for incidental take of eagles	22.200 or 22.210
Permits for incidental take of eagles by power lines	22.200 or 22.210
Permits for disturbance take of eagles	22.200 or 22.210
Permits for nest take of eagle	22.200 or 22.210
Permits for golden eagle nest take from resource development	22.325
Permits for bald eagle take exempted under the Endangered Species Act	22.400

§ 13.24 [Amended]

■ 5. Amend § 13.24 in the introductory text of paragraph (c) by removing ''§ 22.80 of this subchapter B,'' and adding in its place ''part 22, subpart E, of this subchapter''.

§ 13.25 [Amended]

■ 6. Amend § 13.25 in paragraphs (b) introductory text and (f) by removing ''§ 22.80 of this subchapter B'' wherever it appears and adding in its place ''part 22, subpart E, of this subchapter''.

PART 22—EAGLE PERMITS

■ 7. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 703–712; 1531–1544.

■ 8. Amend § 22.6 by:

■ a. Revising the definitions of ''Eagle management unit (EMU)'' and ''Eagle nest'';

■ b. Adding in alphabetical order a definition for ''General permit'':

■ c. Revising the definition of ''In-use nest''; and

■ d. Adding in alphabetic order a definition of ''Incidental take''.

The revisions and additions read as follows:

§ 22.6 Definitions.

* * * * *

Eagle management unit (EMU) means a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald or golden eagles. The Atlantic EMU is CT, DE, FL, GA, MA, MD, ME, NH, NJ, NY, NC, PA, RI, SC, VA, VT, and WV. The Mississippi EMU is AL, AR, IL, IN, IA, KY, LA, MI, MN, MO, MS, OH, TN, and WI. The Central EMU is KS, ND, NE, NM, OK, SD, and TX; portions of CO, NM, and WY east of the Continental Divide; and portions of MT east of Hill, Chouteau, Cascade, Meagher, and Park Counties. The Pacific EMU is AK, AZ, CA, ID, NV, OR, UT, WA; portions of CO, NM, and WY west of the Continental Divide; and in MT Hill, Chouteau, Cascade, Meagher, and Park Counties and all counties west of those counties. An EMU may be further divided between north and south along the 40th Parallel.

Eagle nest means any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. An eagle nest remains an eagle nest until it becomes so diminished or the nest substrate upon which it is built fails, such that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, State, or Tribal eagle biologist.

* * * * *

General permit means a permit that is issued to an individual or entity with nationwide or regional standard conditions for a category or categories of

activities that are substantially similar in nature.

* * * * *

In-use nest means a bald or golden eagle nest characterized by the presence of one or more viable eggs or dependent young in the nest, or, for golden eagles only, adult eagles on the nest in the past 10 days during the breeding season.

Incidental take means take that results from, but is not the purpose of, an activity.

* * * * *

■ 9. Amend § 22.12 by adding paragraph (c) to read as follows:

§ 22.12 Illegal activities.

* * * * *

(c) Application for a permit does not release you from liability for any take that occurs prior to issuance of, or outside the terms of, a permit.

■ 10. Revise the heading of subpart C to read as follows:

Subpart C—Eagle Possession Permit Provisions

§ 22.80 [Removed and Reserved]

■ 11. Remove and reserve § 22.80.

§ 22.85 [Removed and Reserved]

■ 12. Remove and reserve § 22.85.

■ 13. Add subpart E, consisting of §§ 22.200 through 22.300, to read as follows:

Subpart E—Take of Eagles for Other Interests

Sec.

§ 22.200 Specific permits.

(a) *Purpose.* Specific permits authorize the take of bald eagles or golden eagles for other interests that do not meet general permit eligibility requirements or for entities that do not wish to obtain a general permit if applicable.

(b) *Eligibility.* To qualify for a specific permit, you must meet the following eligibility requirements. If conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300, you must also meet any eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or operator of a project.

(2) Upon receipt of a specific permit application, the Service may direct you to apply for a general permit if applicable. If so, the Service will provide a letter of authorization to keep in your records stating the conditions under which the activity qualifies for a general permit.

