FEDERAL REGISTER

Vol. 88 Friday

No. 9 January 13, 2023

Pages 2175–2500

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 88, No. 9

Friday, January 13, 2023

Administrative Conference of the United States
NOTICES
Adoption of Recommendations, 2312–2316

Agency for International Development
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427

Agriculture Department
See Animal and Plant Health Inspection Service
See Foreign Agricultural Service
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2316–2317

Alcohol and Tobacco Tax and Trade Bureau
RULES
Addition of Singani to the Standards of Identity for Distilled Spirits, 2224–2228
Civil Monetary Penalty Inflation Adjustment:
Alcoholic Beverage Labeling Act, 2228–2229

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Animal Health Monitoring System; Sheep 2024 Study, 2317–2318

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Monthly Retail Surveys, 2320–2321

Civil Rights Commission
NOTICES
Meetings:
New Mexico Advisory Committee, 2320
New York Advisory Committee; Correction, 2320
South Carolina Advisory Committee, 2319
Virgin Islands Advisory Committee, 2319

Coast Guard
RULES
Civil Monetary Penalty Adjustments for Inflation, 2175–2187
Safety Zone:
Corpus Christi Shipping Channel, Corpus Christi, TX, 2241–2243
NOTICES
Meetings:
Great Lakes Pilotage Advisory Committee, 2366
Requests for Applications:
Area Maritime Security Advisory Committee, Eastern Great Lakes, Northeast Ohio Sub-Committee, 2365–2366

Commerce Department
See Census Bureau
See Economic Development Administration
See Foreign-Trade Zones Board
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 2344–2345

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Registration of Foreign Boards of Trade, 2345–2346

Community Living Administration
NOTICES
Statement of Delegation of Authority, 2360

Consumer Product Safety Commission
RULES
Determinations Regarding Portable Fuel Container Voluntary Standards Under the Portable Fuel Container Safety Act, 2206–2210

Defense Department
RULES
Civil Monetary Penalty Inflation Adjustment, 2239–2241
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2346–2347

Economic Development Administration
NOTICES
Meetings:
National Advisory Council on Innovation and Entrepreneurship, 2322

Education Department
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Educational Opportunity Centers Program Annual Performance Report, 2347–2348
Rehabilitation Services Administration Payback Information Management System, 2348–2349
Request for Information:
Higher Education Act Pooled Evaluation; Correction, 2349

Employment and Training Administration
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222

Energy Department
See Energy Information Administration

See Federal Energy Regulatory Commission
RULES
Civil Monetary Penalty Inflation Adjustment, 2190–2194

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2349–2351

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
North Carolina; Charlotte-Gastonia-Rock Hill Area Limited Maintenance Plan for the 1997 8–Hour Ozone NAAQS, 2245–2247
North Carolina; Minor Revisions to Nitrogen Oxides Rule, 2243–2245
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Michigan; Part 4 Rule, 2303–2304
Approval and Promulgation of Air Quality Implementation Plan:
Mohegan Tribe of Indians of Connecticut, 2298–2303
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 2357

Farm Credit Administration
RULES
Civil Monetary Penalty Inflation Adjustment, 2197–2199

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points:
Buffalo, NY, 2204–2205
Manassas, VA, 2205–2206
Airworthiness Directives:
Airbus Helicopters, 2199–2202
Leonardo S.p.a. Helicopters, 2202–2204
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 2273–2279, 2283–2286
ATR—GIE Avions de Transport Regional Airplanes, 2295–2298
Bombardier, Inc., Airplanes, 2286–2292
Dassault Aviation Airplanes, 2292–2295
MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes, 2279–2282
NOTICES
Airport Property:
Northeast Alabama Regional Airport Located in Gadsden, AL, 2384
Release From Federal Grant Assurance Obligations:
Morgantown Municipal Airport, Morgantown, WV, 2383–2384

Federal Communications Commission
RULES
Affordable Connectivity Program:
Emergency Broadband Benefit Program, 2248–2268
PROPOSED RULES
Affordable Connectivity Program:
Emergency Broadband Benefit Program, 2305–2311

Federal Energy Regulatory Commission
NOTICES
Application:
Venture Global Plaquemines LNG, LLC, Gator Express Pipeline, LLC, 2354–2356
Combined Filings, 2351–2353
Environmental Assessments; Availability, etc.:
Tres Palacios Gas Storage, LLC, Tres Palacios Cavern 4 Expansion Project, 2356–2357
Venture Global Plaquemines LNG, LLC Uprate Amendment Project, 2353–2354

Federal Reserve System
RULES
Extensions of Credit by Federal Reserve Banks, 2194–2195
Reserve Requirements of Depository Institutions, 2195–2197

Federal Trade Commission
NOTICES
Proposed Consent Agreement:
Mastercard Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment, 2357–2360

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Eagle Permits, 2369–2371
Endangered and Threatened Species:
Initiation of 5-Year Status Reviews of Five Listed Animal and Plant Species, 2368–2369
Receipt of Recovery Permit Applications, 2366–2368

Food and Drug Administration
RULES
Medical Devices:
Neurological Devices; Classification of the Digital Therapy Device To Reduce Sleep Disturbance for Psychiatric Conditions, 2222–2224
NOTICES
Guidance:
Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format, 2360–2362

Foreign Agricultural Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2318–2319

Foreign Assets Control Office
RULES
Inflation Adjustment of Civil Monetary Penalties, 2229–2234
Publication of Venezuela Sanctions Regulations Web General Licenses 12, 13, and Subsequent Iterations, 2234–2237
Publication of Venezuela Sanctions Regulations Web General Licenses 8K and 41, 2237–2239

Foreign-Trade Zones Board
NOTICES
Application for Reorganization and Expansion Under Alternative Site Framework:
Foreign-Trade Zone 29; Louisville, KY, 2322–2323
Authorization of Production Activity:
Great Plains Manufacturing, Inc.; Foreign-Trade Zone 161; Wichita, KS, 2323

Proposed Production Activity:
MannKind Corp.; Foreign-Trade Zone 76; Bridgeport, CT, 2323
Subzone Expansion; Application:
Lam Research Corp.; Foreign-Trade Zone 18; San Jose, CA, 2323

General Services Administration
RULES
Civil Monetary Penalties Inflation Adjustment, 2247–2248

Health and Human Services Department
See Community Living Administration
See Food and Drug Administration
See National Institutes of Health
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2362–2363

Homeland Security Department
See Coast Guard
See Transportation Security Administration
See U.S. Customs and Border Protection
RULES
Civil Monetary Penalty Adjustments for Inflation, 2175–2187
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427

Housing and Urban Development Department
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427

Indian Affairs Bureau
PROPOSED RULES
Mining of the Osage Mineral Estate for Oil and Gas, 2430–2500

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Ocean Energy Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2388–2389

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Cased Pencils From China, 2372–2373
Certain Rotating 3–D LiDAR Devices, Components Thereof, and Sensing Systems Containing the Same, 2375
Light-Walled Rectangular Pipe and Tube From Taiwan, 2374–2375
Steel Nails From India, Thailand, and Turkey, 2373
Stilbenic Optical Brightening Agents From China and Taiwan; Termination of Five-Year Reviews, 2374

Justice Department
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Wage and Hour Division
See Workers Compensation Programs Office
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427

Land Management Bureau
PROPOSED RULES
Update of the Communications Uses Program, Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way, 2304–2305

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 2375

Mine Safety and Health Administration
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222

National Endowment for the Arts
NOTICES
Meetings:
Arts Advisory Panel, 2375–2376

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 2364–2365
National Institute of Allergy and Infectious Diseases, 2363
National Institute of Neurological Disorders and Stroke, 2363–2364
National Institute on Aging, 2365

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 2271–2272
Fisheries of the Northeastern United States:
Atlantic Herring Fishery; 2023 Management Area 1B Possession Limit Adjustment, 2271
NOTICES
Meetings:
North Pacific Fishery Management Council, 2324
Pacific Fishery Management Council, 2324–2325
Takes of Marine Mammals Incidental to Specified Activities:
Marine Site Characterization Surveys in the New York Bight, 2325–2344

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 2371

Nuclear Regulatory Commission
RULES
Adjustment of Civil Penalties for Inflation for Fiscal Year 2023, 2188–2190
Enforcement Policy, 2187–2188
NOTICES
Environmental Impact Statements; Availability, etc.:
United Nuclear Corp.; Church Rock Uranium Mill Site, 2376–2378
Meetings; Sunshine Act, 2378–2379
Revised NRC Form 3, Notice to Employees, 2378

Occupational Safety and Health Administration
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222

Ocean Energy Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Gulf of Mexico OCS Oil and Gas Lease Sales 259 and 261, 2371–2372

Pension Benefit Guaranty Corporation
NOTICES
Performance Review Board Members, 2379

Pipeline and Hazardous Materials Safety Administration
NOTICES
Environmental Assessments; Availability, etc.:
DNV's Petition for Phast Version 8.4 as an Alternative Model for Calculating the Vapor-Gas Dispersion Exclusion Zone, 2387–2388
Hazardous Materials:
Actions on Special Permits, 2384–2386
Applications for Special Permits, 2386–2387

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Investors Exchange, LLC, 2379–2381

Small Business Administration
NOTICES
Disaster Declaration:
Georgia, 2381–2382

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disclosure of Violations of the Arms Export Control Act, 2382
Culturally Significant Objects Imported for Exhibition:
Black Founders: The Forten Family of Philadelphia, 2383
Chryssa and New York, 2383
Tim Walker: Wonderful Things, 2383

Surface Transportation Board
RULES
Civil Monetary Penalties Adjustment, 2268–2270

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration
RULES
Civil Monetary Penalty Adjustments for Inflation, 2175–2187

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Foreign Assets Control Office
See Internal Revenue Service

U.S. Customs and Border Protection
RULES
Civil Monetary Penalty Adjustments for Inflation, 2175–2187

Veterans Affairs Department
PROPOSED RULES
Partnerships With Faith-Based and Neighborhood Organizations, 2395–2427
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alternate Signer Certification, 2389–2390
Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, 2390–2391
Intent To File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC, 2390

Wage and Hour Division
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222

Workers Compensation Programs Office
RULES
Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 2210–2222

Separate Parts In This Issue

Part II
Agency for International Development, 2395–2427
Agriculture Department, 2395–2427
Education Department, 2395–2427
Health and Human Services Department, 2395–2427
Homeland Security Department, 2395–2427
Housing and Urban Development Department, 2395–2427
Justice Department, 2395–2427
Labor Department, 2395–2427
Veterans Affairs Department, 2395–2427

Part III
Interior Department, Indian Affairs Bureau, 2430–2500

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

2 CFR
Proposed Rules:
3474 2395

6 CFR
27 2175
Proposed Rules:
19 2395

7 CFR
Proposed Rules:
16 2395

8 CFR
270 2175
274a 2175
280 2175

10 CFR
2 (2 documents) 2187, 2188
13 2188
207 2190
218 2190
429 2190
431 2190
490 2190
501 2190
601 2190
820 2190
824 2190
851 2190
1013 2190
1017 2190
1050 2190

12 CFR
201 2194
204 2195
622 2197

14 CFR
39 (2 documents) 2199, 2202
71 (2 documents) 2204, 2205
Proposed Rules:
39 (7 documents) 2273, 2276, 2279, 2283, 2286, 2292, 2295

16 CFR
Ch. II 2206

19 CFR
4 2175

20 CFR
655 2210
702 2210
725 2210
726 2210

21 CFR
882 2222

22 CFR
Proposed Rules:
205 2395

24 CFR
Proposed Rules:
5 2395

25 CFR
Proposed Rules:
226 2430

27 CFR
5 2224
16 2228

28 CFR
Proposed Rules:
38 (2 documents) 2395

29 CFR
5 2210
500 2210
501 2210
503 2210
530 2210
570 2210
578 2210
579 2210
801 2210
810 2210
825 2210
1903 2210
Proposed Rules:
2 (2 documents) 2395

30 CFR
100 2210

31 CFR
501 2229
510 2229
535 2229
536 2229
539 2229
541 2229
542 2229
544 2229
546 2229
547 2229
548 2229
549 2229
551 2229
552 2229
553 2229
560 2229
561 2229
566 2229
570 2229
576 2229
578 2229
583 2229
584 2229
588 2229
589 2229
590 2229
591 (2 documents) 2234, 2237
592 2229
594 2229
597 2229
598 2229

32 CFR
269 2239

33 CFR
27 2175
165 2241

34 CFR
Proposed Rules:
75 2395
76 2395

38 CFR
Proposed Rules:
50 2395
61 2395
62 2395

40 CFR
52 (2 documents) 2243, 2245
Proposed Rules:
49 2298
52 2303

41 CFR
50-210 2210
105-70 2247

43 CFR
Proposed Rules:
2800 2304
2860 2304
2880 2304
2920 2304

45 CFR
Proposed Rules:
87 2395

47 CFR
54 2248
Proposed Rules:
54 2305

49 CFR
1022 2268
1503 2175

50 CFR
648 2271
679 2271

Rules and Regulations

Federal Register
Vol. 88, No. 9
Friday, January 13, 2023

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

8 CFR Parts 270, 274a, and 280

U.S. Customs and Border Protection

19 CFR Part 4

Coast Guard

33 CFR Part 27

Transportation Security Administration

49 CFR Part 1503

RIN 1601–AB07

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Homeland Security (DHS) makes the 2023 annual inflation adjustment to its civil monetary penalties. On November 2, 2015, the President signed into law The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). Pursuant to the 2015 Act, all agencies must adjust their civil monetary penalties annually and publish the adjustment in the **Federal Register**. Accordingly, this final rule adjusts the Department's civil monetary penalties for 2023 pursuant to the 2015 Act and Executive Office of the President (EOP) Office of Management and Budget (OMB) guidance. The new penalties will be effective for penalties assessed after January 13, 2023 whose associated violations occurred after November 2, 2015.

DATES: This rule is effective on January 13, 2023.

FOR FURTHER INFORMATION CONTACT: Hillary Hunnings, Attorney-Advisor, 202–282–9043, *hillary.hunnings@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory and Regulatory Background
II. Overview of Final Rule
III. Adjustments by Component
  A. Cybersecurity and Infrastructure Security Agency
  B. U.S. Customs and Border Protection
  C. U.S. Immigration and Customs Enforcement
  D. U.S. Coast Guard
  E. Transportation Security Administration
IV. Administrative Procedure Act
V. Regulatory Analyses
  A. Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act
  D. Paperwork Reduction Act
VI. Signing Authority

I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2015)) (2015 Act).[1] The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation. Through the ''catch-up'' adjustment, agencies were required to adjust the maximum amounts of civil monetary penalties to more accurately reflect inflation rates.

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment. The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments. The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer.[2] On July 1, 2016, DHS published an IFR adjusting the maximum civil monetary penalties with an initial ''catch-up'' adjustment, as required by the 2015 Act.[3] DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance that OMB issued to agencies on February 24, 2016.[4] The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR), whose associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act). On January 27, 2017, DHS published a final rule making the annual adjustment for 2017.[5] On April 2, 2018, DHS made the 2018 annual inflation adjustment.[6] On April 5, 2019, DHS made the 2019 annual inflation adjustment.[7] On June 17, 2020, DHS made the 2020 annual inflation adjustment.[8] On October 18, 2021, DHS made the 2021 annual inflation adjustment.[9] On January 11, 2022, DHS made the 2022 annual inflation adjustment.[10]

II. Overview of the Final Rule

This final rule makes the 2023 annual inflation adjustments to civil monetary penalties pursuant to the 2015 Act and pursuant to guidance OMB issued to agencies on December 15, 2022.[11] The

[1] The 2015 Act was part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

[2] The 2015 Act applies to all agency civil penalties except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). *See* sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are assessed by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) fall under the Tariff Act of 1930, and therefore DHS did not adjust those civil penalties in this rulemaking.

[3] 81 FR 42987.

[4] Office of Mgmt. & Budget, Exec. Office of The President, M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, (Feb. 24, 2016) (*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf*).

[5] 82 FR 8571.

[6] 83 FR 13826.

[7] 84 FR 13499.

[8] 85 FR 36469.

[9] 86 FR 57532.

[10] 87 FR 1317.

[11] Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://*

Continued

penalty amounts in this final rule will be effective for penalties assessed after January 13, 2023 where the associated violation occurred after November 2, 2015. Consistent with OMB guidance, the 2015 Act does not change previously assessed penalties that the agency is actively collecting or has collected.

The adjusted penalty amounts will apply to penalties assessed after the effective date of this final rule. We discuss civil penalties by DHS component in Section III below. For each component identified in Section III, below, we briefly describe the relevant civil penalty (or penalties), and we provide a table showing the increase in the penalties for 2023. In the table for each component, we show (1) the penalty name, (2) the penalty statutory and or regulatory citation, (3) the penalty amount as adjusted in the 2022 final rule, (4) the cost-of-living adjustment multiplier for 2023 that OMB provided in its December 15, 2022, guidance, and (5) the new 2023 adjusted penalty. The 2015 Act instructs agencies to round penalties to the nearest $1. For a more complete discussion of the method used for calculating the initial ''catch-up'' inflation adjustments and a component-by-component breakdown to the nature of the civil penalties and relevant legal authorities, please see the IFR preamble at 81 FR 42987–43000.

III. Adjustments by Component

In the following sections, we briefly describe the civil penalties that DHS and its components, the Cybersecurity and Infrastructure Security Agency (CISA), the U.S. Customs and Border Protection (CBP), the U.S. Immigration and Customs Enforcement (ICE), the U.S. Coast Guard (USCG), and the Transportation Security Administration (TSA), assess. Other components not mentioned do not impose any civil monetary penalties for 2023. We include tables at the end of each section, which list the individual adjustments for each penalty.

A. Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) administers only one civil penalty that the 2015 Act affects. That penalty assesses fines for violations of the Chemical Facility Anti-Terrorism Standards (CFATS). CFATS is a program that regulates the security of chemical facilities that, in the discretion of the Secretary, present high levels of security risk. DHS established the CFATS program in 2007 pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109–295).[12] The CFATS regulation is located in part 27 of title 6 of the Code of Federal Regulations (CFR). Below is a table showing the 2023 adjustment for the CFATS penalty that CISA administers.

TABLE 1—CFATS CIVIL PENALTY ADJUSTMENT

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier *	New penalty as adjusted by this final rule
Penalty for non-compliance with CFATS regulations.	6 U.S.C. 624(b)(1); 6 CFR 27.300(b)(3).	$38,139 per day	1.07745	$41,093 per day.

* Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

B. U.S. Customs and Border Protection

The U.S. Customs and Border Protection (CBP) assesses civil monetary penalties under various titles of the United States Code (U.S.C.) and the CFR. These include penalties for certain violations of title 8 of the CFR regarding the Immigration and Nationality Act of 1952 (Pub. L. 82–414, as amended) (INA). The INA contains provisions that impose penalties on persons, including carriers and aliens, who violate specified provisions of the INA. The relevant penalty provisions appear in numerous sections of the INA; however, CBP has enumerated these penalties in regulation in one location—8 CFR 280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, see the 2016 IFR preamble at 81 FR 42989–42990. For a complete list and brief description of the non-INA civil monetary penalties assessed by CBP subject to adjustment and a discussion of the history of the DHS and CBP adjustments to the non-INA penalties, see the 2019 annual inflation adjustment final rule preamble at 84 FR 13499, 13500 (April 5, 2019).

Below is a table showing the 2023 adjustment for the penalties that CBP administers.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.	8 U.S.C. 1221(g); 8 CFR 280.53(b)(1) (INA section 231(g)).	$1,525	1.07745	$1,643.
Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.	8 U.S.C. 1224; 8 CFR 280.53(b)(2) (INA section 234).	$4,144	1.07745	$4,465.
Penalties for failure to depart voluntarily	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3) (INA section 240B(d)).	$1,746–$8,736	1.07745	$1,881–$9,413.

www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf).

[12] Section 550 has since been superseded by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254). The new legislation codified the statutory authority for the CFATS program within Title XXI of the Homeland Security Act of 2002, as amended. *See* 6 U.S.C. 621 *et seq.* Public Law 113–254 authorized the CFATS program from January 18, 2015, to January 17, 2019. Public Law 116–150 extends the CFATS program authorization to July 27, 2023.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA, or for costs associated with removal under section 241(e) of the INA.	8 U.S.C. 1253(c)(1)(A); 8 CFR 280.53(b)(4) (INA section 243(c)(1)(A)).	$3,494	1.07745	$3,765.
Penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.	8 U.S.C. 1253(c)(1)(B); 8 CFR 280.53(b)(5) (INA section 243(c)(1)(B)).	$8,736	1.07745	$9,413.
Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$414 for each alien	1.07745	$446 for each alien.
Penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$10,360	1.07745	$11,162.
Penalties for failure to control, detain, or remove alien crewmen.	8 U.S.C. 1284(a); 8 CFR 280.53(b)(7) (INA section 254(a)).	$1,036–$6,215	1.07745	$1,116–$6,696.
Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.	8 U.S.C. 1285; 8 CFR 280.53(b)(8) (INA section 255).	$2,072	1.07745	$2,232.
Penalties for discharge of alien crewmen	8 U.S.C. 1286; 8 CFR 280.53(b)(9) (INA section 256).	$3,107–$6,215	1.07745	$3,348–$6,696.
Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.	8 U.S.C. 1287; 8 CFR 280.53(b)(10) (INA section 257).	$20,719	1.07745	$22,324.
Penalties for failure to prevent the unauthorized landing of aliens.	8 U.S.C. 1321(a); 8 CFR 280.53(b)(11) (INA section 271(a)).	$6,215	1.07745	$6,696.
Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.	8 U.S.C. 1322(a); 8 CFR 280.53(b)(12) (INA section 272(a)).	$6,215	1.07745	$6,696.
Penalties for bringing to the United States aliens without required documentation.	8 U.S.C. 1323(b); 8 CFR 280.53(b)(13) (INA section 273(b)).	$6,215	1.07745	$6,696.
Penalties for failure to depart	8 U.S.C. 1324d; 8 CFR 280.53(b)(14) (INA section 274D).	$874	1.07745	$942.
Penalties for improper entry	8 U.S.C. 1325(b); 8 CFR 280.53(b)(15) (INA section 275(b)).	$87–$438	1.07745	$94–$472.
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	$580	1.07745	** $625.
Penalty for employing a vessel in a trade without a required Certificate of Documentation.	19 U.S.C. 1706a; 19 CFR 4.80(i).	$1,453	1.07745	$1,566.
Penalty for transporting passengers coastwise for hire by certain vessels (known as Bowaters vessels) that do not meet specified conditions.	46 U.S.C. 12118(f)(3)	$580	1.07745	** $625.
Penalty for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55103(b); 19 CFR 4.80(b)(2).	$873	1.07745	$941.
Penalty for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55111(c); 19 CFR 4.92.	$1,017–$3,198 plus $174 per ton.	1.07745	$1,096–$3,446 plus $187 per ton.

* Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

** No applicable conforming edit to regulatory text.

C. U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) assesses civil monetary penalties for certain employment-related violations arising from the INA. ICE's civil penalties are located in title 8 of the CFR.

There are three different sections in the INA that impose civil monetary penalties for violations of the laws that relate to employment actions: sections 274A, 274B, and 274C. ICE has primary enforcement responsibilities for two of these civil penalty provisions (sections 274A and 274C), and the Department of Justice (DOJ) has enforcement responsibilities for one of these civil penalty provisions (section 274B). The INA, in sections 274A and 274C, provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I–9, Employment Eligibility Verification), the employment of unauthorized aliens, and document fraud.

Because both DHS and DOJ implement the three employment-related penalty sections in the INA, both Departments' implementing regulations reflect the civil penalty amounts. For a complete description of the civil money penalties assessed and a discussion of DHS's and DOJ's efforts to update the penalties in years past, see the IFR preamble at 81 FR 42991. Below is a

table showing the 2023 adjustment for the penalties that ICE administers.[13]

TABLE 3—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier*	New penalty as adjusted by this final rule
Civil penalties for failure to depart voluntarily, INA section 240B(d).	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3)	$1,746–$8,736	1.07745	$1,881–$9,413.
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(A)	517–4,144	1.07745	557–4,465.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(B)	438–3,494	1.07745	472–3,765.
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(C)	4,144–10,360	1.07745	4,465–11,162.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(D)	3,494–8,736	1.07745	3,765–9,413.
Violation/prohibition of indemnity bonds	8 CFR 274a.8(b)	2,507	1.07745	$2,701.
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens—Penalty for first offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(A)	$627–$5,016	1.07745	676–5,404.
Penalty for second offense (per unauthorized alien)	8 CFR 274a.10(b)(1)(ii)(B)	5,016–12,537	1.07745	5,404–13,508.
Penalty for third or subsequent offense (per unauthorized alien)	8 CFR 274a.10(b)(1)(ii)(C)	7,523–25,076	1.07745	8,106–27,018.
Civil penalties for I–9 paperwork violations	8 CFR 274a.10(b)(2)	252–2,507	1.07745	272–2,701.
Civil penalties for failure to depart, INA section 274D	8 U.S.C. 1324d; 8 CFR 280.53(b)(14)	874	1.07745	942.

*Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

D. U.S. Coast Guard

The Coast Guard is authorized to assess 140 penalties involving maritime safety and security and environmental stewardship that are critical to the continued success of Coast Guard missions. Various statutes in titles 14, 16, 19, 33, 42, 46, and 49 of the U.S.C. authorize these penalties. Titles 33 and 46 authorize the vast majority of these penalties as these statutes deal with navigation, navigable waters, and shipping. For a complete discussion of the civil monetary penalties assessed by the Coast Guard, see the 2016 IFR preamble at 81 FR 42992.

The Coast Guard has identified the penalties it administers, adjusted those penalties for inflation, and is listing those new penalties in a table located in the CFR—specifically, Table 1 in 33 CFR 27.3. Table 1 in 33 CFR 27.3 identifies the statutes that provide the Coast Guard with civil monetary penalty authority and sets out the inflation-adjusted maximum penalty that the Coast Guard may impose pursuant to each statutory provision. Table 1 in 33 CFR 27.3 provides the current maximum penalty for violations that occurred after November 2, 2015.

The applicable civil penalty amounts for violations occurring on or before November 2, 2015, are set forth in previously published regulations amending 33 CFR part 27. To find the applicable penalty amount for a violation that occurred on or before November 2, 2015, look to the prior versions of the CFR that pertain to the date on which the violation occurred.

Table 4 below shows the 2023 adjustment for the penalties that the Coast Guard administers.

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier*	New penalty as adjusted by this final rule
Saving Life and Property	14 U.S.C. 521(c)	$11,649	1.07745	$12,551
Saving Life and Property; Intentional Interference with Broadcast	14 U.S.C. 521(e)	1,195	1.07745	1,288
Confidentiality of Medical Quality Assurance Records (first offense)	14 U.S.C. 936(i); 33 CFR 27.3	5,851	1.07745	6,304
Confidentiality of Medical Quality Assurance Records (subsequent offenses).	14 U.S.C. 936(i); 33 CFR 27.3	39,011	1.07745	42,032
Obstruction of Revenue Officers by Masters of Vessels	19 U.S.C. 70; 33 CFR 27.3	8,723	1.07745	9,399
Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	19 U.S.C. 70; 33 CFR 27.3	2,035	1.07745	2,193
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	19 U.S.C. 1581(d)	**5,000	N/A	**5,000
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty.	19 U.S.C. 1581(d)	**1,000	N/A	**1,000
Anchorage Ground/Harbor Regulations General	33 U.S.C. 471; 33 CFR 27.3	12,647	1.07745	13,627
Anchorage Ground/Harbor Regulations St. Mary's river	33 U.S.C. 474; 33 CFR 27.3	873	1.07745	941
Bridges/Failure to Comply with Regulations	33 U.S.C. 495(b); 33 CFR 27.3	31,928	1.07745	34,401
Bridges/Drawbridges	33 U.S.C. 499(c); 33 CFR 27.3	31,928	1.07745	34,401
Bridges/Failure to Alter Bridge Obstructing Navigation	33 U.S.C. 502(c); 33 CFR 27.3	31,928	1.07745	34,401
Bridges/Maintenance and Operation	33 U.S.C. 533(b); 33 CFR 27.3	31,928	1.07745	34,401
Bridge to Bridge Communication; Master, Person in Charge or Pilot	33 U.S.C. 1208(a); 33 CFR 27.3	2,326	1.07745	2,506
Bridge to Bridge Communication; Vessel	33 U.S.C. 1208(b); 33 CFR 27.3	2,326	1.07745	2,506

[13] Table 3 also includes two civil penalties that are also listed as penalties administered by CBP. These are penalties for failure to depart voluntarily, INA section 240B(d), and failure to depart after a final order of removal, INA section 274D. Both CBP and ICE may administer these penalties, but as ICE is the DHS component primarily responsible for assessing and collecting them, they are also listed among the penalties ICE administers.

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier*	New penalty as adjusted by this final rule
Oil/Hazardous Substances: Discharges (Class I per violation)	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3	20,719	1.07745	22,324
Oil/Hazardous Substances: Discharges (Class I total under paragraph).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3	51,796	1.07745	55,808
Oil/Hazardous Substances: Discharges (Class II per day of violation).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3	20,719	1.07745	22,324
Oil/Hazardous Substances: Discharges (Class II total under paragraph).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3	258,978	1.07745	279,036
Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3	51,796	1.07745	55,808
Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3	2,072	1.07745	2,233
Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	33 U.S.C. 1321(b)(7)(B); 33 CFR 27.3	51,796	1.07745	55,808
Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	33 U.S.C. 1321(b)(7)(C); 33 CFR 27.3	51,796	1.07745	55,808
Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3	6,215	1.07745	6,696
Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3	207,183	1.07745	223,229
Marine Sanitation Devices; Operating	33 U.S.C. 1322(j); 33 CFR 27.3	8,723	1.07745	9,399
Marine Sanitation Devices; Sale or Manufacture	33 U.S.C. 1322(j); 33 CFR 27.3	23,258	1.07745	25,059
International Navigation Rules; Operator	33 U.S.C. 1608(a); 33 CFR 27.3	16,307	1.07745	17,570
International Navigation Rules; Vessel	33 U.S.C. 1608(b); 33 CFR 27.3	16,307	1.07745	17,570
Pollution from Ships; General	33 U.S.C. 1908(b)(1); 33 CFR 27.3	81,540	1.07745	87,855
Pollution from Ships; False Statement	33 U.S.C. 1908(b)(2); 33 CFR 27.3	16,307	1.07745	17,570
Inland Navigation Rules; Operator	33 U.S.C. 2072(a); 33 CFR 27.3	16,307	1.07745	17,570
Inland Navigation Rules; Vessel	33 U.S.C. 2072(b); 33 CFR 27.3	16,307	1.07745	17,570
Shore Protection; General	33 U.S.C. 2609(a); 33 CFR 27.3	57,527	1.07745	61,982
Shore Protection; Operating Without Permit	33 U.S.C. 2609(b); 33 CFR 27.3	23,011	1.07745	24,793
Oil Pollution Liability and Compensation	33 U.S.C. 2716a(a); 33 CFR 27.3	51,796	1.07745	55,808
Clean Hulls	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3	47,424	1.07745	51,097
Clean Hulls—related to false statements	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3	63,232	1.07745	68,129
Clean Hulls—Recreational Vessel	33 U.S.C. 3852(c); 33 CFR 27.3	6,323	1.07745	6,813
Hazardous Substances, Releases, Liability, Compensation (Class I).	42 U.S.C. 9609(a); 33 CFR 27.3	62,689	1.07745	67,544
Hazardous Substances, Releases, Liability, Compensation (Class II).	42 U.S.C. 9609(b); 33 CFR 27.3	62,689	1.07745	67,544
Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	42 U.S.C. 9609(b); 33 CFR 27.3	188,069	1.07745	202,635
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	42 U.S.C. 9609(c); 33 CFR 27.3	62,689	1.07745	67,544
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	42 U.S.C. 9609(c); 33 CFR 27.3	188,069	1.07745	202,635
Safe Containers for International Cargo	46 U.S.C. 80509; 33 CFR 27.3	6,852	1.07745	7,383
Suspension of Passenger Service	46 U.S.C. 70305; 33 CFR 27.3	68,529	1.07745	73,837
Vessel Inspection or Examination Fees	46 U.S.C. 2110(e); 33 CFR 27.3	10,360	1.07745	11,162
Alcohol and Dangerous Drug Testing	46 U.S.C. 2115; 33 CFR 27.3	8,433	1.07745	9,086
Negligent Operations: Recreational Vessels	46 U.S.C. 2302(a); 33 CFR 27.3	7,628	1.07745	8,219
Negligent Operations: Other Vessels	46 U.S.C. 2302(a); 33 CFR 27.3	38,139	1.07745	41,093
Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	46 U.S.C. 2302(c)(1); 33 CFR 27.3	8,433	1.07745	9,086
Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	46 U.S.C. 2306(a)(4); 33 CFR 27.3	13,132	1.07745	14,149
Vessel Reporting Requirements: Master	46 U.S.C. 2306(b)(2); 33 CFR 27.3	2,627	1.07745	2,830
Immersion Suits	46 U.S.C. 3102(c)(1); 33 CFR 27.3	13,132	1.07745	14,149
Inspection Permit	46 U.S.C. 3302(i)(5); 33 CFR 27.3	2,739	1.07745	2,951
Vessel Inspection; General	46 U.S.C. 3318(a); 33 CFR 27.3	13,132	1.07745	14,149
Vessel Inspection; Nautical School Vessel	46 U.S.C. 3318(g); 33 CFR 27.3	13,132	1.07745	14,149
Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b).	46 U.S.C. 3318(h); 33 CFR 27.3	2,627	1.07745	2,830
Vessel Inspection; Failure to Give Notice IAW 3309(c)	46 U.S.C. 3318(i); 33 CFR 27.3	2,627	1.07745	2,830
Vessel Inspection; Vessel ≥1600 Gross Tons	46 U.S.C. 3318(j)(1); 33 CFR 27.3	26,269	1.07745	28,304
Vessel Inspection; Vessel <1600 Gross Tons (GT)	46 U.S.C. 3318(j)(1); 33 CFR 27.3	5,254	1.07745	5,661
Vessel Inspection; Failure to Comply with 3311(b)	46 U.S.C. 3318(k); 33 CFR 27.3	26,269	1.07745	28,304
Vessel Inspection; Violation of 3318(b)–3318(f)	46 U.S.C. 3318(l); 33 CFR 27.3	13,132	1.07745	14,149
List/count of Passengers	46 U.S.C. 3502(e); 33 CFR 27.3	273	1.07745	294
Notification to Passengers	46 U.S.C. 3504(c); 33 CFR 27.3	27,384	1.07745	29,505
Notification to Passengers; Sale of Tickets	46 U.S.C. 3504(c); 33 CFR 27.3	1,368	1.07745	1,474
Copies of Laws on Passenger Vessels; Master	46 U.S.C. 3506; 33 CFR 27.3	548	1.07745	590
Liquid Bulk/Dangerous Cargo	46 U.S.C. 3718(a)(1); 33 CFR 27.3	68,462	1.07745	73,764
Uninspected Vessels	46 U.S.C. 4106; 33 CFR 27.3	11,506	1.07745	12,397
Recreational Vessels (maximum for related series of violations)	46 U.S.C. 4311(b)(1); 33 CFR 27.3	362,217	1.07745	390,271
Recreational Vessels; Violation of 4307(a)	46 U.S.C. 4311(b)(1); 33 CFR 27.3	7,244	1.07745	7,805
Recreational vessels	46 U.S.C. 4311(c); 33 CFR 27.3	2,739	1.07745	2,951
Uninspected Commercial Fishing Industry Vessels	46 U.S.C. 4507; 33 CFR 27.3	11,506	1.07745	12,397
Abandonment of Barges	46 U.S.C. 4703; 33 CFR 27.3	1,949	1.07745	2,100
Load Lines	46 U.S.C. 5116(a); 33 CFR 27.3	12,537	1.07745	13,508
Load Lines; Violation of 5112(a)	46 U.S.C. 5116(b); 33 CFR 27.3	25,076	1.07745	27,018
Load Lines; Violation of 5112(b)	46 U.S.C. 5116(c); 33 CFR 27.3	12,537	1.07745	13,508

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier*	New penalty as adjusted by this final rule
Reporting Marine Casualties	46 U.S.C. 6103(a); 33 CFR 27.3	43,678	1.07745	47,061
Reporting Marine Casualties; Violation of 6104	46 U.S.C. 6103(b); 33 CFR 27.3	11,506	1.07745	12,397
Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	46 U.S.C. 8101(e); 33 CFR 27.3	2,072	1.07745	2,233
Manning of Inspected Vessels	46 U.S.C. 8101(f); 33 CFR 27.3	20,719	1.07745	22,324
Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG.	46 U.S.C. 8101(g); 33 CFR 27.3	20,719	1.07745	22,324
Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	46 U.S.C. 8101(h); 33 CFR 27.3	2,739	1.07745	2,951
Watchmen on Passenger Vessels	46 U.S.C. 8102(a)	2,739	1.07745	2,951
Citizenship Requirements	46 U.S.C. 8103(f)	1,368	1.07745	1,474
Watches on Vessels; Violation of 8104(a) or (b)	46 U.S.C. 8104(i)	20,719	1.07745	22,324
Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	46 U.S.C. 8104(j)	20,719	1.07745	22,324
Staff Department on Vessels	46 U.S.C. 8302(e)	273	1.07745	294
Officer's Competency Certificates	46 U.S.C. 8304(d)	273	1.07745	294
Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 8502(e)	20,719	1.07745	22,324
Coastwise Pilotage; Individual	46 U.S.C. 8502(f)	20,719	1.07745	22,324
Federal Pilots	46 U.S.C. 8503	65,666	1.07745	70,752
Merchant Mariners Documents	46 U.S.C. 8701(d)	1,368	1.07745	1,474
Crew Requirements	46 U.S.C. 8702(e)	20,719	1.07745	22,324
Small Vessel Manning	46 U.S.C. 8906	43,678	1.07745	47,061
Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 9308(a)	20,719	1.07745	22,324
Pilotage: Great Lakes; Individual	46 U.S.C. 9308(b)	20,719	1.07745	22,324
Pilotage: Great Lakes; Violation of 9303	46 U.S.C. 9308(c)	20,719	1.07745	22,324
Failure to Report Sexual Offense	46 U.S.C. 10104(b)	11,011	1.07745	11,864
Pay Advances to Seamen	46 U.S.C. 10314(a)(2)	1,368	1.07745	1,474
Pay Advances to Seamen; Remuneration for Employment	46 U.S.C. 10314(b)	1,368	1.07745	1,474
Allotment to Seamen	46 U.S.C. 10315(c)	1,368	1.07745	1,474
Seamen Protection; General	46 U.S.C. 10321	9,491	1.07745	10,226
Coastwise Voyages: Advances	46 U.S.C. 10505(a)(2)	9,491	1.07745	10,226
Coastwise Voyages: Advances; Remuneration for Employment	46 U.S.C. 10505(b)	9,491	1.07745	10,226
Coastwise Voyages: Seamen Protection; General	46 U.S.C. 10508(b)	9,491	1.07745	10,226
Effects of Deceased Seamen	46 U.S.C. 10711	548	1.07745	590
Complaints of Unfitness	46 U.S.C. 10902(a)(2)	1,368	1.07745	1,474
Proceedings on Examination of Vessel	46 U.S.C. 10903(d)	273	1.07745	294
Permission to Make Complaint	46 U.S.C. 10907(b)	1,368	1.07745	1,474
Accommodations for Seamen	46 U.S.C. 11101(f)	1,368	1.07745	1,474
Medicine Chests on Vessels	46 U.S.C. 11102(b)	1,368	1.07745	1,474
Destitute Seamen	46 U.S.C. 11104(b)	273	1.07745	294
Wages on Discharge	46 U.S.C. 11105(c)	1,368	1.07745	1,474
Log Books; Master Failing to Maintain	46 U.S.C. 11303(a)	548	1.07745	590
Log Books; Master Failing to Make Entry	46 U.S.C. 11303(b)	548	1.07745	590
Log Books; Late Entry	46 U.S.C. 11303(c)	411	1.07745	443
Carrying of Sheath Knives	46 U.S.C. 11506	137	1.07745	148
Vessel Documentation	46 U.S.C. 12151(a)(1)	17,935	1.07745	19,324
Documentation of Vessels—Related to Activities involving mobile offshore drilling units.	46 U.S.C. 12151 (a)(2)	29,893	1.07745	32,208
Vessel Documentation; Fishery Endorsement	46 U.S.C. 12151(c)	137,060	1.07745	147,675
Numbering of Undocumented Vessels—Willful violation	46 U.S.C. 12309(a)	13,693	1.07745	14,754
Numbering of Undocumented Vessels	46 U.S.C. 12309(b)	2,739	1.07745	2,951
Vessel Identification System	46 U.S.C. 12507(b)	23,011	1.07745	24,793
Measurement of Vessels	46 U.S.C. 14701	50,154	1.07745	54,038
Measurement; False Statements	46 U.S.C. 14702	50,154	1.07745	54,038
Commercial Instruments and Maritime Liens	46 U.S.C. 31309	23,011	1.07745	24,793
Commercial Instruments and Maritime Liens; Mortgagor	46 U.S.C. 31330(a)(2)	23,011	1.07745	24,793
Commercial Instruments and Maritime Liens; Violation of 31329	46 U.S.C. 31330(b)(2)	57,527	1.07745	61,982
Ports and Waterway Safety Regulations	46 U.S.C. 70036(a); 33 CFR 27.3	103,050	1.07745	111,031
Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	46 U.S.C. 70041(d)(1)(B); 33 CFR 27.3	10,360	1.07745	11,162
Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	46 U.S.C. 70041(d)(1)(C); 33 CFR 27.3	10,360	1.07745	11,162
Vessel Navigation: Regattas or Marine Parades; Other Persons	46 U.S.C. 70041(d)(1)(D); 33 CFR 27.3	5,179	1.07745	5,580
Port Security	46 U.S.C. 70119(a)	38,139	1.07745	41,093
Port Security—Continuing Violations	46 U.S.C. 70119(b)	68,529	1.07745	73,837
Maritime Drug Law Enforcement	46 U.S.C. 70506(c)	6,323	1.07745	6,813
Hazardous Materials: Related to Vessels	49 U.S.C. 5123(a)(1)	89,678	1.07745	96,624
Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or substantial Damage to Property.	49 U.S.C. 5123(a)(2)	209,249	1.07745	225,455
Hazardous Materials: Related to Vessels; Training	49 U.S.C. 5123(a)(3)	540	1.07745	582

* Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

** Enacted under the Tariff Act; exempt from inflation adjustments.

E. Transportation Security Administration

The Transportation Security Administration (TSA) is updating its civil penalties regulation in accordance with the 2015 Act. Pursuant to its statutory authority in 49 U.S.C. 46301(a)(1), (4), (5), (6), 49 U.S.C. 46301(d)(2), (8), and 49 U.S.C. 114(u), TSA may impose penalties for violations of statutes that TSA administers, including penalties for violations of implementing regulations or orders. Note that pursuant to division K, title I, sec. 1904(b)(1)(I), of Public Law 115–254, 132 Stat. 3186, 3545 (Oct. 5, 2018), the TSA Modernization Act—part of the FAA Reauthorization Act of 2018—the former 49 U.S.C. 114(v), which relates to penalties, was re-designated as 49 U.S.C. 114(u).

TSA assesses these penalties for a wide variety of aviation and surface security requirements, including violations of TSA's requirements applicable to Transportation Worker Identification Credentials (TWIC),[14] as well as violations of requirements described in chapter 449 of title 49 of the U.S.C. These penalties can apply to a wide variety of situations, as described in the statutory and regulatory provisions, as well as in guidance that TSA publishes. Below is a table showing the 2023 adjustment for the penalties that TSA administers.

TABLE 5—TRANSPORTATION SECURITY ADMINISTRATION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2022 FR	Multiplier *	New penalty as adjusted by this final rule
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	49 U.S.C. 46301(a)(1), (4), (5), (6); 49 U.S.C. 46301(d)(2), (8); 49 CFR 1503.401(c)(3).	$37,377 (up to a total of $598,026 per civil penalty action).	1.07745	$40,272 (up to a total of $644,343 per civil penalty action).
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	49 U.S.C. 46301(a)(1), (4), (5); 49 U.S.C. 46301(d)(8); 49 CFR 1503.401(c).	$14,950 (up to a total of $74,754 for individuals or small businesses, $598,026 for others).	1.07745	$16,108 (up to a total of $80,544 for individuals or small businesses, $644,343 for others).
Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued thereunder.	49 U.S.C. 114(u); 49 CFR 1503.401(b).	$12,794 (up to a total of $63,973 total for individuals or small businesses, $511,780 for others).	1.07745	$13,785 (up to a total of $68,928 total for individuals or small businesses, $551,417 for others).

* Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

IV. Administrative Procedure Act

DHS is promulgating this final rule to ensure that the amount of civil penalties that DHS assesses or enforces reflects the statutorily mandated ranges as adjusted for inflation. The 2015 Act provides a clear formula for adjustment of the civil penalties, leaving DHS and its components with little room for discretion. DHS and its components have been charged only with performing ministerial computations to determine the amounts of adjustments for inflation to civil monetary penalties. In these annual adjustments DHS is merely updating the penalty amounts by applying the cost-of-living adjustment multiplier that OMB has provided to agencies. Furthermore, the 2015 Act specifically instructed that agencies make the required annual adjustments notwithstanding section 553 of title 5 of the U.S.C. Thus, as specified in the 2015 Act, the prior public notice-and-comment procedures and delayed effective date requirements of the Administrative Procedure Act (APA) do not apply to this rule. Further, as described above, this rule makes minor amendments to the regulations to reflect changes required by clear statutory authority, and DHS finds that prior notice and comment procedures and a delayed effective date for these amendments are unnecessary.

V. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

OMB has not designated this final rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this rule.

This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guidance.[15] DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this final rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities

[14] *See, e.g.,* 46 U.S.C. 70105, 49 U.S.C. 46302 and 46303, and 49 U.S.C. chapter 449.

[15] Office of Mgmt. and Budget, Exec. Office of the President, M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022) (*https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking was not required for the reasons stated above.

C. 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. This final rule will not result in such an expenditure.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this final rule does not trigger any new or revised recordkeeping or reporting.

VI. Signing Authorities

The amendments to 19 CFR part 4 in this document are issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to Section 403(l) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects

6 CFR Part 27

Reporting and recordkeeping requirements, Security measures.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 27

Administrative practice and procedure, Penalties.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, DHS is amending 6 CFR part 27, 8 CFR parts 270, 274a, and 280, 19 CFR part 4, 33 CFR part 27, and 49 CFR part 1503 as follows:

Title 6—Domestic Security

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 6 U.S.C. 624; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Pub. L. 113–254, 128 Stat. 2898, as amended by Pub. L. 116–150, 134 Stat. 679.

■ 2. In § 27.300, revise paragraph (b)(3) to read as follows:

§ 27.300 Orders.

* * * * *

(b) * * *

(3) Where the Executive Assistant Director determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section and issues an Order Assessing Civil Penalty pursuant to paragraph (b)(1) of this section, a chemical facility is liable to the United States for a civil penalty of not more than $25,000 for each day during which the violation continues, if the violation of the Order occurred on or before November 2, 2015, or $41,093 for each day during which the violation of the Order continues, if the violation occurred after November 2, 2015.

* * * * *

Title 8—Aliens and Nationality

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 3. The authority citation for part 270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321 and Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 270.3, revise paragraphs (b)(1)(ii)(A) through (D) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *First offense under section 274C(a)(1) through (a)(4).* Not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $557 and not exceeding $4,465 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(B) *First offense under section 274C(a)(5) or (a)(6).* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $472 and not exceeding $3,765 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

(C) *Subsequent offenses under section 274C(a)(1) through (a)(4).* Not less than $2,200 and not more than $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $3,200 and not exceeding $6,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $4,465 and not more than $11,162 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(D) *Subsequent offenses under section 274C(a)(5) or (a)(6).* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $2,200 and not exceeding $5,500 for each fraudulent

document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $3,765 and not more than $9,413 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Title VII of Pub. L. 110–229, 122 Stat. 754; Pub. L. 115–218, 132 Stat. 1547; 8 CFR part 2.

■ 6. In § 274a.8, revise paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, of $1,100 for each violation occurring on or after September 29, 1999, but on or before November 2, 2015, and of $2,701 for each violation occurring after November 2, 2015, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

■ 7. In § 274a.10, revise paragraphs (b)(1)(ii)(A) through (C) and the first sentence of paragraph (b)(2) introductory text to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) First offense—not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008; not less than $375 and not exceeding $3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $676 and not more than $5,404 for each unauthorized alien with respect to whom the offense occurred occurring after November 2, 2015;

(B) Second offense—not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008; not less than $3,200 and not more than $6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $5,404 and not more than $13,508 for each unauthorized alien with respect to whom the second offense occurred after November 2, 2015; or

(C) More than two offenses—not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008; not less than $4,300 and not exceeding $16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $8,106 and not more than $27,018 for each unauthorized alien with respect to whom the third or subsequent offense occurred after November 2, 2015; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999; not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999, and on or before November 2, 2015; and not less than $272 and not more than $2,701 for each individual with respect to whom such violation occurred after November 2, 2015. * * *

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

■ 8. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 9. In § 280.53, revise paragraphs (b)(1) through (15) to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

* * * * *

(b) * * *

(1) Section 231(g) of the Act, penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: From $1,525 to $1,643.

(2) Section 234 of the Act, penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: From $4,144 to $4,465.

(3) Section 240B(d) of the Act, penalties for failure to depart voluntarily: From $1,746 minimum/$8,736 maximum to $1,881 minimum/$9,413 maximum.

(4) Section 243(c)(1)(A) of the Act, penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act: From $3,494 to $3,765.

(5) Penalties for failure to remove alien stowaways under section 241(d)(2) of the Act: From $8,736 to $9,413.

(6) Section 251(d) of the Act, penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the Act: From $414 to $446; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: From $10,360 to $11,162.

(7) Section 254(a) of the Act, penalties for failure to control, detain, or remove alien crewmen: From $1,036 minimum/$6,215 maximum to $1,116 minimum/$6,696 maximum.

(8) Section 255 of the Act, penalties for employment on passenger vessels of aliens afflicted with certain disabilities: From $2,072 to $2,232.

(9) Section 256 of the Act, penalties for discharge of alien crewmen: From $3,107 minimum/$6,215 maximum to $3,348 minimum/$6,696 maximum.

(10) Section 257 of the Act, penalties for bringing into the United States alien crewmen with intent to evade immigration laws: From $20,719 maximum to $22,324 maximum.

(11) Section 271(a) of the Act, penalties for failure to prevent the unauthorized landing of aliens: From $6,215 to $6,696.

(12) Section 272(a) of the Act, penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: From $6,215 to $6,696.

(13) Section 273(b) of the Act, penalties for bringing to the United States aliens without required documentation: From $6,215 to $6,696.

(14) Section 274D of the Act, penalties for failure to depart: From $874 maximum to $942 maximum, for each day the alien is in violation.

(15) Section 275(b) of the Act, penalties for improper entry: From $87 minimum/$438 maximum to $94 minimum/$472 maximum, for each entry or attempted entry.

Title 19—Customs Duties

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II,§ 211;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

* * * * *

■ 11. In § 4.80, revise paragraphs (b)(2) and (i) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed on or before November 2, 2015, and $941 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

* * * * *

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation on or before November 2, 2015, and $1,566 for each port at which it arrives without the proper Certificate of Documentation after November 2, 2015 (19 U.S.C. 1706a, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

■ 12. In § 4.92, revise the third sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this section occurring after November 2, 2015, are a fine of from $1,096 to $3,446 against the owner or master of the towing vessel and a further penalty against the towing vessel of $187 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

Title 33—Navigation and Navigable Waters

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 13. The authority citation for part 27 continues to read as follows:

Authority: Secs. 1–6, Pub. L. 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 14. In § 27.3, revise the third sentence of the introductory text and table 1 to read as follows:

§ 27.3 Penalty adjustment table.

* * * The adjusted civil penalty amounts listed in Table 1 to this section are applicable for penalty assessments issued after January 13, 2023, with respect to violations occurring after November 2, 2015.* * *

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Civil monetary penalty description	2023 Adjusted maximum penalty amount ($)
14 U.S.C. 521(c)	Saving Life and Property	$12,551
14 U.S.C. 521(e)	Saving Life and Property; Intentional Interference with Broadcast	1,288
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (first offense)	6,304
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	42,033
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	9,399
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	2,193
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge [1]	5,000
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty [1].	1,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	13,627
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	941
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	34,401
33 U.S.C. 499(c)	Bridges/Drawbridges	34,401
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation	34,401
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	34,401
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot	2,506
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	2,506
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	22,324
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	55,808
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	22,324
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	279,036
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	55,808
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment	2,233
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment)	55,808
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	55,808
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	6,696
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment)	223,229

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	2023 Adjusted maximum penalty amount ($)
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	9,399
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	25,059
33 U.S.C. 1608(a)	International Navigation Rules; Operator	17,570
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	17,570
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	87,855
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	17,570
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	17,570
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	17,570
33 U.S.C. 2609(a)	Shore Protection; General	61,982
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	24,793
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	55,808
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; Civil Enforcement	51,097
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; related to false statements	68,129
33 U.S.C. 3852(c)	Clean Hulls; Recreational Vessels	6,813
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	67,544
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	67,544
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense)	202,635
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	67,544
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense)	202,635
46 U.S.C. 80509(a)	Safe Containers for International Cargo	7,383
46 U.S.C. 70305(c)	Suspension of Passenger Service	73,837
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	11,162
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	9,086
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	8,219
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	41,093
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	9,086
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	14,149
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	2,830
46 U.S.C. 3102(c)(1)	Immersion Suits	14,149
46 U.S.C. 3302(i)(5)	Inspection Permit	2,952
46 U.S.C. 3318(a)	Vessel Inspection; General	14,149
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	14,149
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b)	2,830
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c)	2,830
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥1600 Gross Tons	28,303
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel <1600 Gross Tons (GT)	5,661
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	28,303
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)–3318(f)	14,149
46 U.S.C. 3502(e)	List/count of Passengers	294
46 U.S.C. 3504(c)	Notification to Passengers	29,505
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	1,474
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	590
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	73,764
46 U.S.C. 4106	Uninspected Vessels	12,397
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	390,271
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	7,805
46 U.S.C. 4311(c)	Recreational Vessels	2,951
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	12,397
46 U.S.C. 4703	Abandonment of Barges	2,100
46 U.S.C. 5116(a)	Load Lines	13,508
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	27,018
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	13,508
46 U.S.C. 6103(a)	Reporting Marine Casualties	47,061
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	12,397
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement	2,233
46 U.S.C. 8101(f)	Manning of Inspected Vessels	22,324
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by U.S. Coast Guard (USCG).	22,324
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	2,951
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	2,951
46 U.S.C. 8103(f)	Citizenship Requirements	1,474
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	22,324
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	22,324
46 U.S.C. 8302(e)	Staff Department on Vessels	294
46 U.S.C. 8304(d)	Officer's Competency Certificates	294
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge	22,324
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	22,324
46 U.S.C. 8503	Federal Pilots	70,752
46 U.S.C. 8701(d)	Merchant Mariners Documents	1,474
46 U.S.C. 8702(e)	Crew Requirements	22,324
46 U.S.C. 8906	Small Vessel Manning	47,061
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge	22,324
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	22,324
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	22,324
46 U.S.C. 10104(b)	Failure to Report Sexual Offense	11,864
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	1,474
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	1,474
46 U.S.C. 10315(c)	Allotment to Seamen	1,474

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	2023 Adjusted maximum penalty amount ($)
46 U.S.C. 10321	Seamen Protection; General	10,226
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	10,226
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	10,226
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	10,226
46 U.S.C. 10711	Effects of Deceased Seamen	590
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1,474
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	294
46 U.S.C. 10907(b)	Permission to Make Complaint	1,474
46 U.S.C. 11101(f)	Accommodations for Seamen	1,474
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1,474
46 U.S.C. 11104(b)	Destitute Seamen	294
46 U.S.C. 11105(c)	Wages on Discharge	1,474
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	590
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	590
46 U.S.C. 11303(c)	Log Books; Late Entry	443
46 U.S.C. 11506	Carrying of Sheath Knives	148
46 U.S.C. 12151(a)(1)	Vessel Documentation	19,324
46 U.S.C. 12151(a)(2)	Documentation of Vessels—Related to activities involving mobile offshore drilling units	32,208
46 U.S.C. 12151(c)	Vessel Documentation; Fishery Endorsement	147,675
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	14,754
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	2,951
46 U.S.C. 12507(b)	Vessel Identification System	24,793
46 U.S.C. 14701	Measurement of Vessels	54,038
46 U.S.C. 14702	Measurement; False Statements	54,038
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	24,793
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	24,793
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	61,982
46 U.S.C. 70036(a)	Ports and Waterways Safety Regulations	111,031
46 U.S.C. 70041(d)(1)(B)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	11,162
46 U.S.C. 70041(d)(1)(C)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	11,162
46 U.S.C. 70041(d)(1)(D)	Vessel Navigation: Regattas or Marine Parades; Other Persons	5,580
46 U.S.C. 70119(a)	Port Security	41,093
46 U.S.C. 70119(b)	Port Security—Continuing Violations	73,837
46 U.S.C. 70506	Maritime Drug Law Enforcement; Penalties	6,813
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	96,624
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	225,455
49 U.S.C. 5123(a)(3)	Hazardous Materials: Related to Vessels—Training	582

[1] Enacted under the Tariff Act of 1930 exempt from inflation adjustments.

Title 49—Transportation

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 15. The authority citation for part 1503 continues to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 104–134, as amended by Pub. L. 114–74.

■ 16. In § 1503.401, revise paragraphs (b)(1) and (2) and (c)(1), (2), and (3) to read as follows:

§ 1503.401 Maximum penalty amounts.

* * * * *

(b) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern (''small business concern'' as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $13,785 per violation, up to a total of $68,928 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $13,785 per violation, up to a total of $551,417 per civil penalty action, in the case of any other person.

(c) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern (''small business concern'' as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $16,108 per violation, up to a total of $80,544 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $16,108 per violation, up to a total of $644,343 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $40,272 per violation, up to a total of $644,343 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of

passengers or property for compensation.

Jonathan E. Meyer,

General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2023–00626 Filed 1–12–23; 8:45 am]

BILLING CODE 9110–9P; 9111–14–P; 9111–28–P; 9110–04–P; 9110–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2022–0205]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy. This revision addresses the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires Federal agencies to adjust their maximum civil monetary penalty amounts annually for inflation.

DATES: This action is effective on January 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0205 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0205. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susanne Woods, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9446, email: *Susanne.Woods@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

In 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) to provide for regular adjustments for inflation of civil monetary penalties (CMPs). As amended by the Debt Collection Improvement Act of 1996, the FCPIAA required that the head of each Federal agency review and, if necessary, adjust by regulation the CMPs assessed under statutes enforced by the agency at least once every 4 years.

On November 2, 2015, the President of the United States signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act), which further amended the FCPIAA and requires Federal agencies to adjust their CMPs annually for inflation no later than January 15 of each year. The requirements of the 2015 Improvements Act apply to the NRC's maximum CMP amounts for (1) a violation of the Atomic Energy Act (AEA) of 1954, as amended, or any regulation or order issued under the AEA, codified in § 2.205(j) of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Civil penalties''; and (2) a false claim or statement made under the Program Fraud Civil Remedies Act, codified in § 13.3, ''Basis for civil penalties and assessments.''

Pursuant to the 2015 Improvements Act, the NRC published today in the Rules section of the **Federal Register** the revised maximum daily base CMP, based on the percentage change in the consumer price index between October 2021 and October 2022, and codified in § 2.205. In connection with this final rule, the NRC is publishing a corresponding update to the NRC's Enforcement Policy to adjust the monetary amounts listed in Section 8.0, ''Table of Base Civil Penalties.'' This monetary adjustment does not include item f. since its monetary value is based on the estimated or actual cost of authorized disposal and is not calculated based on the monetary value codified in § 2.205(j). Adjustments to item f. base civil penalty amounts are being examined under a separate effort.

Accordingly, the NRC has revised its Enforcement Policy to read as follows:

8.0—TABLE OF BASE CIVIL PENALTIES

[Table A]

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository	$350,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM and uranium conversion facilities	175,000
c. All other fuel fabricators, including facilities under construction, authorized to possess Category III quantities of SNM, industrial processors, independent spent fuel and monitored retrievable storage installations, mills, gas centrifuge and laser uranium enrichment facilities	87,500
d. Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	35,000
e. Research reactors, academic, medical, or other small material users	17,500
f. Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee:	
1. Sources or devices with a total activity greater than 3.7 × 104 MBq (1 Curie), excluding hydrogen-3 (tritium)	54,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	17,000
3. Sources and devices not otherwise described above	7,000
g. Individuals who release safeguards information	8,750

II. Paperwork Reduction Act Statement

This policy statement does not contain any new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). Existing collections of information were approved by the Office of Management and Budget

(OMB), approval numbers 3150–0010 and 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has determined that it is not a ''major rule'' as defined by the Congressional Review Act.

Dated: December 21, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2022–28631 Filed 1–12–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC–2021–0025]

RIN 3150–AK59

Adjustment of Civil Penalties for Inflation for Fiscal Year 2023

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum civil monetary penalties it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC is amending its regulations to adjust the maximum civil monetary penalty for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act from $326,163 to $351,424 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum civil monetary penalty under the Program Fraud Civil Remedies Act from $12,537 to $13,508 for each false claim or statement.

DATES: This final rule is effective on January 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0025 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0025. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carrie McCann, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0888; email: *Carrie.McCann@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion
III. Rulemaking Procedure
IV. Section-by-Section Analysis
V. Regulatory Analysis
VI. Regulatory Flexibility Act
VII. Backfitting and Issue Finality
VIII. Plain Writing
IX. National Environmental Policy Act
X. Paperwork Reduction Act
XI. Congressional Review Act

I. Background

Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) to allow for regular adjustment for inflation of civil monetary penalties (CMPs), maintain the deterrent effect of such penalties and promote compliance with the law, and improve the collection of CMPs by the Federal government (Pub L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note). Pursuant to this authority, and as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–34, 110 Stat. 1321–373), the NRC increased via rulemaking the CMP amounts for violations of the Atomic Energy Act of 1954, as amended (AEA) (codified at § 2.205 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Civil penalties'') and Program Fraud Civil Remedies Act (codified at § 13.3, ''Civil penalties and assessments'') on four occasions between 1996 and 2008.[1]

On November 2, 2015, Congress amended the FCPIAA through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act) (Sec. 701, Pub. L. 114–74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform an initial ''catch-up'' adjustment via rulemaking, adjusting the CMPs enforced by that agency according to the percentage change in the Consumer Price Index (CPI) between the month of October 2015 and the month of October of the calendar year when the CMP amount was last established by Congress. The NRC published this catch-up rulemaking on July 1, 2016 (81 FR 43019).

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, on an annual basis. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the month of October, and the CPI for the month of October for the previous year. The NRC most recently adjusted its civil penalties for inflation according to this statutory formula on January 14, 2022 (87 FR 2310). This year's adjustment is based on the increase in the CPI from October 2021 to October 2022.

[1] Adjustment of Civil Penalties for Inflation (73 FR 54671; Sept. 23, 2008); Adjustment of Civil Penalties for Inflation (69 FR 62393; Oct. 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes (65 FR 59270; Oct. 4, 2000); Adjustment of Civil Monetary Penalties for Inflation (61 FR 53554; Oct. 11, 1996). An adjustment was not performed in 2012 because the FCPIAA at the time required agencies to round their CMP amounts to the nearest multiple of $1,000 or $10,000, depending on the size of the CMP amount, and the 2012 percentages based on the statutory formula were small enough that no adjustment resulted.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to $100,000 per day, per violation (42 U.S.C. 2282). However, as discussed in Section I, ''Background,'' of this document, the NRC has increased this amount several times since 1996 per the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the $326,163 amount last established in January 2022 will increase by 7.745 percent, resulting in a new CMP amount of $351,424. This is based on the increase in the CPI from October 2021 (276.589) to October 2022 (298.012). Therefore, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of $351,424 per day, per violation. This represents an increase of $25,261.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at $5,000 per claim (Pub. L. 99–509, 100 Stat. 1938; 31 U.S.C. 3802). The NRC also has adjusted this amount (currently set at $12,537) multiple times pursuant to the FCPIAA, as amended, since 1996. Using the formula in the 2015 Improvements Act, the $12,537 amount last established in January 2022 will also increase by 7.745 percent, resulting in a new CMP amount of $13,508. Therefore, the NRC is amending § 13.3 to reflect a new maximum CMP amount of $13,508 per claim or statement. This represents an increase of $971.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this final rule (January 13, 2023), regardless of whether the associated violation occurred before or after this date (Pub. L. 114–74, 129 Stat. 600; 28 U.S.C. 2461 note). The NRC assesses civil penalty amounts for violations of the AEA based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy, which is available under ADAMS Accession No. ML22336A179. A corresponding update to the NRC Enforcement Policy is being published today in the Rules section of the **Federal Register** to reflect the updated CMP amount in § 2.205.