(c) *How to apply for a specific permit.* (1) Submit a completed application form as specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a), as applicable, or Form 3–200–71 if the activity does not correspond with a particular permit type. Submit forms to the Regional Director of the region where you will conduct your activity. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address. The Service will assign the appropriate administering region. You can find the current contact information for Regional Directors in § 2.2 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take to be authorized, including the location, seasonality, and duration of the activity.

(A) If applying under § 22.250 for wind energy projects, that description must include the number of turbines, rotor diameter, and location coordinates of each turbine.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage, total miles of transmission and distribution line, number of distribution poles, and the number of distribution poles that are not electrocution-safe at time of application.

(C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (such as in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) An eagle impacts assessment, including the species affected, an estimate of the number of eagles using the project area, projected take, and a description of methods used to make the required findings. If the Service has officially issued or endorsed, through rulemaking procedures, survey, modeling, take estimation, or other standards for the activity that will take eagles, you must follow them and include in your application all the information thereby obtained, unless the Service waives this requirement for your application.

(iv) Implemented and proposed steps to avoid, minimize, compensate for, and monitor impacts on eagles.

(v) Alternative actions considered and the reasons why such alternatives are not practicable.

(vi) Any supplemental information necessary for the Service to make an adequate determination on the application (see § 13.21 of this subchapter).

(vii) Payment of the required application and administration fee(s) (see § 13.11(d)(4) of this subchapter), and, if required, proposed compensatory mitigation or eagle credits to be obtained from a Service-approved or in-lieu fee program. All compensatory mitigation must comply with the provisions of § 22.220.

(3) The applicant must be the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required beneficial practices. Applicants are most commonly the owner or manager of the entity conducting the activity. Contractors or consultants may assist in completing applications and/or conducting work as a subpermittee but may not be a permit holder.

(d) *Issuance criteria.* Upon receiving a complete application, the Regional Director will decide whether to issue a permit based on the general criteria of § 13.21 of this subchapter and whether the application meets the following requirements:

(1) The applicant is eligible for a specific permit. However:

(i) The Service may deny applications for specific permits if we determine the project does not require a permit.

(ii) The Service may grant a letter of authorization to apply for a general permit if the Service determines the project is consistent with fatality estimates for general permits even though it does not otherwise meet general-permit eligibility criteria. This paragraph (d)(1)(ii) applies only to existing projects applying for incidental take of eagles by wind energy projects (§ 22.250). You must submit a specific permit application and request a determination for general permit eligibility. Your specific permit application fee may be refunded (§ 13.11(d)(1) of this subchapter); however, the administration fee will not be refunded.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality; and

(ii) Results from, but is not the purpose of, the activity.

(3) The amount of take the Service authorizes under the permit is compatible with the preservation of the bald eagle and the golden eagle, including consideration of the effects of

other permitted take and other factors affecting bald eagle and golden eagle populations.

(4) The applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the activity's impacts to eagles. These measures must meet or exceed the requirements of the general permit (§ 22.210), except where not practicable.

(5) The applicant has proposed to either: implement compensatory mitigation measures that comply with the standards in § 22.220; or secure required eagle credits from a Service-approved conservation bank or in-lieu fee program.

(6) The applicant has proposed monitoring plans that are sufficient to determine the effects on eagle(s) of the proposed activity.

(7) The proposed reporting is sufficient for the Service to determine the effects on eagle(s).

(8) Any additional factors that may be relevant to our decision whether to issue the permit.

(e) *Modifications to your permit.* An amendment fee is required to make substantive amendments to the permit during the permit tenure (see § 13.11(d)(5) of this subchapter). The Service will also charge an administration fee for permittee- or Service-initiated amendments (see § 13.23 of this subchapter) that the Service determines to be significant, such as modifications that result in recalculating estimated take, reevaluating compensatory mitigation requirements, evaluating impacts of a new project size or arrangement, or requiring additional environmental review.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. Specific permits may be valid for a maximum of 30 years. Permit tenure may be less, as restricted by the provisions for specific activities set forth in § 22.250, § 22.260, § 22.280, or § 22.300 or as appropriate to the duration and nature of the proposed activity, including mitigation requirements.

§ 22.210 General permits.

(a) *Purpose.* General permits authorize the take of bald eagles or golden eagles for other interests that meet the eligibility requirements for general permits set forth in § 22.250, § 22.260, § 22.280, or § 22.300.

(b) *Eligibility.* To qualify for a general permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300 and meet any additional eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or operator of a project. The applicant is responsible for compliance with the permit and must have the authority to implement the required beneficial practices. Contractors or consultants may assist in completing applications and/or conducting work as a subpermittee but may not be a permit holder.

(2) Even if you are otherwise eligible for a general permit, the Service may notify you that you must apply for a specific permit if:

(i) The Service finds that the project does not comply with the requirements for a general permit; or

(ii) For wind projects authorized under § 22.250, four eagle mortalities of either species have been discovered at the project.

(c) *How to apply.* (1) Register with the Service by submitting the appropriate application form specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a), as applicable, to the Regional Director of the region in which your activity will be conducted. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address. The Service will assign the appropriate administering region. You can find the current contact information for Regional Directors in § 2.2 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take to be authorized, including the location, seasonality, and duration of the activity.

(A) If applying under § 22.250 for wind energy projects, that description must include the number of turbines, rotor diameter, and location coordinates of each turbine.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage, total miles of transmission and distribution line, number of distribution poles, and the number of distribution poles that are not electrocution-safe at time of application.

(C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (such as in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) Duration of the permit requested.

(iv) Certification that the activity complies with all other applicable Federal, State, Tribal, and local laws. This includes certifying that the activity for which take is to be authorized by the general permit either does not affect a property that is listed, or is eligible for listing, in the National Register of Historic Places as maintained by the Secretary of the Interior; or that the applicant has obtained, and is in compliance with, a written agreement with the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to the historic property.

(v) Payment of required application and administration fee(s) (see § 13.11(d)(4) of this subchapter).

(vi) A certification that the applicant agrees to acquire eagle credits, if required, from a Service-approved in-lieu fee program within 90 days of the effective date of the permit.

(d) *Issuance criteria.* Upon registering by submitting an application under paragraph (c) of this section, the Service will automatically issue a general permit to authorize the take requested in the application. In registering, you must certify that you meet the general criteria of § 13.21 of this subchapter and the following issuance criteria:

(1) You are conducting an activity that qualifies for a general permit.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality; and

(ii) Results from, but is not the purpose of, the activity.

(3) The activity is consistent with the specific requirements applicable to that activity as described in § 22.250, § 22.260, § 22.280, or § 22.300.

(4) You will implement the general permit conditions applicable to your activity, including required avoidance, minimization, monitoring, and reporting requirements.

(5) You will implement the required eagle credits from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of your permit.

(e) *Program continuation.* The Service will regularly evaluate whether the take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds, through the best available information, that the general permit program is not compatible with the preservation of bald eagles or golden eagles, the Service may suspend issuing general permits in all or in part after publishing a notice in the **Federal Register**. The Service may reinstate issuance of general permits after publishing another notice in the **Federal Register** or by promulgating additional rulemaking. If the Service suspends general permitting, take currently authorized under a general permit

remains authorized until expiration unless you are notified otherwise.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. General permits may be valid for a maximum of 5 years. Permit tenure may be less, as restricted by the provisions in § 22.250, § 22.260, § 22.280, or § 22.300 as applicable.

§ 22.215 Conditions of permits.

(a) In addition to meeting the conditions set forth in part 13 of this subchapter, you must comply with the terms of your permit. Your authorization is subject to the following additional permit terms and conditions:

(1) Your permit will specify the type of take authorized (*i.e.,* incidental take, disturbance take, or nest take) and may specify the amount, location, or other restrictions on the take authorized. You are not authorized for any additional types of take not specified on the face of your permit.

(2) Your permit will require implementation of avoidance, minimization, monitoring, and adaptive management measures consistent with the relevant regulations in this subpart.

(3) For permits that authorize the incidental take of eagles, you are required to implement methods for discovering eagles at your project.

(i) Onsite personnel, such as staff, contractors, and volunteers, must be trained how to visually scan for eagle remains and must conduct visual scans when onsite.