III. Rulemaking Procedure

The 2015 Improvements Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 13, 2023.

IV. Section-by-Section Analysis

§ 2.205 Civil penalties.

This final rule revises paragraph (j) by replacing ''$326,163'' with ''$351,424.''

§ 13.3 Basis for civil penalties and assessments.

This final rule revises paragraphs (a)(1)(iv) and (b)(1)(ii) by replacing ''$12,537'' with ''$13,508.''

V. Regulatory Analysis

This final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (codified at 28 U.S.C. 2461 note). Congress passed this legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation diminishes the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Therefore, these are the anticipated impacts of this rulemaking. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (§ 2.205), or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this notice under Section III, ''Rulemaking Procedure,'' of this document, this final rule is exempt from the requirements of 5 U.S.C. 553(b) and notice and comment need not be provided. Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee systems, structures, components, designs, approvals, or procedures required for the construction or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described as a categorical exclusion in § 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination,

Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

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

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

§ 2.205 [Amended]

■ 2. In § 2.205, amend paragraph (j) by removing the amount ''$326,163'' and adding in its place the amount ''$351,424''.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 3. The authority citation for part 13 continues to read as follows:

Authority: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note.

Section 13.3 also issued under 28 U.S.C. 2461 note Section 13.13 also issued under 31 U.S.C. 3730.

§ 13.3 [Amended]

■ 4. In § 13.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing the amount ''$12,537'' and adding in its place the amount ''$13,508''.

Dated: December 21, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman

Executive Director for Operations.

[FR Doc. 2022–28632 Filed 1–12–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 820, 824, 851, 1013, 1017, and 1050

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') publishes this final rule to adjust DOE's civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective on January 13, 2023.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8078, *preeti.chaudhari@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Method of Calculation
III. Summary of the Final Rule
IV. Final Rulemaking
V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act required agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, notwithstanding 5 U.S.C. 553. DOE's initial catch-up adjustment interim final rule was published June 28, 2016 (81 FR 41790), and adopted as final without amendment on December 30, 2016 (81 FR 96349). The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

In accordance with the 2015 Act, the Office of Management and Budget (OMB) must issue annually guidance on adjustments to civil monetary penalties. This final rule to adjust civil monetary penalties for 2023 is issued in accordance with applicable law and OMB's guidance memorandum on implementation of the 2023 annual adjustment.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to the aforementioned OMB guidance memorandum, the adjustment multiplier for 2023 is 1.07745. In order to complete the 2023 annual adjustment, each CMP is multiplied by the 2023 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

III. Summary of the Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment.

DOE authority containing civil monetary penalty	Before adjustment	After adjustment
10 CFR 207.7	$11,630	$12,531
10 CFR 218.42	$25,189	$27,140.
10 CFR 429.120	$503	$542.
10 CFR 431.382	$503	$542.

[1] OMB's annual guidance memorandum was issued on December 15, 2022, providing the 2023 adjustment multiplier and addressing how to apply it.

DOE authority containing civil monetary penalty	Before adjustment	After adjustment
10 CFR 490.604	$9,751	$10,506.
10 CFR 501.181	—$103,050	—$111,031.
	—$8/mcf	—$44/mcf.
	—$41/bbl	—$9/bbl.
10 CFR 601.400 and appendix A	—minimum $22,021	—minimum $23,727.
	—maximum $220,213	—maximum $237,268.
10 CFR 820.81	$230,107	$247,929.
10 CFR 824.1	$164,438	$177,174.
10 CFR 824.4	$164,438	$177,174.
10 CFR 851.5 and appendix B	$106,790	$115,061.
10 CFR 1013.3	$12,537	$13,508.
10 CFR 1017.29	$296,132	$319,067.
10 CFR 1050.303	$22,450	$24,189.
42 U.S.C. 2282(a)[2]	$112,131	$120,816.
50 U.S.C. 2731[3]	$10,066	$10,846.

IV. Final Rulemaking

The 2015 Act requires that annual adjustments for inflation subsequent to the initial ''catch-up'' adjustment be made notwithstanding 5 U.S.C. 553.

V. Regulatory Review

A. Executive Order 12866

This final rule has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed previously, the 2015 Act requires that annual inflation adjustments subsequent to the initial catch-up adjustment be made notwithstanding 5 U.S.C. 553. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule.

D. Paperwork Reduction Act

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for

[2] Adjustment applies only to violations of 42 U.S.C. 2077(b), consistent with Pubic Law 115–232 (August 13, 2018).

[3] Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

L. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National defense, Nuclear energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 20, 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 January 6, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 207—COLLECTION OF INFORMATION

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.;* 15 U.S.C. 791 *et seq.;* E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

■ 2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * *

(1) Any person who violates any provision of this subpart or any order issued pursuant thereto shall be subject

to a civil penalty of not more than $12,531 for each violation. * * *
* * * * *

PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

■ 3. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 *et seq.;* 15 U.S.C. 787 *et seq.;* 42 U.S.C. 6201 *et seq.;* 42 U.S.C. 7101 *et seq.;* E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 4. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) * * *

(1) Any person who violates any provision of this part or any order issued pursuant thereto shall be subject to a civil penalty of not more than $27,140 for each violation.

* * * * *

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) may be subject to assessment of a civil penalty of no more than $542 for each violation. * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 8. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $542 for each violation.

* * * * *

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 9. The authority citation for part 490 continues to read as follows:

Authority: 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq;* 28 U.S.C. 2461 note.

■ 10. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 shall be subject to a civil penalty of not more than $10,506 for each violation.

* * * * *

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

■ 11. The authority citation for part 501 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8301 *et seq.;* 42 U.S.C. 8701 *et seq.;* E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * *

(1) Any person who violates any provisions of the Act (other than section 402) or any rule in this subchapter or order under this subchapter or the Act will be subject to the following civil penalty, which may not exceed $111,031 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $9 for each MCF of natural gas or up to $44 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601—NEW RESTRICTIONS ON LOBBYING

■ 13. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

■ 14. Section 601.400 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 601.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part shall be subject to a civil penalty of not less than $23,727 and not more than $237,268 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required by this part, shall be subject to a civil penalty of not less than $23,727 and not more than $237,268 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $23,727, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $23,727 and $237,268, as determined by the agency head or his or her designee.

* * * * *

Appendix A to Part 601 [Amended]

■ 15. Appendix A to part 601 is amended by:

■ a. Removing ''$22,021'' wherever it appears and adding in its place ''$23,727''; and

■ b. Removing ''$220,213'' wherever it appears and adding in its place ''$237,268''.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 16. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 17. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed $247,929 for each such violation. * * *

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 18. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.,* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 19. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates

(or whose employee violates) any applicable rule, regulations in this chapter, or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $177,174 for each violation. * * *

■ 20. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $177,174 for each violation.

* * * * *

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 21. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.;* 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 22. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to $115,061 for each such violation. * * *

* * * * *

■ 23. Appendix B to part 851 is amended by:

■ a. Revising the last sentences of paragraphs (b)(1) and (2) in section VI; and

■ b. Revising paragraph 1.(e)(1) in section IX.

The revisions read as follows:

Appendix B to Part 851—General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

* * * * *

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $115,061.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($57,530).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to $115,061 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

■ 24. The authority citation for part 1013 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

■ 25. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 1013.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $13,508 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $13,508 for each such statement.

* * * * *

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

■ 26. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2168; 28 U.S.C. 2461 note.

■ 27. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§ 1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $319,067 for each violation.

* * * * *

PART 1050—FOREIGN GIFTS AND DECORATIONS

■ 28. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

■ 29. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as follows:

§ 1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $24,189.

[FR Doc. 2023–00401 Filed 1–12–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1797; RIN 7100–AG 50]

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: The amendments to part 201 (Regulation A) are effective January 13, 2023.

Applicability date: The rate changes for primary and secondary credit were applicable on December 15, 2022.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Kristen Payne, Lead Financial Institution & Policy Analyst (202–452–2872), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On December 14, 2022, the Board voted to approve a 0.50 percentage point increase in the primary credit rate, thereby increasing the primary credit rate from 4.00 percent to 4.50 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate increased by 0.50 percentage points as a result of the Board's primary credit rate action, thereby increasing the secondary credit rate from 4.50 percent to 5.00 percent. The amendments to Regulation A reflect these rate changes.

The 0.50 percentage point increase in the primary credit rate was associated with a 0.50 percentage point increase in the target range for the federal funds rate (from a target range of 3¾ percent to 4 percent to a target range of 4¼ percent to 4½ percent) announced by the Federal Open Market Committee on December 14, 2022, as described in the Board's amendment of its Regulation D published elsewhere in today's **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

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

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 4.50 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 5.00 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–00416 Filed 1–12–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1798; RIN 7100–AG 51]

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation D to revise the rate of interest paid on balances (''IORB'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 4.40 percent, a 0.50 percentage point

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

[3] 5 U.S.C. 553(d).

[4] 5 U.S.C. 553(a)(2) (emphasis added).

[5] 5 U.S.C. 603, 604.

[6] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

increase from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective January 13, 2023.

Applicability date: The IORB rate change was applicable on December 15, 2022.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Kristen Payne, Lead Financial Institution & Policy Analyst (202–452–2872), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D established IORB at 3.90 percent.[6]

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.40 percent. The amendment represents a 0.50 percentage point increase in IORB. This decision was announced on December 14, 2022, with an effective date of December 15, 2022, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on December 14, 2022. The FOMC statement stated that the Committee decided to raise the target range for the federal funds rate to 4¼ to 4½ percent.

The Federal Reserve Implementation Note stated:

> The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on reserve balances to 4.4 percent, effective December 15, 2022.

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.40 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

[1] 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR 16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) and (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(1).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate (''IORB rate'') on a day multiplied by the total balances maintained on that day. The IORB rate is 4.40 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–00417 Filed 1–12–23; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AD59

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) (collectively FDPA, as amended).

DATES: This regulation is effective on January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Camp, Accountant, Office of Regulatory Policy, Farm Credit Administration, (703) 883–4320, TTY (703) 883–4056, Or

Heather LoPresti, Senior Counsel, Office of General Counsel, Farm Credit Administration, (703) 883–4318, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate and adjust, if necessary, those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law. Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty [1] as any penalty, fine, or other sanction that: (1) either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.[2]

The FCA imposes and enforces CMPs through the Farm Credit Act [3] and the FDPA, as amended.[4] FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules regarding persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

B. CMPs Issued Under the Farm Credit Act

Section 5.32(a) of the Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of an order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay a maximum daily amount of $1,000,[5] for each day such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act ''shall be treated'' as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that ''[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than $500 [6] per day for each day during which such violation continues.'' This CMP maximum was set by section 423 of the Agricultural Credit Act of 1987, which was enacted in 1988 and amended the Farm Credit Act. Current inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.[7]

The FCA also enforces the FDPA, as amended, which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The FDPA states that the maximum CMP for a violation of that Act is $2,000.[8] [9]

C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

1. In General

The 2015 Act required all Federal agencies to adjust the CMPs yearly, starting January 15, 2017.

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be made no later than January 15.[10] Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this 1990 Act applies only to civil monetary penalties, including instances in which an associated violation predated the annual increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term ''cost-of-living adjustment'' as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index

[1] While the 1990 Act, as amended by the 1996 and 2015 Acts, uses the term ''civil monetary penalties'' for these penalties or other sanctions, the Farm Credit Act and FCA regulations use the term ''civil money penalties.'' Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

[2] *See* 28 U.S.C. 2461 *note.*

[3] Public Law 92–181, as amended.

[4] 42 U.S.C. 4012a and Public Law 103–325, title V, 108 Stat. 2160, 2255–87 (September 23, 1994).

[5] The inflation-adjusted CMP in effect on January 15, 2022, for a violation of a final order is $2,544 per day, as set forth in § 622.61(a)(1) of FCA regulations.

[6] The inflation-adjusted CMP in effect on January 15, 2022, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $1,151 per day for each violation, as set forth in § 622.61(a)(2) of FCA regulations.

[7] Prior adjustments were made under the 1990 Act and continue to be made each year.

[8] Public Law 112–141, 126 Stat. 405 (July 6, 2012); 42 U.S.C. 4012a(f)(5).

[9] The inflation-adjusted CMP in effect on January 15, 2022, for a flood insurance violation is $2,392, as set forth in § 622.61(b) of FCA regulations.

[10] Public Law 114–74, sec. 701(b)(1).

(CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October one year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[11]

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.[12]

2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.[13]

III. Yearly Adjustments

A. Mathematical Calculations of 2023 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2023 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2022 White House Office of Management and Budget (OMB) guidance [14] is based on the percentage by which the CPI for October 2022 exceeds the CPI for October 2021. The OMB set forth guidance, as required by the 2015 Act,[15] with a multiplier for calculating the new CMP values.[16] The 2022 OMB multiplier for the 2023 CMPs is 1.07745.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. The adjustment multiplier is the same for all FCA enforced CMPs, set at 1.07745. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973.

1. New Penalty Amount in § 622.61(a)(1)

The inflation-adjusted CMP currently in effect for violations of a final order occurring on or after January 15, 2022, is a maximum daily amount of $2,544.[17] Multiplying the $2,544 CMP by the 2022 OMB multiplier, 1.07745, yields a total of $2,741.03. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to $2,741. Thus, the new CMP maximum is $2,741, for violations that occur on or after January 15, 2023.

2. New Penalty Amount in § 622.61(a)(2)

The inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after January 15, 2022, is a maximum daily amount of $1,151.[18] Multiplying the $1,151 CMP maximum by the 2022 OMB multiplier, 1.07745, yields a total of $1,240.14. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to $1,240. Thus, the new CMP maximum is $1,240, for violations that occur on or after January 15, 2023.

3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) occurring on or after January 15, 2022, is $2,392. Multiplying $2,392 by the 2022 OMB multiplier, 1.07745, yields a total of $2,577.26. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is $2,577. Thus, the new CMP maximum is $2,577, for violations that occur on or after January 15, 2023.

IV. Notice and Comment Not Required by Administrative Procedure Act

The 1990 Act, as amended, gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form.

V. Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 *note*), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is $2,741 for violations that occur on or after January 15, 2023.

(2) Amount of civil money penalty for violation of the Act or regulations: the maximum daily amount is $1,240 for each violation that occurs on or after January 15, 2023.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is $2,577 for each violation that occurs on or after January 15, 2023, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

[11] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: *https://www.bls.gov/cpi/.*

[12] Pursuant to section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest $1.

[13] Pursuant to section 4(d) of the 1990 Act, as amended.

[14] OMB Circular M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[15] 28 U.S.C. 2461 *note,* section 7(a).

[16] OMB Circular M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[17] 12 CFR 622.61(a)(1).

[18] 12 CFR 622.61(a)(2).

Dated: January 11, 2023.

Ashley Waldron,

Secretary, Farm Credit Administration Board.

[FR Doc. 2023–00715 Filed 1–12–23; 8:45 am]

BILLING CODE 6705–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1664; Project Identifier MCAI–2022–01585–R; Amendment 39–22294; AD 2022–27–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model EC130T2 helicopters. This AD was prompted by a crack in the tailboom. This AD requires repetitively inspecting the vibration level on the tail rotor drive shaft and, depending on the results, taking corrective action. This AD also requires reporting information and prohibits installing certain rotor drive shafts unless the inspection is done, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 30, 2023.

The FAA must receive comments on this AD by February 27, 2023.

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–2022–1664; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is incorporated by reference in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu*.
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1664.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/helicopters/services/technical-support.html.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1664; Project Identifier MCAI–2022–01585–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0251–E, dated December 14, 2022 (EASA AD 2022–0251–E), to correct an unsafe condition on Airbus Helicopters Model EC 130 T2 helicopters with modification 079809 incorporated in production.

This AD was prompted by a report of a crack in the tailboom. During the preceding flight, the pilot experienced a humming sound and vibrations in the pedals. A subsequent balancing of the tail rotor drive shaft revealed an excessive vibration level. The FAA is issuing this AD to address an excessive vibration level on the tail rotor drive shaft, which could result in failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

You may examine EASA AD 2022–0251–E in the AD docket at *regulations.gov* under Docket No. FAA–2022–1664.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0251–E requires repetitively checking the balancing of the tail rotor drive shaft by measuring the vibration level. Depending on the results, EASA AD 2022–0251–E requires contacting Airbus Helicopters to obtain approved instructions, accomplishing those instructions, and reporting the results to Airbus Helicopters. Lastly, EASA AD 2022–0251–E prohibits installing certain part-numbered tail rotor drive shafts on any helicopter unless its requirements are met.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin No. EC130–05A042, Revision 0, dated December 14, 2022. This service information specifies procedures for measuring the vibration level on the tail rotor drive shaft and reporting the results to Airbus Helicopters.

The FAA also reviewed AMM Task 65–11–01,5–1A, Adjustment—Balancing of the tail rotor drive line (with the STEADY Control tuning equipment)—Tail Drive Line POST MOD 079809 and AMM Task 65–11–01,5–1B, Adjustment—Balancing of the tail rotor drive shaft (with the VIBREX 2000 adjustment equipment)—Tail Drive Line POST MOD 079809, both Update 2 and dated July 3, 2022. This service information specifies procedures for measuring the vibration level on the tail rotor drive shaft, analyzing the results, and balancing the tail rotor drive line or shaft.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0251–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and discussed under ''Differences Between this 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 been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0251–E is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2022–0251–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0251–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0251–E. Service information referenced in EASA AD 2022–0251–E for compliance will be available at regulations.gov under Docket No. FAA–2022–1664 after this final rule is published.

Differences Between This AD and the EASA AD

EASA AD 2022–0251–E requires tail rotor drive shaft checks, whereas this AD requires tail rotor drive shaft inspections because those actions must be accomplished by persons authorized under 14 CFR 43.3. Depending on the results of the vibration check, EASA AD 2022–0251–E specifies contacting Airbus Helicopters to obtain approved instructions and accomplishing those instructions, whereas this AD requires accomplishing corrective action in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' EASA Design Organization Approval. For inspection results of more than 1.4 inch per second, this AD requires reporting those results to Airbus Helicopters before further flight, whereas EASA AD 2022–0251–E is unclear about reporting that information. For inspection results of 1.4 or less inch per second, EASA AD 2022–0251–E specifies to report results within 14 days, whereas this AD requires reporting those results within 10 days.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the tail rotor drive shaft is critical to the control of a helicopter and a failure of the tail rotor drive shaft could occur during any phase of flight without previous indication. The FAA also has no information pertaining to how quickly the condition may propagate to failure. In light of this and, depending how many hours the helicopter has accumulated, for some operators the initial inspection must be accomplished before further flight. For other operators, the initial inspection must be accomplished before accumulating 50 total hours time-in-service or within three months, whichever occurs first, which is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the

FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 9 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the tail rotor drive shaft takes about 4 work-hours for an estimated cost of $340 per helicopter and $3,060 for the U.S. fleet, per inspection cycle. Reporting information to the manufacturer takes about 1 work-hour for an estimated cost of $85 per helicopter for each report.

The corrective action that may be needed as a result of the inspection could vary significantly from helicopter to helicopter. The FAA has no data to determine the costs to accomplish the corrective action or the number of helicopters that may require corrective action.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–27–09 Airbus Helicopters: Amendment 39–22294; Docket No. FAA–2022–1664; Project Identifier MCAI–2022–01585–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC130T2 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) Emergency AD 2022–0251–E, dated December 14, 2022 (EASA AD 2022–0251–E).

(d) Subject

Joint Aircraft System Component (JASC) Code: 6510, Tail Rotor Drive Shaft.

(e) Unsafe Condition

This AD was prompted by a report of a crack in the tailboom. The FAA is issuing this AD to address an excessive vibration level on the tail rotor drive shaft. The unsafe condition, if not addressed, could result in failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0251–E.

(h) Exceptions to EASA AD 2022–0251–E

(1) Where EASA AD 2022–0251–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0251–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2022–0251–E refers to tail rotor drive shaft checks, this AD requires tail rotor drive shaft inspections.

(4) Where paragraph (2) of EASA AD 2022–0251–E specifies contacting AH [Airbus Helicopters] to obtain approved instructions, this AD requires, before further flight, reporting results to Airbus Helicopters and accomplishing corrective action in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Where paragraph (3) of EASA AD 2022–0251–E specifies reporting results to AH [Airbus Helicopters] within 14 days after the check, this AD requires reporting the results at the applicable time in paragraph (h)(5)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(6) This AD does not adopt the Remarks paragraph of EASA AD 2022–0251–E.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 only to operate the helicopter to a location where the first tail rotor drive shaft inspection can be performed, provided no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2022–0251–E, dated December 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0251–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material 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 January 2, 2023.

Christina Underwood,

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

[FR Doc. 2023–00680 Filed 1–11–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0818; Project Identifier AD–2022–00299–R; Amendment 39–22296; AD 2023–01–02]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters modified by Supplemental Type Certificate (STC) SR01812LA. This AD was prompted by a report of certain floats not deploying due to a faulty plunger assembly. This AD requires repairing or replacing certain float assemblies. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 17, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0818; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Related Service Information:

- For DART Aerospace service information identified in this final rule, contact Apical Industries, Inc., Jason Gardiner, 3030 Enterprise Ct., Vista, CA 92081, United States; phone: (760) 542–2096; email: *jgardiner@dartaero.com;* website: *dartaerospace.com/.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Johann S. Magana, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5322; email *johann.magana@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters, modified by STC SR01812LA with A109 Float (with/without Liferafts System) DART Aerospace 634.4100 Kit Series part number (P/N) 634.4101, 634.4102, 634.4103, 634.4104, 634.4106, or 634.4107 with float assembly P/N 644.0501, 644.0502, 644.0503, 644.0504, 644.0505, or 644.0506 installed. The NPRM published in the **Federal Register** on July 12, 2022 (87 FR 41263).