(ii) You must promptly notify the Service of any eagle(s) found injured or dead at the activity site, regardless of whether the injury or death resulted from your activity. Your notification must include species, condition, discovery date, location, and other relevant information.

(iii) Dispose of eagles in accordance with Service instructions, which may include shipping eagles to the National Eagle Repository or other designated facility.

(4) You must comply with all Service reporting requirements in this subpart. You must annually report incidental take and disturbance take using Form 3–202–15. You must report nest take using Form 3–202–16.

(5) You must comply with all compensatory mitigation requirements in accordance with § 22.220, including any additional requirements contained in § 22.250, § 22.260, § 22.280, or § 22.300 if applicable.

(6) You must keep records of all activities conducted under this permit, including any subpermittee activities carried out under the authority of this permit (see § 13.46 of this subchapter). Your records must include an internal, discovered-eagle reporting system for bald eagle and golden eagle remains found at the site of the activity.

(7) By accepting this permit, you are authorizing the Service to inspect the location and records relating to the activity (see § 13.21(e) of this subchapter). The Service may require you to participate in the Service's program-wide monitoring, such as providing access to Service staff or contractors. The Service will provide reasonable notice for requests to access sites and negotiate with the permittee about practicable and appropriate access conditions to protect human health and safety and address physical, logistical, or legal constraints.

(8) You are responsible for ensuring that the activity for which take is authorized complies with all Federal, Tribal, State, and local laws and regulations applicable to eagles.

(9) You may designate subpermittees to conduct some or all of your permitted activities. Subpermittees must be at least 18 years of age. You must designate subpermittees in writing, including the name and contact information of the individual or entity and the date(s), location(s), and activitie(s) for which take is authorized. Subpermittees must have a copy of their subpermittee designation and the permit when conducting activities and display them upon request whenever exercising the permit authority. You are responsible for ensuring that your subpermittees are qualified to perform the work and comply with the terms of your permit. You are also responsible for maintaining current records of designated subpermittees. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit, and that responsibility may not be delegated.

(b) The Service may amend, suspend, or revoke a permit issued under this subpart if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. The provision in this paragraph (b) is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§ 13.23, 13.27, and 13.28 of this subchapter.

(c) Notwithstanding the provisions of § 13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

§ 22.220 Compensatory mitigation.

(a) Your permit conditions may include a requirement to compensate for the take of eagles, in which case that requirement will be specified on the face of your permit.

(1) Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by reducing another ongoing form of mortality by an amount equal to or greater than the unavoidable mortality or by increasing the eagle population of the affected species by an equal or greater amount.

(2) A permit may require compensatory mitigation when the Service determines from the best available information that the persistence of the local area population of an eagle species in the project area may not be maintained.

(3) Compensatory mitigation will be calculated to account for both the project's impacts and the population status of the species for which incidental take is requested.

(b) All required compensatory mitigation actions must:

(1) Be contingent upon application of avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the project's impacts on eagles.

(2) Be sited within:

(i) The same EMU where the permitted take will occur; or

(ii) Another EMU, but only if the Service has reliable data showing that the population affected by the take includes individuals that are reasonably likely to use that EMU during part of their seasonal migration.

(3) Be sited within the same local area population where the permitted take will occur if required by the Service due to concern regarding the persistence of a particular local area population.

(4) Use the best available science in formulating, crediting, and monitoring the long-term effectiveness of mitigation measures.

(5) Be additional to and improve upon the baseline conditions for the affected eagle species in a manner that is demonstrably new and would not have occurred without the compensatory mitigation.

(6) Be durable and, at a minimum, maintain its intended purpose for as long as the impacts of the authorized take persist.

(7) Include mechanisms to account for and address uncertainty and risk of

failure of a compensatory mitigation measure, including financial assurances.

(c) Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers.

(1) General permittees meet this requirement by obtaining required credits from a Service-approved third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in paragraph (c)(2) of this section. Third-party mitigation providers, such as in-lieu fee programs and conservation banks, obtain Service approval by meeting the requirements to be a mitigation provider as described in paragraph (c)(2) of this section.

(2) To obtain approval as a permittee-responsible mitigation provider, providers must submit a mitigation plan to the Service sufficient to demonstrate that the standards set forth in paragraph (b) of this section can be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the location(s) where projects will be implemented, the EMU and local area population served, the number of credits provided, and an explanation of the rationale for this determination. The Service must approve the mitigation plan prior to implementation.

§ 22.250 Permits for incidental take of eagles by wind energy projects.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind-energy projects. Apply using Form 3–200–71.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Existing project. Infrastructure that was operational prior to [EFFECTIVE DATE OF THE FINAL RULE], as well as infrastructure that was sufficiently far along in the planning process on that date that complying with new requirements would be impracticable, including if an irreversible or irretrievable commitment of resources has been made (*e.g.,* site preparation was already underway or infrastructure was partially constructed).

Relative abundance. The average number of eagles of each species expected to be seen by a qualified person who observes for eagles for one hour at the optimal time of the day for detecting the species, and who travels no more than one kilometer during the observation session. Relative abundance values determined for a project must be based on publicly available eBird relative abundance products (eBird is an online database of bird distribution and abundance. Cornell Lab of Ornithology, Ithaca, New York. Available at: *https://science.ebird.org/en/status-and-trends/faq#mean-relative-abundance*). You may use the relative abundance map produced by the Service (available at: *https://fws.gov/*) in lieu of calculating relative abundance values yourself.

(c) *Eligibility for a general permit.* To qualify for a general permit, you must meet the requirements of § 22.210, not be denied eligibility per paragraph (d)(3) of this section, be located in the contiguous 48 States, and:

(1) To be eligible, all turbines associated with a project must be located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species listed in paragraphs (c)(1)(i) and (ii) of this section. Additionally, golden eagle nests must be at least 2 miles and bald eagle nests must be at least 660 feet from any turbines.

(i) Relative abundance value thresholds for bald eagles throughout the year are as follows:

TABLE 1 TO PARAGRAPH (c)(1)(i)

Date range	Bald eagle relative abundance
1. Feb 22–Apr 11	1.272
2. Apr 12–Sep 6	0.812
3. Sep 7–Dec 13	0.973
4. Dec 14–Feb 21	1.151
Average of periods 1 and 3	1.018

(ii) Relative abundance value thresholds for golden eagles throughout the year are as follows:

TABLE 2 TO PARAGRAPH (c)(1)(ii)

Date range	Golden eagle relative abundance
1. Feb 15–May 16	0.206
2. May 17–Sep 27	0.118
3. Sep 28–Dec 13	0.168
4. Dec 14–Feb 14	0.229
Average of periods 1 and 3	0.145

(2) For existing projects only, if you have received a letter of authorization from the Service (see § 22.200(d)(1)(ii)), the project is eligible for a general permit.

(d) *Discovered eagle provisions for general permits.* You must implement procedures to discover eagles in accordance with the provisions set forth in § 22.215(a)(3) and as required by your permit conditions. In following those protocols:

(1) You must include in your annual report the discovery of any eagle found.

(2) If you discover the take of three eagles of any one species during the tenure of the general permit, you must notify the Service in writing within 2 weeks of discovering the take of a third eagle and implement an adaptive management measure(s). Your notification must include the reporting data required in your permit conditions, your adaptive management plan, and a description and justification of which adaptive management approaches you will be implementing.

(3) If you discover the take of four eagles of any one species during the tenure of the general permit, you must notify the Service in writing within 2 weeks of discovering the take of the fourth eagle. Your notification must include the reporting data required in your permit conditions, your adaptive management plan, and a description and justification of which adaptive management approaches you will be implementing. The project may continue to be authorized to incidentally take eagles through the term of the existing general permit but will be denied eligibility for future general permits for incidental take. You may apply for a specific permit for incidental take at that project. You may request reconsideration of this denial by following the review procedures set forth at § 13.29 of this subchapter, including providing the information required in § 13.29(b)(3).

(4) If the Service conducts monitoring at a wind project, eagles discovered by the Service may be attributed to the wind project. To adjust for potential differences in detection rate for Service-monitoring, the number of eagles attributed to the project as ''discovered'' in accordance with this paragraph (d) will be adjusted based on the Service-monitoring detection rate.