The NPRM was prompted by a report, received by the FAA, of two forward floats not deploying after an inadvertent activation. It was discovered that the plunger assembly caused the forward floats to not deploy. Further investigation revealed that a design change of the plunger assembly in 2009 inadvertently changed the position of the bushing from a press fit to a threaded fit. The dimensions for the threaded fit were preventing the bushing from fully clearing the ball bearings when bottoming out on the solenoid on the valve assemblies. The plunger assembly is contained within the float assembly and reservoir assembly. An emergency float kit consists of float assemblies, reservoir assemblies, and additional components. These emergency float kits (634.4100 Kit Series) are installed on Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters modified by STC SR01812LA. In the NPRM, the FAA proposed to require repairing or replacing affected float assemblies with a method approved by the Manager, Los Angeles ACO Branch, FAA. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one commenter, Bristow Group Inc. (VTOL). The following presents the comment received on the NPRM and the FAA's response to the comment.

Request for Credit for Compliance With Service Information

Bristow Group Inc. (VTOL) requested clarification regarding if credit will be given for previous compliance with DART SB2021–05.

The FAA agrees to allow credit for the accomplishment of DART Aerospace Service Bulletin SB2021–05, Revision N/C, dated December 6, 2021, provided those actions were accomplished prior to the effective date of this AD. Accordingly, the FAA has added the Credit for Previous Actions paragraph in this final rule.

Conclusion

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

Related Service Information

The FAA reviewed DART Aerospace Service Bulletin SB2021–05, Revision N/C, dated December 6, 2021. This service bulletin specifies replacing certain serial-numbered float assemblies or, if the serial number is not listed in the service bulletin, contacting DART to verify effectivity. The service bulletin also provides procedures for removing the float assemblies from the helicopter, discharging the reservoirs, shipping the float assemblies, and re-installing the float assemblies.

The FAA also reviewed DART Aerospace Instructions for Continued Airworthiness ICA109–1, Rev. U, dated October 27, 2020. This service information provides description, operation, disassembly, inspection, assembly, repair, and testing instructions as well as an illustrated parts list for emergency float kits and emergency float with life raft kits.

Costs of Compliance

The FAA estimates that this AD affects 25 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing each float assembly takes about 4 work-hours for an estimated cost of $340 per helicopter and up to $8,500 for the U.S. fleet. The FAA has received no definitive data that would enable the FAA to provide parts cost estimates for the required actions; however, according to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–01–02 Leonardo S.p.a.: Amendment 39–22296; Docket No. FAA–2022–0818; Project Identifier AD–2022–00299–R.

(a) Effective Date

This airworthiness directive (AD) is effective February 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters, certificated in any category, modified by Supplemental Type Certificate SR01812LA with A109 Float (with/without Liferafts System) DART Aerospace 634.4100 Kit Series part number (P/N) 634.4101, 634.4102, 634.4103, 634.4104, 634.4106, or 634.4107 with float assembly P/N 644.0501, 644.0502, 644.0503, 644.0504, 644.0505, or 644.0506 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2560, Emergency Equipment.

(e) Unsafe Condition

This AD was prompted by a report of two forward floats not deploying after an inadvertent activation. The FAA is issuing this AD to ensure the affected floats work as intended. The unsafe condition, if not addressed, could result in the helicopter either rolling to one side or capsizing in an event of an emergency landing on water.

(f) Compliance

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

(g) Required Actions

Within 300 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, remove each float assembly identified in paragraph (c) of this AD and repair or replace it in accordance with a method approved by the Manager, Los Angeles ACO Branch, FAA. For a repair or replacement method to be approved by the Manager, Los Angeles ACO Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were accomplished before the effective date of this AD using DART Aerospace Service Bulletin SB2021–05, Revision N/C, dated December 6, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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 (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Johann S. Magana, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5322; email *johann.magana@faa.gov.*

(2) For DART service information identified in this AD that is not incorporated by reference, contact Apical Industries, Inc., Jason Gardiner, 3030 Enterprise Ct., Vista, CA 92081, United States; phone: (760) 542–2096; email: *jgardiner@dartaero.com;* website: *dartaerospace.com/.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

None.

Issued on January 4, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–00260 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1640; Airspace Docket No. 22–AWA–9]

RIN 2120–AA66

Amendment of Class C Airspace; Buffalo, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Greater Buffalo International Airport, NY, Class C airspace description to update the Greater Buffalo International Airport and Lancaster Airport names and the associated airport reference point (ARP) geographic coordinates for each airport to match the FAA's National Airspace System Resource (NASR) database information. Additionally, this action makes a technical amendment to the airspace description header information by changing the title of the airspace area. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, April 20, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates listed airport names and the associated ARP geographic coordinates for those airports and amends the airspace description header information by changing the airspace title.

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. While amending Class D and Class E airspace areas in the vicinity of Niagara Falls and Buffalo, NY, the FAA identified that the Greater Buffalo International Airport and Lancaster Airport names and associated ARP geographic coordinates required updating in the Greater Buffalo International Airport Class C airspace description. Additionally, the FAA identified a technical amendment to the Greater Buffalo International Airport airspace description header information necessary to change the title of the Class C airspace area to reflect city and state instead of the airport name the airspace is designated around.

This action updates the airport names and ARP geographic coordinates for both airports to match the FAA's NASR database information and changes the title of the Class C airspace area to comply with FAA Order JO 7400.2 airspace legal description guidance.

Class C airspace areas are published in paragraph 4000 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class C airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending the Greater Buffalo International Airport, NY, Class C airspace description to update the Greater Buffalo International Airport and Lancaster Airport names and associated ARP geographic coordinates. This action also makes a technical amendment to the airspace description header by changing the airspace title.

The ''Greater Buffalo International Airport'' name is changed to ''Buffalo Niagara International Airport'' and the ''Lancaster Airport'' name is changed to ''Buffalo-Lancaster Regional Airport''. Additionally, the ARP geographic coordinates for the Buffalo Niagara International Airport are changed from ''lat. 42°56′26″ N, long. 78°43′56″ W'' to

''lat. 42°56′26″ N, long. 78°43′50″ W'' and the ARP geographic coordinates for the Buffalo-Lancaster Regional Airport are changed from ''lat. 42°55′20″ N, long. 78°36′44″ W'' to ''lat. 42°55′19″ N, long. 78°36′43″ W''. Lastly, the airspace title in the airspace description header is changed from ''Greater Buffalo International Airport, NY'' to ''Buffalo, NY''. The airport name and ARP geographic coordinates updates are made to coincide with the FAA's NASR database information. The airspace title technical amendment is made to comply with airspace legal description guidance contained in FAA Order JO 7400.2.

This action does not affect the boundaries, altitudes, or operating requirements of the airspace. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action making technical amendments to the Buffalo, NY, Class C airspace description qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this airspace action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, effective September 15, 2022, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

AEA NY C Buffalo, NY

Buffalo Niagara International Airport, NY
(Lat. 42°56′26″ N, long. 78°43′50″ W)
Buffalo Airfield, NY
(Lat. 42°51′43″ N, long. 78°43′00″ W)
Buffalo-Lancaster Regional Airport, NY
(Lat. 42°55′19″ N, long. 78°36′43″ W)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Buffalo Niagara International Airport, excluding that airspace within a 1-mile radius of the Buffalo Airfield and within a 1-mile radius of the Buffalo-Lancaster Regional Airport; and that airspace extending upward from 2,200 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the Buffalo Niagara International Airport, excluding that airspace within Canada.

* * * * *

Issued in Washington, DC, on January 5, 2023.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2023–00340 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1827; Airspace Docket No. 22–AEA–39]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace; Manassas, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E surface airspace at Manassas Regional Airport/Harry P. Davis Field, Manassas, VA. The geographic coordinates of the airport are being updated to coincide with the FAA's aeronautical database. In addition, this action makes the editorial changes replacing the term Notice to Airmen with Notice to Air Missions and replacing the term Airport/Facility Directory with Chart Supplement. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, April 20, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends airspace in Manassas, VA, to support IFR operations in the area. This update is administrative change and does not change the airspace boundaries or operating requirements.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class D airspace and Class E surface airspace at Manassas Regional Airport/Harry P. Davis Field, Manassas, VA., by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database. In addition, this action makes the editorial changes replacing the term Notice to Airmen with Notice to Air Missions and replacing the term Airport/Facility Directory with Chart Supplement.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5. a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA VA D Manassas, VA [Amended]

Manassas Regional Airport/Harry P. Davis Field, VA
(Lat. 38°43′16″ N, long. 77°30′54″ W)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 5-mile radius of the Manassas Regional Airport/Harry P. Davis Field, excluding that airspace within the Washington Tri-Area Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA VA E2 Manassas, VA [Amended]

Manassas Regional Airport/Harry P. Davis Field, VA
(Lat. 38°43′16″ N, long. 77°30′54″ W)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 5-mile radius of the Manassas Regional Airport/Harry P. Davis Field, excluding that airspace within the Washington Tri-Area Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on January 5, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–00268 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2022–0017]

Determinations Regarding Portable Fuel Container Voluntary Standards Under the Portable Fuel Container Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Determinations.

SUMMARY: The Portable Fuel Container Safety Act of 2020 (PFCSA) provides that the Consumer Product Safety Commission (Commission) must promulgate a rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container, unless the Commission determines that there is a voluntary standard for flame mitigation devices that impedes the propagation of flame into the container. The Commission is announcing in this document that it has determined that such voluntary standards exist for all known classes of portable fuel containers. Therefore, the Commission will not be promulgating a final rule, and pursuant to the PFCSA, the requirements of such voluntary standards shall be treated as a consumer product safety rule under the Consumer Product Safety Act (CPSA).

DATES: The Commission determinations made under the PFCSA for ASTM F3429/F3429M–20, ASTM F3326–21, and section 18 of UL 30:2022 discussed in this document will be effective by operation of law as consumer product safety rules on July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer H. Colten, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone (301) 504–8165; *jcolten@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Portable Fuel Container Safety Act of 2020

The PFCSA [1] requires the Commission to promulgate, not later than 30 months after December 27, 2020, a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1), (2). However, the Commission is not required to promulgate a final rule for a class of portable fuel containers within the scope of the PFCSA if the Commission determines at any time that:

- There is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- The voluntary standard is or will be in effect not later than 18 months after the date of enactment of the PFCSA (*i.e.,* June 27, 2022); and
- The voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A). Any such Commission determinations regarding applicable voluntary standards must be published in the **Federal Register**. 15 U.S.C. 2056d(b)(3)(B).

II. Portable Fuel Container Voluntary Standards

A. Background

The PFCSA requires the Commission to promulgate a final rule to require flame mitigation devices on portable fuel containers by June 27, 2023. 15 U.S.C. 2056d(b)(1). The PFCSA provides an exception to the rulemaking requirement if the Commission determines that a voluntary standard for a class of portable fuel containers has requirements for flame mitigation devices that impede the propagation of flames into the container. 15 U.S.C. 2056d(b)(3)(A). The Commission must publish any such determination in the **Federal Register**, and the requirements of such a voluntary standard ''shall be treated as a consumer product safety rule.'' 15 U.S.C. 2056d(b)(3)(B) and (b)(4).

1. Definition of Flame Mitigation Device

The PFCSA does not define the term ''flame mitigation device.'' However, ASTM F3429, *Standard Specification for Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers,* defines a ''flame mitigation device'' as ''a device or feature attached to, installed in, or otherwise integral to, a container that is expected to inhibit the propagation of an external flame into the container.'' A common type of flame mitigation device used with portable fuel containers is a flame arrestor (also known as flame arrester or flash arresting screen). A flame arrestor is a screen that quenches and cools a flame so that it cannot pass through the flame arrestor. Other examples of flame mitigation devices include, but are not limited to, expanded metal mesh, screens, bladders, pinhole restrictors, and pumps.

2. Statutory Definition of ''Portable Fuel Container''

The PFCSA defines the term ''portable fuel container'' to mean any container or vessel (including any spout, cap, and other closure mechanism or component of such container or vessel or any retrofit or aftermarket spout or component intended or reasonably anticipated to be for use with such container):

- Intended for flammable liquid fuels with a flash point less than 140 degrees Fahrenheit, including gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or biofuels;
- That is a consumer product with a capacity of 5 gallons or less; and
- That the manufacturer knows or reasonably should know is used by consumers for transporting, storing, and dispensing flammable liquid fuels.

15 U.S.C. 2056d(b)(8).

Some examples of portable fuel containers include portable gasoline containers and containers for cigarette lighter fluid, charcoal lighter fluid, and liquid fireplace fuel (such as firepot fuel). Products that store substances like liquified petroleum gas (''LP gas,'' commonly called ''propane'') are not within scope of the statutory definition of ''portable fuel containers'' because these substances are only liquid at high pressure, and when exposed to ambient conditions, readily vaporize.

3. Flame Jetting Hazard

The principal hazards that flame mitigation devices protect against are flame jetting and container rupturing. ''Flame jetting,'' as defined in ASTM F3429, is a ''phenomenon where an external ignition source causes a sudden ignition within a liquid container that directionally propels burning vapor and liquid from the mouth of the container.'' Container rupturing is similar to flame jetting, except the burning vapor and liquid exit through a rupture in the container. The injury potential associated with each hazard is the same, severe burns and possible death. Flame jetting typically injures people other than the person holding the container, while container rupturing typically injures the person holding the container. In this notice, references to flame jetting also include container rupturing.

B. Relevant Voluntary Standards

The PFCSA allows the Commission to separate portable fuel containers into different classes. 15 U.S.C. 2056d(b)(3)(A). CPSC staff evaluated the specifications for many portable fuel containers and recommends separating portable fuel containers into two classes: containers sold pre-filled, and containers sold empty. Below are staff's descriptions and assessments under the PFCSA of the relevant portable fuel container voluntary standards for containers sold pre-filled, and containers sold empty, which together, encompass all known classes of portable fuel containers. A more detailed description of staff's assessment of the voluntary standards is available in staff's memorandum.[2]

1. Containers Sold Pre-Filled

Containers sold pre-filled are likely to be discarded by the consumer once the contents (the flammable liquid fuel) are completely used; whereas containers sold empty are specifically designed to be reused. Pre-filled containers and empty containers are used differently and have different product lifespans. The differences also mean that the flame mitigation devices will be subjected to different conditions that can affect

[1] Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. 2056d, as stated Public Law 116–260, div. FF, title IX, section 901, available at: *https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf.*

[2] CPSC staff's memorandum ''Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020'' is available at: *https://www.cpsc.gov/s3fs-public/Federal-Register-Notice-Notice-of-Commission-Determinations-Regarding-Voluntary-Standards-Under-the-Portable-Fuel-Container-Safety-Act-of-2020.pdf?VersionId=vhydmadrMn5PqRmgzmfLxhk80ddFo52E.*

performance over time, and therefore, requirements differ for pre-filled versus empty containers. For example, pre-filled containers, such as those used for charcoal lighter fluid, can be squeezed easily, and therefore, are likely to create a larger vacuum force pulling external flames into the container.

a. ASTM F3429/F3429M–20

Portable fuel containers sold pre-filled are within the scope of ASTM F3429/F3429M–20, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers.* ASTM lists the standard as a dual standard in inch-pound (F3429 designation) and metric (F3429M designation) units. Both designations of the standard are substantively identical except for the inch-pound vs metric units used in the standard. ASTM F3429/F3429M was first published in 2020 and has not been revised since publication of the standard. The standard was developed by the ASTM F15.72 subcommittee for Pre-Filled Containers of Flammable and Combustible Liquids.

The standard requires two performance tests of the container's flame mitigation devices. The first is an endurance test, in which the container is subjected to an external and stationary 2.5-inch flame at the mouth of the container for 30 seconds. The second test is a flashback test, in which the container is subjected to an external flash fire near the container mouth. The container passes each test if the contents of the container do not catch fire or otherwise ignite in each of five consecutive trials. The two tests demonstrate that the flame mitigation device impedes the propagation of two different types of ignition sources, a stationary flame and a moving flame.

2. Containers Sold Empty

Portable fuel containers sold empty, such as gas cans, are designed to receive fuel from a service station pump for transfer later into a fuel-powered product, such as a lawnmower. They are designed to be used in this manner many times and to hold flammable liquids for long periods, over large temperature variations.

Safety cans are portable fuel containers sold empty that the U.S. Occupational Safety and Health Administration (OSHA) generally regulates for use in the workplace. OSHA requires spring-loaded or self-closing openings and flash-arresting screens on safety cans, 29 CFR 1926.155(l). OSHA also requires that safety cans be approved by a nationally recognized testing laboratory (NRTL), 29 CFR 1926.155(a). The OSHA requirements do not specify to which standard an NRTL must test the safety can. Safety cans tend to be more expensive than typical gas cans but are available for purchase by consumers at many physical and online retailers.

a. ASTM F3326–21

Portable fuel containers sold empty for general consumer use are within the scope of ASTM F3326–21, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers.* ''Portable Fuel Containers,'' as used in the title of ASTM F3326, refers to containers that meet the scope of ASTM F852, *Standard Specification for Portable Gasoline, Kerosene, and Diesel Containers for Consumer Use.* ASTM F3326 was initially published in 2019 and has been revised twice. The current version of the standard is ASTM F3326–21.

ASTM F3326 requires a performance test of the container's flame mitigation devices after the container is exposed to several use-and-abuse tests. Use-and-abuse tests are designed to ensure a flame mitigation device still functions after simulating normal use and reasonably foreseeable abuse of the container over time. The flame mitigation device performance test demonstrates that the container prevents a flame traveling at five meters per second from igniting the contents of the container in each of five consecutive trials. The test also demonstrates that the flame mitigation device impedes the propagation of a rapidly travelling flame front into the container.

b. UL 30:2022

Portable fuel containers that are sold empty and meet the OSHA requirements for safety cans are within the scope of ANSI/CAN/UL/ULC 30:2022 (UL 30:2022), *Standard for Safety Metallic and Nonmetallic Safety Cans for Flammable and Combustible Liquids.* UL 30:2022 is a voluntary standard that covers various requirements for safety cans, including requirements for flame mitigation devices. The standard is under the jurisdiction of UL Standard Technical Panel (STP) 30. The current version of the standard, UL 30:2022, was published in 2022, and it has been in effect since April 29, 2022.

Section 18 of UL 30 has two performance test options. The first option is to subject the safety can mouth to an external and stationary 2.5-inch flame for 30 seconds. The safety can pass the test if the interior content of the safety can does not catch fire or otherwise ignite in each of five consecutive trials. The second performance test option is used for safety cans that have a flame arrestor. In this performance test, a 7.5-inch flame is balanced on one side of the flame arrestor as a fuel-air mixture passes through. The flame arrestor fails if the flame crosses the flame arrestor and ignites the fuel-air mixture. CPSC staff advises that compliance to section 18 of UL 30:2022 would meet the OSHA requirement for a ''flash arresting screen.'' 29 CFR 1926.155(l).

III. Responses to Comments

On May 24, 2022, the Commission published a notice of availability seeking public comment on a CPSC staff draft document, ''Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020,'' which provided staff's initial assessment and recommendations to the Commission regarding whether the relevant voluntary standards qualify for the exception from the rulemaking requirement under the PFCSA. 87 FR 31540. Six comments were submitted in response to the request for comments. The comments generally supported staff's recommendations and did not suggest any other voluntary standards the Commission should consider when making a determination under the PFCSA, or any class of portable fuel containers that the referenced voluntary standards fail to address. A brief summary of the comments and staff's responses is provided below.

Comment: The Portable Fuel Container Manufacturers Association (PFCMA) supports CPSC staff's recommendation to require that products meet the three staff-recommended voluntary standards, as applicable. The PFCMA concurs with CPSC staff's assessment that the voluntary standards meet the requirements of the PFCSA. The PFCMA notes that each of the referenced standards was developed in collaboration with industry, consumer safety advocates, and CPSC experts. Consequently, the PFCMA indicates that the standards promote practical approaches to mitigating the risk of flame-jetting for each application. The PFCMA states that its members have been compliant with the relevant voluntary standards for several years.

Comment: Zippo Manufacturing Company (ZMC) states that it supports CPSC staff's recommendation to require pre-filled portable fuel containers to meet ASTM F3429. ZMC recommends that CPSC refer to the list found in ASTM F3429 when listing ''other'' flame mitigation devices. The commenter states that the ASTM

standard specifies that ''other examples of [flame mitigation devices] include, but are not limited to, expanded metal mesh, screens, bladders, pinhole restrictors, and pumps.''

Response: Staff included in its briefing memorandum the examples of flame mitigation devices listed in ASTM F3429/F3429M–2020, which include, but are not limited to, expanded metal mesh, screens, bladders, pinhole restrictors, and pumps.

Comment: Calumet Specialty Products Partners, L.P.'s Performance Brand business unit indicates that it did not object to the Commission requiring pre-filled portable fuel containers to meet ASTM F3429/F3429M–20, but they request a delayed effective date of December 31, 2023, due to supply chain delays, testing delays, and time needed to design flame mitigation devices. The commenter also provides technical suggestions for potential future development of ASTM F3429/F3429M–20.

SolvChem, Inc., also requests additional time to comply with the voluntary standard, requesting an effective date of January 2024, for three reasons: (1) time needed to develop the devices; (2) time needed to test the devices to the standard; and (3) time needed to purchase the tooling and equipment necessary to produce the devices. This commenter asserts that tooling and equipment lead times are at an all-time high, with some lead times expected to be 6 months to a year. The commenter clarifies that the purchase of tooling and equipment must occur after the development and approval of any potential device.