(e) *Eligibility for a wind energy specific permit.* To qualify for a specific permit, you must meet the requirements of § 22.200. In determining whether to issue a permit, the Service will review the application materials provided, including the eagle impacts assessment. The Service will use the best available data to estimate the take of eagles that will result from the proposed activity.

(f) *Wind energy permit conditions.* The following conditions apply to all general and specific permits. Specific permits may include additional project-specific permit conditions.

(1) Develop an adaptive management plan, including circumstances that

trigger implementation and management measures to be considered.

(2) Remove anthropogenic hazardous attractants to eagles and avoid creating new anthropogenic eagle attractants throughout the project, including resources that could attract foraging, roosting, and/or nesting behavior.

(3) Minimize collision and electrocution risks in the project, including collisions with turbines, vehicles, towers, and power lines.

(4) Comply with all of the regulations and permit conditions in part 21 of this subchapter, including any provisions specific to authorizing incidental take of migratory birds.

(5) Submit required reports to the Service.

(6) Pay the required application and administration fee(s) (see § 13.11(d)(4) of this subchapter).

(7) Implement required compensatory mitigation. You must keep records to document compliance with this requirement and provide them to the Service with your annual report.

(i) For wind energy specific permits, you must submit a plan to the Service in accordance with § 22.200(c) and implement the compensatory-mitigation requirements on the face of your permit.

(ii) For wind energy general permits, you must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project in cubic-kilometers. The hazardous volume of a project is calculated as the number of turbines multiplied by $0.200\pi(d/2)\wedge 2$ where d is the diameter of the blades in kilometers. You must obtain eagle credits at the following rates: Atlantic/Mississippi EMUs: 6.56 eagles/km^3, Central EMU: 7.88 eagles/km^3, and Pacific EMU: 11.48 eagles/km^3.

(g) *Tenure of permits.* General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years.

§ 22.260 Permits for incidental take of eagles by power lines.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Apply using Form 3–200–92.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Collision response strategy. A plan that describes the steps the permittee will take to identify, assess, and respond to eagle collisions with power-line infrastructure. The assessment should include the species, habitat, daily and seasonal migration patterns, eagle concentration areas, and other local factors that might be contributing to eagle collisions. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), when modifying habitat, and when marking the power line.

Eagle-shooting response strategy. A plan to respond to eagle-shooting events where one or more eagles are discovered near power-line infrastructure and the cause of death is shooting. The plan must outline the steps to identify when eagle shooting occurs, options for response, and implementation of the response.

Electrocution-safe. A power-pole configuration that minimizes eagle electrocution risk by using a design that provides sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of an eagle or by covering exposed parts with insulators to physically separate electricity from eagles. If insulators are used, they must be in good condition and regularly maintained. For conversions from an above-ground line to a buried line, the buried portion is considered ''electrocution-safe.''

Proactive retrofit strategy. A plan to convert existing infrastructure to electrocution-safe infrastructure. The proactive retrofit strategy must include information on how poles are identified as not electrocution-safe, how poles are prioritized for retrofit, what retrofit designs are used, and how the strategy is to be implemented. The proactive retrofit strategy must identify annual targets for the number of poles to be retrofitted.

Reactive retrofit strategy. A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors, such as convenience or cost. The pole that caused the electrocution must be retrofitted, unless the pole is already electrocution-safe. A total of 11 poles or a half-mile segment must be retrofitted, whichever is less. The typical pole selection will be the pole that caused the electrocution and five poles in each direction. However, if retrofitting other poles in the circuit provides more benefit to eagles, those poles may be retrofitted by prioritizing the least-safe poles closest to the electrocution event. Poles outside of the circuit that caused the electrocution may be counted towards this retrofit requirement only if all poles in the circuit are already electrocution-safe.

(c) *Eligibility for a general permit for incidental take.* To qualify for a general permit, you must meet the requirements of § 22.210.

(d) *General permit conditions for power lines.* Project permittees must:

(1) Ensure that all new construction and reconstruction of poles is electrocution-safe, as limited by the need to ensure human health and safety.