Response: Under the PFCSA, a voluntary standard that the Commission determines meets the requirements of the rulemaking exception under PFCSA ''shall be treated as a consumer product safety rule promulgated under section 2058 of this title beginning on the date which is the later of'' either ''180 days after publication of the Commission's determination'' or ''the effective date contained in the voluntary standard.'' 15 U.S.C. 2056d(b)(4). Here, the later date is 180 days after publication of the Commission's determinations. Therefore, the relevant voluntary standards will be effective pursuant to the PFCSA 180 days after publication of the Commission's determinations in this document. We note that the voluntary standard referred to by the commenter has been in place since 2020.

Comment: R.B. Howes & Co. Inc., asks whether ''additives'' would be considered a ''fuel.'' The commenter understands that, based on its reading of CPSC staff's voluntary standards evaluation for the PFCSA, the provisions apply to fuels with a flash point below 140 degrees Fahrenheit. The commenter states that it manufactures diesel fuel additives, which, it asserts, are not fuels and have flash points above the 140-degree Fahrenheit threshold. However, the commenter states that it is unclear whether additives with flash points within the scope of the PFCSA would be exempted from the requirements, and therefore, requests clarification.

Similarly, an anonymous commenter asks for the Commission to define ''liquid fuels.'' This commenter indicates that they represent a contract manufacturer of various chemical products. The commenter understands that, based on their reading of CPSC staff's voluntary standards evaluation for the PFCSA, the provisions would apply only to fuels and not ''fuel-adjacent products,'' such as fuel additives. The commenter requests a definition for ''liquid fuels'' so that businesses have clarity.

Response: The PFCSA defines ''portable fuel containers'' as products ''intended for flammable liquid fuels with a flash point less than 140 degrees Fahrenheit, including gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or biofuels.'' 15 U.S.C. 2056d(b)(8)(A). Fuels generally are considered substances that can be burned to release energy, and liquids with a flash point below 140 degrees Fahrenheit are, by the definition of flash point, capable of being burned at that temperature. Staff assessed all known flammable liquid fuels with a flash point less than 140 degrees as part of the evaluation of the voluntary standards under the PFCSA. Accordingly, while classification of a particular container for purposes of the PFCSA is case-specific, as a general matter, when a liquid with a flash point less than 140 degrees Fahrenheit is intended to be used as, or in, a fuel mixture to support combustion, it is a fuel under the definition of ''portable fuel containers'' as indicated in the PFCSA.

IV. Commission Determinations Regarding Portable Fuel Containers Voluntary Standards

As noted in section I of this document, under the PFCSA, the Commission is not required to promulgate a final rule if the requirements for an exception are met for a class of portable fuel containers within the scope of the PFCSA. 15 U.S.C. 2056d(b)(3).

Portable fuel containers sold pre-filled and portable fuel containers sold empty are together subject to three voluntary standards. Based on CPSC staff's assessment and recommendations regarding the three voluntary standards, and consideration of the comments submitted, the Commission makes the following determinations [3] regarding ASTM F3429/F3429M–20, ASTM F3326–21, and section 18 of UL 30:2022 under section 2056d(b)(3)(A) of the PFCSA.

A. Commission Determination Regarding ASTM F3429/F3429M–20

The Commission determines that for portable fuel containers sold pre-filled, ASTM F3429/F3429M–20, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers,* meets the requirements of the exception to rulemaking under the PFCSA. ASTM F3429/F3429M–20 contains effective performance requirements for flame mitigation devices in portable fuel containers that impede the propagation of flame into the container; the standard was in effect before June 27, 2022; and the standard was developed by ASTM International. *See* 15 U.S.C. 2056d(b)(3)(A). Based on these findings, the Commission determines that rulemaking is not required under the PFCSA for portable fuel containers sold pre-filled, because ASTM F3429/F3429M–20 meets the requirements of the PFCSA.

B. Commission Determination Regarding ASTM F3326–21

The Commission determines that for portable fuel containers sold empty, ASTM F3326–21, *Standard Specification for Flame Mitigation Devices on Portable Fuel Containers,* meets the requirements of the exception to rulemaking under the PFCSA. ASTM F3326–21 contains effective performance requirements for flame mitigation devices in portable fuel containers that impede the propagation of flame into the container; the standard was in effect before June 27, 2022; and the standard was developed by ASTM International. 15 U.S.C. 2056d(b)(3)(A). Based on these findings, the Commission determines that rulemaking is not required under the PFCSA for portable fuel containers sold empty, because ASTM F3326–21 meets the requirements of the PFCSA.

C. Commission Determination Regarding UL 30:2022

The Commission determines that for safety cans sold empty, ANSI/CAN/UL/

[3] The Commission voted 4–0 to publish this document.

ULC 30:2022, *Standard for Safety Metallic and Nonmetallic Safety Cans for Flammable and Combustible Liquids,* meets the requirements of the exception to rulemaking under the PFCSA. Section 18 of UL 30:2022 contains effective performance requirements for flame mitigation devices in safety cans that impede the propagation of flame into the container; the standard was in effect before June 27, 2022; and the standard was developed by UL, which, like ASTM International, is an ANSI-accredited standards developer and is experienced in the development of consumer product voluntary standards. 15 U.S.C. 2056d(b)(3)(A). Based on these findings, the Commission determines that rulemaking is not required under the PFCSA for portable fuel containers that are safety cans sold empty, because section 18 of UL 30:2022 meets the requirements of the PFCSA.

D. Publication of Notice of Commission Determinations

The Commission is publishing this notice of Commission determinations in the **Federal Register**, as required under section 2056d(b)(3)(B) of the PFCSA. The three portable fuel container voluntary standards will become effective as mandatory consumer product safety rules on July 12, 2023. 15 U.S.C. 2056d(b)(4). The Commission may in the future issue a direct final rule to incorporate the voluntary standards into the Code of Federal Regulations.

V. Effect of Commission Determinations Regarding Portable Fuel Container Voluntary Standards

Under the PFCSA, because the Commission has determined that the three voluntary standards discussed above, collectively covering the two known classes of portable fuel containers, meet the requirements for the exception to the rulemaking requirement, the requirements of those voluntary standards shall be treated as consumer product safety rules promulgated under section 9 of the CPSA (15 U.S.C. 2058), beginning on the date that is the later of 180 days after publication of the Commission's determination, or the effective date contained in the voluntary standard. 15 U.S.C. 2056d(b)(4). In this instance, the publication of this notice is the later of the two possible statutory dates. Therefore, portable fuel containers manufactured after July 12, 2023 must comply with the requirements of either ASTM F3429/F3429M–20, ASTM F3326–21, or section 18 of UL 30:2022, as applicable. Specifically, portable fuel containers sold pre-filled are required to comply with the requirements of ASTM F3429/F3429M–20. Portable fuel containers sold empty (that are not safety cans) are required to comply with the requirements of ASTM F3326–21. Safety cans are required to meet the requirements of either ASTM F3326–21 or section 18 of UL 30:2022.

VI. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. 15 U.S.C. 2063(a)(1). Under the PFCSA, because of the Commission's determinations, ASTM F3429/F3429M–20, ASTM F3326–21, and section 18 of UL 30:2022, are considered consumer product safety rules under the CPSA. Therefore, portable fuel containers manufactured after July 12, 2023, are subject to the testing and certification requirements of section 14(a)(1) of the CPSA.

VII. Public Access to Portable Fuel Containers Voluntary Standards

ASTM F3429/F3429M–20, ASTM F3326–21, and UL 30:2022 are available to the public for review, free of charge, as described below.

For free-of-charge, read-only online access to ASTM F3429/F3429M–20:

- Access ASTM's CPSC reading room at: *http://www.astm.org/cpsc.htm.*
- Search for ASTM F3429.

Note: In the future, read-only access to the standard may move to ASTM's Reading Room at: *https://www.astm.org/products-services/reading-room.html.*

For free-of-charge, read-only online access to ASTM F3326–21:

- Access ASTM's CPSC reading room at: *http://www.astm.org/cpsc.htm.*
- Search for ASTM F3326.

Note: in the future, read-only access to the standard may move to ASTM's Reading Room at: *https://www.astm.org/products-services/reading-room.html.*

For free-of-charge, read-only online access to ANSI/CAN/UL/ULC 30:2022:

- Access UL's Standards Sale Site at: *http://shopulstandards.com.*
- Click ''Browse and Buy Standards,'' and search for UL 30.
- Click ''Digital View,'' and sign in, or create a user account.

ASTM F3429/F3429M–20, ASTM F3326–21, and ANSI/CAN/UL/ULC 30:2022 are also available to review in person through CPSC's Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–28325 Filed 1–12–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers' Compensation Programs

20 CFR Parts 702, 725, and 726

Office of the Secretary

29 CFR Part 5

41 CFR Part 50–201

Wage and Hour Division

29 CFR Parts 500, 501, 503, 530, 570, 578, 579, 801, 810, and 825

Occupational Safety and Health Administration

29 CFR Part 1903

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA46

Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Department, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The Inflation Adjustment Act requires the

Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department's 2023 annual adjustments for inflation to its civil monetary penalties.

DATES: This final rule is effective on January 15, 2023. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background
II. Adjustment for 2023
III. Paperwork Reduction Act
IV. Administrative Procedure Act
V. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
VII. Other Regulatory Considerations
A. The Unfunded Mandates Reform Act of 1995
B. Executive Order 13132: Federalism
C. Executive Order 13175: Indian Tribal Governments
D. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
F. Environmental Impact Assessment
G. Executive Order 13211: Energy Supply
H. Executive Order 12630: Constitutionally Protected Property Rights
I. Executive Order 12988: Civil Justice Reform Analysis

I. Background

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the ''Prior Inflation Adjustment Act''), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act required agencies to (1) adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation no later than January 15 of each year.

On July 1, 2016, the Department published an IFR that established the initial catch-up adjustment for most civil penalties that the Department administers and requested comments. *See* 81 FR 43430 (DOL IFR). On January 18, 2017, the Department published the final rule establishing the 2017 Annual Adjustment for those civil monetary penalties adjusted in the DOL IFR. *See* 82 FR 5373 (DOL 2017 Annual Adjustment). On July 1, 2016, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, ''the Departments'') jointly published an IFR that established the initial catch-up adjustment for civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H–2B program. *See* 81 FR 42983 (Joint IFR). On March 17, 2017, the Departments jointly published the final rule establishing the 2017 Annual Adjustment for the H–2B civil monetary penalties. *See* 82 FR 14147 (Joint 2017 Annual Adjustment). The Joint 2017 Annual Adjustment also explained that DOL would make future adjustments to the H–2B civil monetary penalties consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), Immigration and Nationality Act section 214(c)(14), and the Inflation Adjustment Act. *See* 82 FR 14147–48. On January 2, 2018, the Department published the final rule establishing the 2018 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 83 FR 7 (DOL 2018 Annual Adjustment). On January 23, 2019, the Department published the final rule establishing the 2019 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 84 FR 213 (DOL 2019 Annual Adjustment). On January 15, 2020, the Department published the final rule establishing the 2020 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 85 FR 2292 (DOL 2020 Annual Adjustment). On January 14, 2021, the Department published the final rule establishing the 2021 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 86 FR 2964 (DOL 2021 Annual Adjustment). On January 14, 2022, the Department published the final rule establishing the 2022 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 87 FR 2328 (DOL 2022 Annual Adjustment). The DOL 2022 Annual Adjustment also included the first annual adjustments for a newly enacted civil monetary penalty regarding retention of tips under the Fair Labor Standards Act (FLSA) and a newly established civil monetary penalty regarding whistleblower protections under the high-wage components of the labor value content requirements of the United States-Mexico-Canada Agreement Implementation Act (USMCA).

This rule implements the 2023 annual inflation adjustments, as required by the Inflation Adjustment Act, for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. The Inflation Adjustment Act provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Pursuant to the Inflation Adjustment Act, this final rule is published notwithstanding Section 553 of the APA.

This rule is not significant under Executive Order 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule,' as defined by 5 U.S.C. 804(2).

II. Adjustment for 2023

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.[1]

The Department first identified the most recent penalty amount, which is the amount established by the 2022

[1] M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022).

annual adjustment as set forth in the DOL 2022 Annual Adjustment published on January 14, 2022.

The Department is required to calculate the annual adjustment based on the Consumer Price Index for all Urban Consumers (CPI–U). Annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U; in this case, the percent change between the October 2022 CPI–U and the October 2021 CPI–U. The cost-of-living adjustment multiplier for 2023, based on the Consumer Price Index (CPI–U) for the month of October 2022, not seasonally adjusted, is 1.07745.[2] In order to compute the 2023 annual adjustment, the Department multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.07745, and rounded to the nearest dollar.

As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.[3] Accordingly, for penalties assessed after January 15, 2023, whose associated violations occurred after the applicable dates listed below, the higher penalty amounts outlined in this rule will apply. The tables below demonstrate the penalty amounts that apply:

CIVIL MONETARY PENALTIES FOR VIOLATIONS OF SECTION 3(M)(2)(B) OF THE FLSA (TIPS)

Violations occurring	Penalty assessed	Which penalty level applies
After March 23, 2018	After March 23, 2018 but on or before November 23, 2021.	Consolidated Appropriations Act of 2018 amount.
After March 23, 2018	After November 23, 2021 but on or before January 15, 2022.	November 23, 2021 level.
After March 23, 2018	After January 15, 2022 but on or before January 15, 2023.	January 15, 2022 level.
After March 23, 2018	After January 15, 2023	January 15, 2023 level.

CIVIL MONETARY PENALTIES FOR USMCA VIOLATIONS

Violations occurring	Penalty assessed	Which penalty level applies
After July 1, 2020	After July 1, 2020 but on or before January 15, 2022	2020 USMCA IFR amount.
After July 1, 2020	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 level.
After July 1, 2020	After January 15, 2023	January 15, 2023 level.

CIVIL MONETARY PENALTIES FOR THE H–2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before March 17, 2017	August 1, 2016 levels.
After November 2, 2015	After March 17, 2017 but on or before January 2, 2018	March 17, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023	January 15, 2023 levels.

CIVIL MONETARY PENALTIES FOR OTHER DOL PROGRAMS

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before January 13, 2017	August 1, 2016 levels.
After November 2, 2015	After January 13, 2017 but on or before January 2, 2018	January 13, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023	January 15, 2023 levels.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule does not require any collection of information.

[2] OMB provided the year-over-year multiplier, rounded to 5 decimal points. *Id.* at 1.

[3] Appendix 1 consists of a table that provides ready access to key information about each penalty.

IV. Administrative Procedure Act

The Inflation Adjustment Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding section 553 of the APA. Additionally, the Inflation Adjustment Act provides a nondiscretionary cost-of-living formula for annual adjustment of the civil monetary penalties. For these reasons, the requirements in sections 553(b), (c), and (d) of the APA, relating to notice and comment and requiring that a rule be effective 30 days after publication in the **Federal Register**, are inapplicable.

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

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues.

The Department has determined that this final rule is not a ''significant'' regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Department, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

The Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. In that context, Congress has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by Executive Order 13563.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this rule. Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

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. This Final Rule will not result in such an expenditure. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Executive Order 13132: Federalism

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 667) requires Occupational Safety and Health Administration (OSHA)-approved State Plans to have standards and an enforcement program that are at least as effective as Federal OSHA's standards and enforcement program. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as Federal OSHA's, per section 18(c)(2) of the OSH Act. *See also* 29 CFR 1902.4(c)(2)(xi); 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases to maintain at least as effective penalty levels.

State Plans are not required to impose monetary penalties on state and local government employers. *See* § 1956.11(c)(2)(x). Six (6) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one states and one U.S. territory have State Plans that cover both private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. They must increase their penalties for private-sector employers.

Other than as listed above, this final rule does not have federalism implications because it 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. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. Executive Order 13175: Indian Tribal Governments

This final rule does not have ''tribal implications'' because 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. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

List of Subjects

20 CFR Part 655

Immigration, Labor, Penalties.

20 CFR Part 702

Administrative practice and procedure, Longshore and harbor workers, Penalties, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Coal

miners, Penalties, Reporting and recordkeeping requirements.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, Labor, Penalties, Transportation, Wages.

29 CFR Part 530

Administrative practice and procedure, Clothing, Homeworkers, Indians—arts and crafts, Penalties, Reporting and recordkeeping requirements, Surety bonds, Watches and jewelry.

29 CFR Part 570

Child labor, Law enforcement, Penalties.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 810

Labor, Wages, Hours of work, Trade agreement, Motor vehicle, Tariffs, Imports, Whistleblowing.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

29 CFR Part 1903

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Penalties.

30 CFR Part 100

Mine safety and health, Penalties.

41 CFR Part 50–201

Child labor, Government procurement, Minimum wages, Occupational safety and health, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 20 CFR chapters VI and VII, 29 CFR subtitle A and chapters V, XVII, and XXV, 30 CFR chapter I, and 41 CFR chapter 50 are amended as follows.

DEPARTMENT OF LABOR

Employment and Training Administration

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–128, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

§§ 655.620, 655.801, and 655.810 [Amended]

■ 2. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 655.620(a)	$10,360	$11,162
§ 655.801(b)	8,433	9,086
§ 655.810(b)(1) introductory text	2,072	2,232
§ 655.810(b)(2) introductory text	8,433	9,086
§ 655.810(b)(3) introductory text	59,028	63,600

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

PART 702—ADMINISTRATION AND PROCEDURE

■ 3. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

§§ 702.204, 702.236, and 702.271 [Amended]

■ 4. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the section or paragraph and add in its place the dollar amount or date indicated in the right column.

Section/paragraph	Remove	Add
§ 702.204	$26,269	$28,304.
§ 702.204	January 15, 2022	January 15, 2023.
§ 702.236	$320	$345.
§ 702.236	January 15, 2022	January 15, 2023.
§ 702.271(a)(2)	January 15, 2022	January 15, 2023.
§ 702.271(a)(2)	$2,627	$2,830.
§ 702.271(a)(2)	$13,132	$14,149.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 5. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

§ 725.621 [Amended]

■ 6. In § 725.621, amend paragraph (d) by removing ''January 15, 2022'' and adding in its place ''January 15, 2023'' and by removing ''$1,600'' and adding in its place ''$1,724''.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 7. The authority citation for part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.,* 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 8. In § 726.302:

■ a. In paragraph (c)(2)(i) introductory text, remove ''January 15, 2022'' and add ''January 15, 2023'' in its place;

■ b. Revise the table following paragraph (c)(2)(i); and

■ c. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
(c)(4)	January 15, 2022	January 15, 2023.
(c)(4)	$157	$169.
(c)(5)	January 15, 2022	January 15, 2023.
(c)(5)	$468	$504.
(c)(6)	January 15, 2022	January 15, 2023.
(c)(6)	$3,198	$3,446.

The revision reads as follows:

§ 726.302 Determination of penalty.

* * * * *

(c) * * *

(2) * * *

(i) * * *

TABLE 1 TO PARAGRAPH (c)(2)(i)

Employees	Penalty (per day)
Less than 25	$169
25–50	335
51–199	504
More than 100	670

* * * * *

DEPARTMENT OF LABOR

Wage and Hour Division

Title 29—Labor

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

■ 9. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.;* 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.;* and the laws listed in 5.1(a) of this part; Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 5.5 [Amended]

■ 10. In § 5.5, amend paragraph (b)(2) by removing ''$29'' and adding in its place ''$31''.

§ 5.8 [Amended]

■ 11. In § 5.8, amend paragraph (a) by removing ''$29'' and adding in its place ''$31''.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 12. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

§ 500.1 [Amended]

■ 13. In § 500.1, amend paragraph (e) by removing ''$2,739'' and adding in its place ''$2,951''.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 14. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 note; and sec. 701, Pub. L. 114–74, 129 Stat. 584.

§ 501.19 [Amended]

■ 15. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 501.19(c) introductory text	$1,898	$2,045
§ 501.19(c)(1)	6,386	6,881
§ 501.19(c)(2)	63,232	68,129
§ 501.19(c)(3)	126,463	136,258
§ 501.19(d)	6,386	6,881
§ 501.19(e)	18,970	20,439
§ 501.19(f)	18,970	20,439

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON-AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

■ 16. The authority citation for part 503 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

§ 503.23 [Amended]

■ 17. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column:

Paragraph	Remove	Add
§ 503.23(b)	$13,885	$14,960
§ 503.23(c)	13,885	14,960
§ 503.23(d)	13,885	14,960

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 18. The authority citation for part 530 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat. 584.

■ 19. In § 530.302:

■ a. Amend paragraph (a) by removing ''$1,151'' and adding in its place ''$1,240;'' and

■ b. Revise paragraph (b).

The revision reads as follows:

§ 530.302 Amounts of civil penalties.

* * * * *

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

TABLE 1 TO PARAGRAPH (b)

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated intentional or knowing
Recordkeeping	$24–249	$249–496	$496–1,240
Monetary violations	24–249	249–496	.....
Employment of homeworkers without a certificate	.....	249–496	496–1,240
Other violations of statutes, regulations or employer assurances	24–249	249–496	496–1,240

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

■ 20. The authority citation for subpart G of part 570 is revised to read as follows:

Authority: 52 Stat. 1060–1069, as amended; 29 U.S.C. 201–219; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

§ 570.140 [Amended]

■ 21. In § 570.140, amend paragraph (b)(1) by removing ''$14,050'' and adding in its place ''$15,138'' and paragraph (b)(2) by removing ''$63,855'' and adding in its place ''$68,801''.

PART 578—TIP RETENTION, MINIMUM WAGE, AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 22. The authority citation for part 578 continues to read as follows:

Authority: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29, sec. 302(a), Pub. L. 110–233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, 1321–373, and sec. 701, Pub. L. 114–74, 129 Stat. 584.

§ 578.3 [Amended]

■ 23. In § 578.3, amend paragraph (a)(1) by removing ''$1,234'' and adding in its place ''$1,330'' and paragraph (a)(2) by removing ''$2,203'' and adding in its place ''$2,374''.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 24. The authority citation for part 579 continues to read as follows:

Authority: 29 U.S.C. 203(m), (l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note.

§ 579.1 [Amended]

■ 25. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 579.1(a)(1)(i)(A)	$14,050	$15,138
§ 579.1(a)(1)(i)(B)	63,855	68,801
§ 579.1(a)(2)(i)	2,203	2,374
§ 579.1(a)(2)(ii)	1,234	1,330

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 26. The authority citation for part 801 is revised to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 801.42 [Amended]

■ 27. In § 801.42, amend paragraph (a) introductory text by removing ''$23,011'' and adding in its place ''$24,793''.

PART 810—HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT

■ 28. The authority citation for part 810 is revised to read as follows:

Authority: 19 U.S.C. 1508(b)(4) and 19 U.S.C. 4535(b); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 810.800 [Amended]

■ 29. In § 810.800, amend paragraph (c)(3)(i) by removing ''$53,111'' and adding in its place ''$57,224''.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 30. The authority citation for part 825 is revised to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 825.300 [Amended]

■ 31. In § 825.300, amend paragraph (a)(1) by removing ''$189'' and adding in its place ''$204''.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Title 29—Labor

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 32. The authority citation for part 1903 continues to read as follows:

Authority: Secs. 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

§ 1903.15 [Amended]

■ 33. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 1903.15(d) introductory text	January 15, 2022	January 15, 2023.
§ 1903.15(d)(1)	$10,360	$11,162.
§ 1903.15(d)(1)	$145,027	$156,259.
§ 1903.15(d)(2)	$145,027	$156,259.
§ 1903.15(d)(3)	$14,502	$15,625.
§ 1903.15(d)(4)	$14,502	$15,625.

Paragraph	Remove	Add
§ 1903.15(d)(5)	$14,502	$15,625.
§ 1903.15(d)(6)	$14,502	$15,625.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Title 30—Mineral Resources

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 34. The authority citation for part 100 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 815, 820, 957; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

■ 35. In § 100.3, amend paragraph (a)(1) introductory text by removing ''$79,428'' and adding in its place ''$85,580'' and by revising table 14 to paragraph (g).

The revision reads as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(g) * * *

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE

Points	Penalty ($)
60 or fewer	$159
61	173
62	186
63	203
64	220
65	238
66	258
67	280
68	302
69	328
70	354
71	385
72	418
73	453
74	488
75	530
76	576
77	621
78	674
79	731
80	792
81	858
82	927
83	1,006
84	1,089
85	1,182
86	1,280
87	1,385
88	1,501
89	1,626
90	1,762
91	1,908
92	2,065
93	2,238
94	2,425
95	2,627
96	2,846
97	3,080
98	3,340
99	3,618
100	3,920
101	4,245
102	4,599
103	4,982
104	5,396
105	5,847
106	6,333
107	6,861
108	7,432
109	8,052
110	8,722
111	9,446
112	10,235
113	11,088
114	12,012
115	13,011
116	14,094
117	15,270
118	16,541
119	17,919
120	19,410
121	21,029
122	22,777
123	24,677
124	26,733
125	28,955
126	31,369
127	33,983
128	36,812
129	39,879
130	43,201
131	46,799
132	50,695
133	54,918
134	59,299
135	63,677
136	68,060
137	72,437
138	76,819
139	81,198
140 or more	85,580

* * * * *

§§ 100.4 and 100.5 [Amended]

■ 36. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 100.4(a)	$2,648	$2,853
§ 100.4(b)	5,293	5,703
§ 100.4(c) introductory text	6,620	7,133
§ 100.4(c) introductory text	79,428	85,580
§ 100.5(c)	8,605	9,271
§ 100.5(d)	363	391
§ 100.5(e)	291,234	313,790

Title 41—Public Contracts and Property Management

PART 50–201—GENERAL REGULATIONS

■ 37. The authority citation for part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 50–201.3 [Amended]

■ 38. In § 50–201.3, amend paragraph (e) by removing ''$29'' and adding in its place ''$31''.

Signed in Washington, DC.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Agency	Law	Name/description	CFR citation	2022		2023	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(a)	.....	$79,428	.....	$85,580.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(g)	$148	$79,428	$159	$85,580.
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum Penalty for any order issued under 104(d)(1) of the Mine Act.	30 CFR 100.4(a)	2,648	.....	2,853	
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum penalty for any order issued under 104(d)(2) of the Mine Act.	30 CFR 100.4(b)	5,293	.....	5,703	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification under 103(j) of the Mine Act.	30 CFR 100.4(c)	6,620	$79,428	7,133	$85,580.
MSHA	Federal Mine Safety & Health Act of 1977.	Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act.	30 CFR 100.5(c)	.....	$8,605	.....	$9,271.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(d)	.....	$363	.....	$391.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)	.....	$291,234	.....	$313,790.
EBSA	Employee Retirement Income Security Act.	Section 209(b): Per plan year for failure to furnish reports (e.g., pension benefit statements) to certain former employees or maintain employee records each employee a separate violation.	29 CFR 2575.1–3 ...	.....	$33	.....	$36.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.1–3 ...	.....	$2,400	.....	$2,586.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(4)—Per day for failure to disclose certain documents upon request under Section 101(k) and (l); failure to furnish notices under Sections 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.1–3 ...	.....	$1,899	.....	$2,046.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(5)—Per day for each failure to file annual report for Multiple Employer Welfare Arrangements (MEWAs) under Section 101(g).	29 CFR 2575.1–3 ...	.....	$1,746	.....	$1,881.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(6)—Per day for each failure to provide Secretary of Labor requested documentation not to exceed a per-request maximum.	29 CFR 2575.1–3 ...	.....	$171 per day, not to exceed $1,713 per request.	.....	$184 per day, not to exceed $1,846 per request.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(7)—Per day for each failure to provide notices of blackout periods and of right to divest employer securities—each statutory recipient a separate violation.	29 CFR 2575.1–3 ...	.....	$152	.....	$164.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(8)—Per each failure by an endangered status multiemployer plan to adopt a funding improvement plan or meet benchmarks; or failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.1–3 ...	.....	$1,507	.....	$1,624.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(A)—Per day for each failure by an employer to inform employees of CHIP coverage opportunities under Section 701(f)(3)(B)(i)(I)—each employee a separate violation.	29 CFR 2575.1–3 ...	.....	$127	.....	$137.

Agency	Law	Name/description	CFR citation	2022		2023	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(B)—Per day for each failure by a plan to timely provide to any State information required to be disclosed under Section 701(f)(3)(B)(ii), as added by CHIP regarding coverage coordination—each participant/beneficiary a separate violation.	29 CFR 2575.1–3 ...	.....	$127	.....	$137.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—Failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of Sections 702(a)(1)(F), (b)(3), (c) or (d); or Section 701; or Section 702(b)(1) with respect to genetic information—daily per participant and beneficiary during non-compliance period.	29 CFR 2575.1–3 ...	.....	$127	.....	$137.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.1–3 ...	3,192	.....	3,439	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.1–3 ...	19,157	.....	20,641	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.1–3 ...	.....	$638,556	.....	$688,012.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(12)—Per day for each failure of a CSEC plan in restoration status to adopt a restoration plan.	29 CFR 2575.1–3 ...	.....	$117	.....	$126.
EBSA	Employee Retirement Income Security Act.	Section 502(m)—Failure of fiduciary to make a proper distribution from a defined benefit plan under section 206(e) of ERISA.	29 CFR 2575.1–3 ...	.....	$18,500	.....	$19,933.
EBSA	Employee Retirement Income Security Act.	Failure to provide Summary of Benefits Coverage under PHS Act section 2715(f), as incorporated in ERISA section 715 and 29 CFR 2590.715–2715(e).	29 CFR 2575.1–3 ...	.....	$1,264	.....	$1,362.
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3).	.....	$14,502	.....	$15,625.
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4).	.....	$14,502	.....	$15,625.
OSHA	Occupational Safety and Health Act.	Willful	29 CFR 1903.15(d)(1).	10,360	$145,027	11,162	$156,259.
OSHA	Occupational Safety and Health Act.	Repeated	29 CFR 1903.15(d)(2).	.....	$145,027	.....	$156,259.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6).	.....	$14,502	.....	$15,625.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5).	.....	$14,502 per day.	.....	$15,625 per day.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1).	.....	$189	.....	$204.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(1)	.....	$1,234	.....	$1,330.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(2)	.....	$2,203	.....	$2,374.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(i).	.....	$2,203	.....	$2,374.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(ii).	.....	$1,234	.....	$1,330.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 570.140(b)(1).	.....	$14,050	.....	$15,138.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(1)(i)(A).	.....	$14,050	.....	$15,138.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 570.140(b)(2).	.....	$63,855	.....	$68,801.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 579.1(a)(1)(i)(B).	.....	$63,855	.....	$68,801.
WHD	Fair Labor Standards Act.	Child Labor willful or repeated that causes serious injury or death (penalty amount doubled).	29 CFR 570.140(b)(2); 29 CFR 579.1(a)(1)(i)(B) Doubled.	.....	$127,710	.....	$137,602.

Agency	Law	Name/description	CFR citation	2022		2023	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)		$2,739		$2,951.
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1).		$2,072		$2,232.
WHD	Immigration & Nationality Act.	H1B retaliation	20 CFR 655.801(b)		$8,433		$9,086.
WHD	Immigration & Nationality Act.	H1B willful or discrimination	20 CFR 655.810(b)(2).		$8,433		$9,086.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3).		$59,028		$63,600.
WHD	Immigration & Nationality Act.	D–1	20 CFR 655.620(a)		$10,360		$11,162.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.5(b)(2)		$29		$31.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)		$29		$31.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50–201.3(e)		$29		$31.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)		$23,011		$24,793.
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)		$1,898		$2,045.
WHD	Immigration & Nationality Act.	H2A willful or discrimination	29 CFR 501.19(c)(1)		$6,386		$6,881.
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)		$63,232		$68,129.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)		$126,463		$136,258.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)		$6,386		$6,881.
WHD	Immigration & Nationality Act.	H2A displacing a US worker	29 CFR 501.19(e)		$18,970		$20,439.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker	29 CFR 501.19(f)		$18,970		$20,439.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(b)		$13,885		$14,960.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(c)		$13,885		$14,960.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(d)		$13,885		$14,960.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(a)		$1,151		$1,240.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(b)	22	$1,151	24	$1,240.
WHD	United States-Mexico-Canada Agreement Implementation Act.	Whistleblower	29 CFR 810.800(c)(3)(i).		$53,111		$57,224.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to file first report of injury or filing a false statement or misrepresentation in first report.	20 CFR 702.204		$26,269		$28,304.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments	20 CFR 702.236		$320		$345.
OWCP	Longshore and Harbor Workers' Compensation Act.	Discrimination against employees who claim compensation or testify in a LHWCA proceeding.	20 CFR 702.271(a)(2).	2,627	$13,132	2,830	$14,149.
OWCP	Black Lung Benefits Act.	Failure to report termination of payments	20 CFR 725.621(d)		$1,600		$1,724.
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with fewer than 25 employees.	20 CFR 726.302(c)(2)(i).	157		169	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 25–50 employees.	20 CFR 726.302(c)(2)(i).	311		335	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 51–100 employees.	20 CFR 726.302(c)(2)(i).	468		504	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(i).	622		670	

Agency	Law	Name/description	CFR citation	2022		2023	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
OWCP ...	Black Lung Benefits Act.	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(4).	157	.....	169	
OWCP ...	Black Lung Benefits Act.	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5).	468	.....	504	
OWCP ...	Black Lung Benefits Act.	Failure to secure payment of benefits	20 CFR 726.302(c)(5).	.....	$3,198	.....	$3,446.

[FR Doc. 2023–00271 Filed 1–12–23; 8:45 am]

BILLING CODE 4510–HL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2022–N–3240]

Medical Devices; Neurological Devices; Classification of the Digital Therapy Device To Reduce Sleep Disturbance for Psychiatric Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the digital therapy device to reduce sleep disturbance for psychiatric conditions into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the digital therapy device to reduce sleep disturbance for psychiatric conditions' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 13, 2023. The classification was applicable on November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Antkowiak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4118, Silver Spring, MD 20993–0002, 240–402–3705, *Patrick.Antkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the digital therapy device to reduce sleep disturbance for psychiatric conditions as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 27, 2020, FDA received NightWare, Inc's request for De Novo classification of the NightWare Kit (Apple iPhone, Apple Watch, Apple iPhone Charging Cable, Apple Watch Charging Cable). FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness,

but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 6, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 882.5705.[1] We have named the generic type of device digital therapy device to reduce sleep disturbance for psychiatric conditions, and it is identified as a prescription device that is intended to provide stimulation using a general purpose computing platform to reduce sleep disturbance in patients who experience this symptom due to psychiatric conditions such as nightmare disorder or post-traumatic stress disorder.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—DIGITAL THERAPY DEVICE TO REDUCE SLEEP DISTURBANCE FOR PSYCHIATRIC CONDITIONS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Ineffective treatment leading to worsening sleep	Clinical performance testing.
Ineffective treatment leading to worsening condition-specific symptoms	Clinical performance testing.
Device software failure leading to delayed access and treatment	Software verification, validation, and hazard analysis.
Improper device use leading to worsening sleep	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, digital therapy devices to reduce sleep disturbance for psychiatric conditions are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 882.5705 to subpart F to read as follows:

§ 882.5705 Digital therapy device to reduce sleep disturbance for psychiatric conditions.

(a) Identification. A digital therapy device to reduce sleep disturbance for psychiatric conditions is a prescription device that is intended to provide stimulation using a general purpose computing platform to reduce sleep disturbance in patients who experience this symptom due to psychiatric conditions such as nightmare disorder or post-traumatic stress disorder.

(b) Classification. Class II (special controls). The special controls for this device are:

(1) Clinical performance testing under the labeled conditions for use must evaluate the following:

(i) The ability of the device to provide therapy for patients with sleep disturbance due to psychiatric conditions, using a validated measure;

(ii) Worsening of any condition-specific symptoms using a validated measure for assessment of the particular condition; and

(iii) Increase in symptoms of disturbed sleep or sleepiness using a validated measure.

(2) Software must clearly describe all features and functions of the software implementing the digital therapy. Software verification, validation, and hazard analysis must also be provided.

[1] FDA notes that the ACTION caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

(3) The labeling must include the following:

(i) Patient and physician labeling must include instructions for use, including images that demonstrate how to interact with the device;

(ii) Patient and physician labeling must list the minimum operating system and general purpose computing requirements that support the software of the device;

(iii) Patient and physician labeling must include a warning that the digital therapy device is not intended for use as a stand-alone therapeutic device;

(iv) Patient and physician labeling must include a warning that the digital therapy device does not represent a substitution for the patient's medication; and

(v) Physician labeling must include a summary of the clinical performance testing conducted with the device.

Dated: January 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00497 Filed 1–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB–2021–0008; T.D. TTB–187; Re: Notice No. 205]

RIN 1513–AC61

Addition of Singani to the Standards of Identity for Distilled Spirits

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

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule amends the Alcohol and Tobacco Tax and Trade Bureau regulations that set forth the standards of identity for distilled spirits to include ''Singani'' as a type of brandy that is a distinctive product of Bolivia. This amendment follows a joint petition submitted by the Plurinational State of Bolivia and Singani 63, Inc., and subsequent discussions with the Office of the United States Trade Representative.

DATES: This final rule is effective February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Trevar D. Kolodny, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–2226.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury (the Secretary) to prescribe regulations relating to the labeling of containers of alcohol beverages that will prohibit consumer deception and provide the consumer with adequate information as to the identity and quality of the product contained therein.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary has delegated certain administrative and enforcement authorities to TTB through Treasury Department Order 120–01.

The TTB regulations in 27 CFR part 5 implement those provisions of section 105(e) of the FAA Act as they pertain to distilled spirits.

Certificates of Label Approval

TTB's regulations at 27 CFR 5.24 prohibit the release of bottled distilled spirits from customs custody for consumption unless the person removing the distilled spirits has obtained and is in possession of a Certificate of Label Approval (COLA) covering the product. The bottles must bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB. The TTB regulations at 27 CFR 5.22 also generally prohibit the bottling or removal of distilled spirits from a distilled spirits plant unless the proprietor possesses a COLA covering the labels on the bottle.

Classes and Types of Spirits

The TTB regulations establish standards of identity for distilled spirits products and categorize these products according to various classes and types. See 27 CFR part 5, subpart I. As defined in 27 CFR 5.141(a), the term ''class'' refers to a general category of spirits. Subpart I sets out the various classes of distilled spirits, such as whisky, rum, gin, and brandy. As used in § 5.141(a), the term ''type'' refers to a subcategory within a class of spirits. For example, ''Cognac'' and ''Pisco'' are types of brandy, and ''Cachaça'' is a type of rum.

The TTB labeling regulations at 27 CFR 5.63(a)(2) require that the class, type, or other appropriate designation appear on the distilled spirits labels. If a class or type does not appear on the label, 27 CFR 5.156 and 5.166 require that such products be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, with a distinctive or fanciful name appearing in the same field of vision as a statement of composition.

Classification of Singani

''Singani'' is a term recognized by the Plurinational State of Bolivia (Bolivia) as a designation for an alcohol beverage product that is distilled from grape wine or grape pomace and produced in certain delimited parts of Bolivia. Under current TTB distilled spirits labeling regulations, Singani products are generally classified as brandies. TTB's regulations at 27 CFR 5.145(a) provide that ''brandy'' is a spirit distilled from the fermented juice, mash, or wine of fruit, or from the residue thereof. For this purpose, brandy must be distilled at less than 95 percent alcohol by volume (190° proof) and be bottled at not less than 40 percent alcohol by volume (80° proof). Under § 5.145(b), brandies generally must be labeled with their applicable type name as specified in the regulations, or, if the brandy does not conform to a specified type, must be labeled as ''brandy'' followed immediately by a truthful and adequate statement of composition.

Section 5.145(c) sets out the specific types of brandy and the standards for each type. As described by petitioners Singani 63, Inc. (Singani 63) and Bolivia, Singani may meet the criteria of several of these types of brandy, such as ''fruit brandy'' under § 5.145(c)(1) or ''pomace brandy'' (including ''grappa brandy'') under § 5.145(c)(9), depending on the amount of pomace used.

Section 5.145(c)(1) states that fruit brandy derived solely from grapes and stored for at least 2 years in oak containers must be designated as ''grape brandy'' or ''brandy.'' That regulation also generally requires that such grape brandy must be labeled as ''immature grape brandy'' or ''immature brandy'' if it has been stored in oak barrels for fewer than two years. However, this labeling requirement does not apply to other types of brandy derived from grapes specified in § 5.145(c). The Bolivian standards submitted by petitioners contain no minimum aging requirements, and petitioners' submissions suggest that, unlike many grape brandies, Singani is generally not aged in wood. Under current TTB regulations, a Singani product classified as a grape brandy under paragraph (c)(1) would need to be labeled as an immature brandy unless it was aged in oak barrels for at least two years.

According to information submitted by the petitioners, under the standards set forth by Bolivia, certain categories of Singani may have a minimum alcohol content by volume of as low as 35 percent (70° proof). However, under § 5.145(a), all brandy must be bottled at not less than 40 percent alcohol by volume (80° proof). Thus, under TTB's current regulations, only Singani products bottled at a minimum of 40 percent alcohol by volume (80° proof) may be labeled as any type of brandy specifically defined under the standard of identity in § 5.145(c). A Singani product bottled at less than 40 percent alcohol by volume (80° proof) could be labeled as a ''diluted'' brandy in accordance with Ruling 75–32 of the Bureau of Alcohol, Tobacco and Firearms (TTB's predecessor agency), or as a distilled spirits specialty product bearing a statement of composition and fanciful name as required under §§ 5.156 and 5.166. Possible statements of composition for such a specialty product could include ''spirits distilled from grapes'' or ''grape spirits.''

Singani Petitions and Letters

Petitions and Related Letters

TTB received a petition from Singani 63, a distilled spirits importer, dated November 18, 2014, proposing that TTB amend its regulations to recognize Singani as a type of brandy that is a distinctive product of Bolivia. In support of this petition, Bolivia submitted letters to TTB in December 2015 and January 2017. Singani 63 also submitted a letter to TTB in June 2017 that provided additional information related to the petition.

In the petition, Singani 63 stated that TTB's recognition of Singani as a distinctive product would benefit consumers by informing them that the product was produced and labeled in compliance with Bolivia's laws. It also asserted that Singani is a product that is distinct from other types of brandy. Furthermore, both Singani 63 and Bolivia indicated that Bolivia had established a legal standard for Singani as an exclusively Bolivian product.

In response to these submissions, TTB issued letters in February and October 2017, in which TTB addressed the petitioner's request for rulemaking and identified several deficiencies in the petition and its supporting documents. Accordingly, TTB did not undertake rulemaking at that time to amend its regulations as proposed in Singani 63's petition.

TTB subsequently received a joint petition from Singani 63 and Bolivia in November 2018, again proposing that TTB recognize Singani as a type of brandy that is a distinctive product of Bolivia. The 2018 joint petition contained additional information in support of its regulatory proposal, including official translations of Bolivian laws and decrees governing the production of Singani.