(2) Implement a reactive retrofit strategy following all electrocutions of eagles.

(3) Implement a proactive retrofit strategy to convert all existing infrastructure to electrocution-safe. You must convert one-tenth of infrastructure that is not electrocution-safe as of the effective date of the general permit to electrocution-safe during the duration of the permit. If you renew your general permit, the same number of poles must be retrofit, such that all poles are retrofit within 50 years or by the expiration of the tenth, 5-year general permit.

(4) Implement an eagle collision response strategy.

(5) For new construction and reconstruction, incorporate information on eagles (population status of the species) into siting and design considerations as practicable, such as siting power lines a safe distance from nests, foraging areas, and roosts, subject to human health and safety, and/or significant adverse effects to biological, cultural, or historical resources.

(6) Implement an eagle-shooting response strategy.

(7) Comply with all of the regulations and permit conditions of part 21 of this subchapter, including any provisions specific to authorizing incidental take of migratory birds.

(8) Train personnel to scan for eagle remains when onsite and implement internal reporting and recordkeeping procedures.

(9) Submit required reports to the Service using Form 3–202–15.

(10) Pay the required application and administration fee as set forth in § 13.11(d)(4) of this subchapter.

(e) *Eligibility for a specific permit for incidental take.* To qualify for a specific permit, you must meet the requirements of § 22.200.

(f) *Tenure of permits.* Power line general permits are valid for 5 years. Specific permits may be valid for up to 30 years.

§ 22.280 Permits for disturbance take of eagles.

(a) *Purpose.* The regulations in this section authorize the incidental take of bald eagles or golden eagles by

disturbance, as defined in § 22.6. Purposeful disturbance of nests is not authorized under this section. Apply using Form 3–200–91.

(b) *Eligibility for a general permit for disturbance.* To qualify for a general permit, you must meet the requirements of § 22.210, and your activities must comply with the provisions set forth in paragraphs (b)(1) through (8) of this section. Activities occurring farther than the distances specified do not require a permit because they are unlikely to cause disturbance. The following activities are eligible for a general permit:

(1) Building construction and maintenance within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(2) Linear infrastructure construction and maintenance (*e.g.,* roads, rail, trails, power lines, and other utilities) within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(3) Alteration of shorelines and water bodies (*e.g.,* shorelines, wetlands, docks, moorings, marinas, and water impoundment) within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(4) Alteration of vegetation (*e.g.,* mowing, timber operations, and forestry practices) within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(5) Motorized recreation (*e.g.,* snowmobiles, motorized watercraft, etc.) within 330 feet of an in-use bald eagle nest.

(6) Nonmotorized recreation (*e.g.,* hiking, camping, fishing, hunting, canoeing, etc.) within 330 feet of an in-use bald eagle nest.

(7) Aircraft operation (*e.g.,* helicopters and fixed-wing aircraft) within 1,000 feet of an in-use bald eagle nest.

(8) Loud, intermittent noises (*e.g.,* blasting) within one-half-mile of an in-use bald eagle nest, where the noise is intermittent or otherwise not present when the nest is initiated. Noise that is present prior to nest initiation and sufficiently consistent that eagles demonstrate tolerance to the activity does not require a permit.

(c) *Eligibility for a specific permit for disturbance.* To qualify for a specific permit, you must meet the requirements of § 22.200. You may apply for a specific permit if your activity may result in incidental disturbance of a golden eagle nest, incidental disturbance of a bald eagle nest for an activity not specified in paragraph (b) of this section, or disturbance to a foraging area.

(d) *Disturbance permit conditions.* (1) Implement measures to avoid and minimize nest disturbance, including disturbance due to noise from human activities, visibility of human activities, proximity to nest, habitat alteration, and indirect stressors.

(2) Avoid activities that may negatively affect the nesting substrate, such as the survivability of the nest tree.

(3) Implement monitoring of in-use nests that is sufficient to determine whether nestlings have fledged from the nest and submit this information on your annual report.

(e) *Reporting.* You must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of your permit or prior to requesting renewal of your permit, whichever is first.

(f) *Tenure of permits.* General permits for disturbance issued under the regulations in this section are valid for a maximum of 1 year. The tenure of specific permits for disturbance is set forth on the face of the permit and may not exceed 5 years.

§ 22.300 Permits for take of eagle nests.

(a) *Purpose.* The regulations in this section authorize the take of a bald eagle nest or a golden eagle nest, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure. Apply using Form 3–200–72.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Nest take for emergency. Take of an in-use or alternate eagle nest where necessary to alleviate an existing safety emergency, or to prevent a rapidly developing safety emergency that is otherwise likely to result in bodily harm to humans or eagles while the nest is still in use by eagles for breeding purposes.

Nest take for health and safety. Take of an in-use eagle nest prior to egg-laying or an alternate eagle nest, when the removal is necessary to ensure public health and safety.

Nest take for human-engineered structure. Take of an in-use eagle nest prior to egg-laying or an alternate eagle nest that is built on a human-engineered structure and creates, or is likely to create, a functional hazard that renders the structure inoperable for its intended use.

Nest take for species protection. Take of an in-use eagle nest prior to egg-laying or an alternate eagle nest, when the removal is necessary to protect a species federally protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) and included on the List of Endangered and Threatened Wildlife (at § 17.11 of this subchapter).

Other purposes. Take of an alternate eagle nest, provided the take is necessary to protect an interest in a particular locality and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.

(c) *Eligibility for a general permit for nest take.* To qualify for a general permit, you must meet the requirements of § 22.210. General permits are available for bald eagle nest take for emergency, health and safety, or a human-engineered structure, or, if located in Alaska, bald eagle nest take for other purposes. General permits are not available for take of golden eagle nests. General permits authorize bald eagle nest removal from the nesting substrate at the location requested and the location of any subsequent nesting attempts by the eagle pair within one-half-mile of the location requested for the duration of the permit. Take of an additional eagle nest(s) more than one-half-mile away requires an additional permit(s) if the subsequent nest(s) re-create the emergency, safety, or functional hazard of the original nest. The general permit application will require supporting documentation for certain types of requests, such as an arborist report in the case of hazard-tree removal.

(d) *Eligibility for a specific permit for nest take.* To qualify for a specific permit, you must meet the requirements of § 22.200. You may apply for a specific permit if you are requesting take of a golden eagle nest or requesting take of a bald eagle nest for species protection or other purposes. As part of your specific permit application, you may be required to provide supporting documentation, such as an arborist report in the case of hazard-tree removal.

(e) *Permits for species protection.* If you are applying for a specific permit for nest take for species protection:

(1) You must apply as the Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern.

(2) You must include documentation that:

(i) Describes relevant management efforts to protect the species of concern.

(ii) Identifies how eagles are a limiting factor to survival of the species using the best available scientific information and data. Include a description of the mechanism of that threat.

(iii) Explains how take of eagle nest(s) is likely to have a positive outcome on recovery for the species.

(f) *Permit conditions for nest take.* Permit conditions may include requirements to:

(1) Adjust timing of your activity to minimize the effects of nest take.

(2) Obstruct nest(s) or nest substrate.

(3) Minimize renesting that would cause the same emergency, safety, or functional hazard.

(4) Relocate the nest or provide suitable nesting substrate within the same territory.

(5) Remove chicks and/or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service.

(6) Monitor in-use nests that are relocated with nestlings or eggs present or foster nests to ensure adults are tending to nestlings or eggs.

(7) Monitor the area near the nest removal for one or more seasons to determine the effect on eagles.

(8) Submission of an annual report using Form 3–202–16.

(g) *Tenure of permits.* General permits issued under the regulations in this section are valid until the start of the next breeding season, not to exceed 1 year. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

§ 22.75 [Redesignated as § 22.325]

■ 14. Redesignate § 22.75 as § 22.325.

■ 15. Newly redesignated § 22.325 is amended by:

■ a. Revising the section heading; and

■ b. In the introductory text, removing the three sentences following the first sentence.

The revision reads as follows:

§ 22.325 Permits for golden eagle nest take from resource development.

* * * * *

§ 22.90 [Redesignated as § 22.400]

■ 16. Redesignate § 22.90 as § 22.400.

Maureen D. Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

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