2020 U.S.-Bolivia Exchange of Letters on Unique Distilled Spirits

Following discussions between officials of Bolivia and the Office of the U.S. Trade Representative (USTR), and after consultations between USTR and TTB, USTR and Bolivia's Ministry of Foreign Affairs exchanged letters on January 6, 2020. The exchange of letters agreed upon a procedure that could potentially lead each party to recognize as distinctive certain distilled spirits products produced in the other party's territory.

The exchange of letters provides that the United States shall endeavor to publish a Notice of Proposed Rulemaking to promulgate a regulation that would provide that Singani is a type of brandy that is a distinctive product of Bolivia. The exchange of letters further provides that if, following this proposed rule, the United States publishes a final rule announcing the promulgation of a regulation establishing Singani as a type of brandy that is a distinctive product of Bolivia, then Bolivia shall, within thirty (30) days thereafter, recognize Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States. Following such recognition, Bolivia shall prohibit the sale within Bolivia of any product as Bourbon Whiskey, or Tennessee Whiskey, if it has not been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey. These protections also apply to products spelled as ''Bourbon Whisky'' or ''Tennessee Whisky.'' The publication of this final rule activates Bolivia's obligations under the exchange of letters agreement.

Singani Production

The Bolivian decrees and regulations submitted with the 2018 joint petition establish that Bolivia defines ''Singani'' as a brandy product of Bolivia. Of the Bolivian decrees and regulations submitted, Bolivian Standard NB 324001 contains the most specific standards for Singani. Among other requirements, NB 324001 requires that Singani be obtained exclusively by distillation of wines made of *Vitis vinifera* grapes produced at a minimum altitude of 1,600 meters above sea level, prepared, distilled, and bottled in traditional ''zones of origin'' at a minimum altitude of 1,600 meters above sea level. NB 324001 lists several different categories of Singani, some of which have more specific requirements, such as requiring the product to be made from Muscat of Alexandria grapes specifically. NB 324001 classifies Singani in the group ''Brandies and liquors.''

In a prior rulemaking, TTB distinguished Singani from Pisco, which is a type of grape brandy manufactured in Peru or Chile in accordance with the laws and regulations of those countries. In 2013, TTB updated its labeling regulations to add Pisco as a type of brandy that is manufactured only in Peru and Chile. In regard to brandy produced in Bolivia, TTB determined that it would not recognize Pisco as a type of brandy produced in that country. See T.D. TTB–113 (78 FR 28739, May 16, 2013). TTB stated that Bolivia maintains standards for Singani but not for Pisco, and cited other evidence suggesting that Pisco and Singani are different products.

Notice of Proposed Rulemaking

On August 25, 2021, TTB published Notice No. 205 in the **Federal Register**, proposing to amend the regulations setting forth the standards of identity for distilled spirits (86 FR 47429). Specifically, TTB proposed amending § 5.22(d), now § 5.145, which lays out the standard of identity for brandy, to include Singani as a type of brandy that is a distinctive product of Bolivia. TTB also asserted that evidence suggests that the generally recognized geographical limits of the Singani-producing areas do not extend beyond certain delimited ''zones of production'' located exclusively in Bolivia.

Since the publication of Notice No. 205, TTB has published T.D. TTB–176, Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages (see the **Federal Register**, February 9, 2022, 87 FR 7526). In T.D. TTB–176, TTB finalized a reorganization of 27 CFR part 5, including amendments to improve clarity and readability, incorporate current policy into the current regulations, and adopt certain liberalizing changes. Where necessary, TTB has updated regulatory citations and text in this document to reflect the changes in T.D. TTB–176.

In Notice No. 205, TTB proposed to recognize Singani as a type of brandy derived from grapes that is manufactured in Bolivia in compliance with the laws and regulations of Bolivia

governing the manufacture of Singani for consumption in that country. Under the proposed rule, the product could simply be labeled as ''Singani'' without the term ''brandy'' appearing on the label, in the same way that products with the type designations ''Cognac'' or ''Pisco'' are not required to bear the broader class designation ''brandy.''

TTB noted that the Bolivian standard allows products designated as Singani to have an alcohol content ranging from 35 to 45 percent alcohol by volume (70° to 90° proof), while TTB's standard of identity for brandy requires all brandy products to have a minimum alcohol content of 40 percent by volume (80° proof). TTB therefore proposed to exempt Singani from the general minimum bottling proof requirement for brandy (now in § 5.145(a)) to allow Singani to be bottled at not less than 35 percent alcohol by volume (70° proof) in accordance with the laws and regulations of Bolivia.

In addition, TTB proposed to exempt Singani from the requirement that grape brandies (as currently defined in § 5.145(c)(1)) be labeled with the word ''immature'' if they have been stored in oak containers for less than two years. TTB noted that Bolivian standards do not require that Singani be aged and explained that the same exemption applies to other types of brandy derived from grapes (specifically neutral brandy, pomace brandy, marc brandy, grappa brandy, Pisco, Pisco Perú, and Pisco Chileno).

Effect on Currently Approved Labels

In Notice No. 205, TTB stated that the proposed change to the regulations would revoke by operation of regulation any COLAs that specify ''Singani'' as the brand name or fanciful name, or as part of the brand name or fanciful name, of distilled spirits products that are not products of Bolivia. However, TTB also noted that it had searched its COLA database, and that the results of the search did not show any approved labels that used the term ''Singani'' as the brand name or fanciful name, or as part of the brand name or fanciful name, for distilled spirits produced outside Bolivia.

Comments Received and TTB Response

TTB received nine comments in response to Notice No. 205. All comments appear on ''*Regulations.gov*,'' the Federal Rulemaking portal, at *http://www.regulations.gov,* in Docket No. TTB–2021–0008. The nine comments came from on-premise retailers (2), members of the general public (2), trade associations (2), one anonymous commenter, the Embassy of Bolivia, and Singani 63. All nine commenters supported TTB's proposal to recognize Singani as a distinctive product of Bolivia in the United States.

Based on a review of the comments, TTB has determined that it will finalize the proposal to recognize Singani as a distinctive product of Bolivia. As discussed further below, TTB is modifying one aspect of its proposal as it pertains to the minimum bottling proof for Singani.

General Comments Concerning TTB's Proposal To Recognize Singani as a Distinctive Product of Bolivia

The two on-premise retailers (Ivy Mix and Alex Day) both stated that the distinctive product designation would help consumers and bartenders understand Singani in relation to other brandy products, and they each submitted published books they wrote, ''Cocktail Codex'' (Day, Fauchald, Kaplan and Darby, 2018) and ''Spirits of Latin America'' (Mix and Carpenter, 2020), both of which described Singani in detail.

A comment from a member of the public located in Bolivia (Carlos Paz) and the comment from the anonymous commenter similarly agreed that the designation would help U.S. consumers understand this distilled spirit and its distinctiveness compared to other brandy products. The anonymous commenter also included a 109-page document purporting to be a list of individuals who supported recognition of Singani as its own category as part of an online petition. The other member of the public (Dominick O'Neal) agreed that the Bolivian standards for brandy production are unique, and also mentioned that the reciprocal nature of the exchange of letters agreement would allow this rulemaking to benefit distilled spirits in the United States as well.

Petitioners Singani 63 and the Embassy of Bolivia also submitted comments in support of the proposal. Singani 63 summarized the elements that make Singani distinctive among distilled spirits products, and the Embassy of Bolivia highlighted the extent to which Singani is part of Bolivia's cultural heritage.

Both trade associations that commented, the National Association of Beverage Importers (NABI) and the Distilled Spirits Council of the United States (DISCUS), also lent their support to the proposal to add Singani as a type of brandy that is a distinctive product of Bolivia, although DISCUS's support came with certain reservations regarding the proposed minimum bottling proof requirement for Singani, as discussed below. DISCUS confirmed that neither DISCUS nor its member companies are aware of any Singani production outside Bolivia.

TTB did not receive any comments alerting us to any COLAs that would be revoked by operation of regulation if the proposed rule were to be adopted as a final rule.

Comments Concerning TTB's Proposal To Authorize a 70° Minimum Bottling Proof for Singani

Three commenters responded to TTB's specific invitation for comments on the proposal to authorize a minimum bottling proof of 35 percent alcohol by volume (70° proof) for Singani, which is lower than the minimum bottling proof of 40 percent alcohol by volume (80° proof) required for brandy generally.

Two of these commenters (NABI and Dominick O'Neal) supported TTB's proposal to authorize a lower minimum bottling proof for Singani, arguing that the lower bottling proof requirement reinforces the uniqueness of Singani as a category. NABI also asserted that allowing Singani imports with a bottling proof standard that complied with the Bolivian legal standard, even while falling below TTB's minimum requirement for brandy generally, would benefit consumers by ensuring that they receive a product that is ''fully true to its heritage in the country of origin[.]''

NABI also argued that aligning the U.S. and Bolivian minimum bottling proof standards for Singani would reduce the regulatory burden on importers, who would no longer have to manage inventory controls to prevent lower proof Singani from reaching the U.S. market. NABI also expressed its concern that requiring Singani bottled at an alcohol by volume content less than 40 percent (80° proof) to be labeled as ''diluted'' is inconsistent with the standard in the country of origin. Finally, while acknowledging that other distilled spirits products fall outside the scope of the proposed rulemaking, NABI opined that other distinctive distilled spirits products would benefit from similar treatment, including Tequila.

In contrast, DISCUS disagreed with TTB's proposal to allow Singani products to have a lower bottling proof than other brandy products. DISCUS argued that this proposal was inconsistent with TTB's general minimum bottling proof for brandies. DISCUS also noted that TTB's labeling regulations require other geographically distinctive products, such as Tequila, Cachaça, Mezcal, Pisco Peru, and Pisco Chileno, to be bottled at a minimum of 40 percent alcohol by volume (80° proof).

TTB Response to Comments Concerning the Proposal to Authorize a 70° Minimum Bottling Proof for Singani

Based on a review of the comments, TTB has decided that it will not proceed with the proposal to authorize a minimum bottling proof of 35 percent alcohol by volume (70° proof) for Singani at this time. Instead, TTB will authorize a minimum bottling proof of 40 percent alcohol by volume (80° proof), which is consistent with the minimum bottling proof requirements for brandy generally and for other geographically distinctive products currently recognized under TTB regulations, such as Tequila, Cachaça, Mezcal, Pisco Peru, and Pisco Chileno.

TTB recognizes that exempting Singani from the minimum bottling proof requirements for brandy would promote consistency with Bolivian rules that allow a lower minimum bottling proof for certain categories of Singani. However, authorizing such an exception for Singani would not be consistent with the minimum bottling proof rules that apply to all other brandies under the TTB regulations. In addition, as referenced in Notice No. 205 and in comments from NABI and DISCUS, the TTB regulations have not previously authorized bottling proofs for other types of products that are below the minimum bottling proof prescribed for the product's class designation, even when a foreign standard permits a lower proof. Accordingly, TTB will consider whether to address exceptions to minimum bottling proofs for Singani and other distinctive products in a possible future rulemaking.

TTB Finding

After careful review of the comments discussed above and consideration of the terms of the 2020 exchange of letters between the United States and Bolivia, TTB has determined that it is appropriate to adopt the regulatory amendments proposed in Notice No. 205, with necessary technical changes to reflect the subsequent amendments to TTB's distilled spirits labeling regulations published in T.D. TTB–176, and with changes to the proposed minimum bottling proof requirement as discussed above. This final rule therefore amends the standards of identity in § 5.145(c) to add Singani as a specific type of brandy derived from grapes that is manufactured in Bolivia in compliance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country. For this purpose, Singani only includes products bottled at not less than 40 percent alcohol by volume (80° proof), which is the minimum bottling proof required for brandies in general. Singani bottled at less than 40 percent alcohol by volume (80° proof) would need to be labeled as ''Diluted'' Singani, or as a distilled spirits specialty product bearing a statement of composition and fanciful name. Because Bolivian standards do not require Singani to be aged, this final rule does not require Singani to be labeled as ''immature'' or to be labeled with any age statement.

Effect on Existing Labels

This amendment to the TTB regulations revokes by operation of regulation any COLA that uses the term ''Singani'' as a designation for a distilled spirits product that was not manufactured in Bolivia in accordance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country. TTB has searched its COLA database and does not believe that this rulemaking will affect any existing labels. TTB also solicited comments on whether this rulemaking would affect any existing labels, and TTB did not receive any comments indicating any adverse impact.

TTB will continue to allow the use of the terms ''Singani'' as additional information on labels of products that are currently designated as ''brandy'' as long as the products in question meet the new regulatory standards for designation as ''Singani.'' Once the final rule goes into effect, future labels of such products may be designated as Singani without the use of the designation ''brandy'' on the label.

Regulatory Analysis and Notices

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule amends the standards of identity for brandy in TTB's regulations at 27 CFR 5.145(c) and makes conforming edits in other sections of part 5. It does not impose or otherwise cause any new reporting, recordkeeping, or other administrative requirements. TTB does not believe this rulemaking will affect any existing labels for distilled spirits products, and TTB did not receive any comments indicating that this rulemaking would affect any existing labels. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Trevar D. Kolodny of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this final rule.

List of Subjects in 27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, and Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR part 5 as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

■ 2. Section 5.74 is amended by:
■ a. In paragraph (c), by revising the first sentence; and
■ b. By revising paragraph (f)(1)(ii).
The revisions read as follows:

§ 5.74 Statements of age, storage, and percentage.

* * * * *

(c) * * * A statement of age on labels of rums, brandies, and agave spirits is optional, except that, in the case of brandy (other than immature brandies, fruit brandies, marc brandy, pomace brandy, Pisco brandy, Singani brandy, and grappa brandy, which are not customarily stored in oak barrels) not stored in oak barrels for a period of at least two years, a statement of age must appear on the label. * * *

* * * * *

(f) * * *

(1) * * *

(ii) Labels of whiskies and brandies (other than immature brandies, pomace brandy, marc brandy, Pisco brandy, Singani brandy, and grappa brandy) not required to bear a statement of age, and rum and agave spirits aged for not less than four years, may contain general inconspicuous age, maturity or similar

representations without the label having to bear an age statement.

* * * * *

Subpart I—Standards of Identity for Distilled Spirits

■ 3. Section 5.145 is amended by:

■ a. In paragraph (b), removing the words ''(c)(1) through (12)'' and adding, in their place, the words ''(c)(1) through (13);

■ b. Revising paragraph (c) introductory text;

■ c. Redesignating paragraphs (c)(7) through (12) as (c)(8) through (13); and

■ d. Adding new paragraph (c)(7).

The revisions and addition read as follows:

§ 5.145 Brandy.

* * * * *

(c) *Types.* Paragraphs (c)(1) through (13) of this section set out the types of brandy and the standards for each type.

Type	Standards
*	*
(7) Singani	Brandy derived from grape/s that is manufactured in Bolivia in accordance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country.
*	*

Subpart N—Advertising of Distilled Spirits

■ 4. In § 5.235(c), revise the third sentence to read as follows:

§ 5.235 Prohibited practices.

* * * * *

(c) * * * An advertisement for any whisky or brandy (except immature brandies, pomace brandy, marc brandy, Pisco brandy, Singani brandy, and grappa brandy) which is not required to bear a statement of age on the label or an advertisement for any rum or agave spirits, which has been aged for not less than 4 years may, however, contain inconspicuous, general representations as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

* * * * *

Signed: December 20, 2022.

Mary G. Ryan,

Administrator.

Approved: December 20, 2022.

Thomas C. West, Jr.

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–28374 Filed 1–12–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 16

[Docket No. TTB–2023–0001; Notice No. 220]

Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

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

ACTION: Notification of civil monetary penalty adjustment.

SUMMARY: This document informs the public that the maximum penalty for violations of the Alcoholic Beverage Labeling Act (ABLA) is being adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Prior to the publication of this document, any person who violated the provisions of the ABLA was subject to a civil penalty of not more than $22,979, with each day constituting a separate offense. This document announces that this maximum penalty is being increased to $24,759.

DATES: The new maximum civil penalty for violations of the ABLA takes effect on January 13, 2023, and applies to penalties that are assessed after that date.

FOR FURTHER INFORMATION CONTACT: Vonzella C. Johnson, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; (202) 508–0413.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701, 129 Stat. 584, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A ''civil monetary penalty'' is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act, as amended, requires agencies to adjust civil monetary penalties by the inflation adjustment described in section 5 of the Inflation Adjustment Act. The amended Inflation Adjustment Act also provides that any increase in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect.

The Inflation Adjustment Act, as amended, provides that the inflation adjustment does not apply to civil monetary penalties under the Internal Revenue Code of 1986 or the Tariff Act of 1930.

Alcoholic Beverage Labeling Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the Federal Alcohol Administration Act (FAA Act) pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

The FAA Act contains the Alcoholic Beverage Labeling Act (ABLA) of 1988, Public Law 100–690, 27 U.S.C. 213–219a, which was enacted on November 18, 1988. Section 204 of the ABLA, codified in 27 U.S.C. 215, requires that a health warning statement appear on the labels of all containers of alcoholic

beverages manufactured, imported, or bottled for sale or distribution in the United States, as well as on containers of alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement requirement applies to containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States on or after November 18, 1989. The statement reads as follows:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Section 204 of the ABLA also specifies that the Secretary of the Treasury shall have the power to ensure the enforcement of the provisions of the ABLA and issue regulations to carry them out. In addition, section 207 of the ABLA, codified in 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense.

Most of the civil monetary penalties administered by TTB are imposed by the Internal Revenue Code of 1986, and thus are not subject to the inflation adjustment mandated by the Inflation Adjustment Act. The only civil monetary penalty enforced by TTB that is subject to the inflation adjustment is the penalty imposed by the ABLA at 27 U.S.C. 218.

TTB Regulations

The TTB regulations implementing the ABLA are found in 27 CFR part 16, and the regulations implementing the Inflation Adjustment Act with respect to the ABLA penalty are found in 27 CFR 16.33. This section indicates that, in accordance with the ABLA, any person who violates the provisions of this part is subject to a civil penalty of not more than $10,000. Further, pursuant to the provisions of the Inflation Adjustment Act, as amended, this civil penalty is subject to periodic cost-of-living adjustments. Accordingly, any person who violates the provisions of 27 CFR part 16 is subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/regulation_guidance/ablapenalty.html.* Each day constitutes a separate offense.

To adjust the penalty, § 16.33(b) indicates that TTB will provide notice in the **Federal Register** and at the website mentioned above of cost-of-living adjustments to the civil penalty for violations of 27 CFR part 16.

Penalty Adjustment

In this document, TTB is publishing its yearly adjustment to the maximum ABLA penalty, as required by the amended Inflation Adjustment Act.

As mentioned earlier, the ABLA contains a maximum civil monetary penalty. For such penalties, section 5 of the Inflation Adjustment Act indicates that the inflation adjustment is determined by increasing the maximum penalty by the cost-of-living adjustment. The cost-of-living adjustment means the percentage increase (if any) between the Consumer Price Index for all-urban consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U.

The CPI–U in October 2021 was 276.589, and the CPI–U in October 2022 was 298.012. The rate of inflation between October 2021 and October 2022 was therefore 7.745 percent. When applied to the current ABLA penalty of $22,979, this rate of inflation yields a raw (unrounded) inflation adjustment of $1,779.72355. Rounded to the nearest dollar, the inflation adjustment is $1,780, meaning that the new maximum civil penalty for violations of the ABLA will be $24,759.

The new maximum civil penalty will apply to all penalties that are assessed after January 13, 2023. TTB has also updated its web page at *https://www.ttb.gov/regulation_guidance/ablapenalty.html* to reflect the adjusted penalty.

Dated: January 9, 2023.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2023–00594 Filed 1–12–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 553, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to adjust certain civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective January 13, 2023.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (*www.treas.gov/ofac*).

Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs annually for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

OFAC has adjusted its CMPs eight times since the Federal Civil Penalties Inflation Adjustment Act Improvements Act went into effect on November 2, 2015: an initial catch-up adjustment on August 1, 2016 (81 FR 43070, July 1, 2016); an additional initial catch-up adjustment related to CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records (''recordkeeping CMPs'') that were inadvertently omitted from the August 1, 2016 initial catch-up adjustment on October 5, 2020 (85 FR 54911, September 3, 2020); and annual adjustments on February 10, 2017 (82 FR 10434, February 10, 2017); March 19, 2018 (83 FR 11876, March 19, 2018); June 14, 2019 (84 FR 27714, June 14, 2019); April 9, 2020 (85 FR 19884, April 9, 2020); March 17, 2021 (86 FR 14534, March 17, 2021); and February 9, 2022 (87 FR 7369, February 9, 2022).

Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the FCPIA Act. Under the FCPIA Act and the Office of Management and Budget guidance required by the FCPIA Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget Memorandum M–23–05 of December 15, 2022, the adjustment multiplier for 2023 is 1.07745. In order to complete the 2023 annual adjustment, each current CMP is multiplied by the 2023 adjustment multiplier. Under the FCPIA Act, any increase in CMP must be rounded to the nearest multiple of $1.

New Penalty Amounts

OFAC imposes CMPs pursuant to the penalty authority in five statutes: the Trading With the Enemy Act (50 U.S.C. 4301–4341, at 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1701–1706, at 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, at 1906) (FNKDA); and the Clean Diamond Trade Act (19 U.S.C. 3901–3913, at 3907) (CDTA).

The table below summarizes the existing and new maximum CMP amounts for each statute.

TABLE 1—MAXIMUM CMP AMOUNTS FOR RELEVANT STATUTES

Statute	Existing maximum CMP amount	Maximum CMP amount effective January 13, 2023
TWEA	$97,529	$105,083
IEEPA	330,947	356,579
AEDPA	87,361	94,127
FNKDA	1,644,396	1,771,754
CDTA	14,950	16,108

In addition to updating these maximum CMP amounts, OFAC is also updating two references to one-half the IEEPA maximum CMP from $165,474 to $178,290, and is adjusting the recordkeeping CMP amounts found in OFAC's Economic Sanctions Enforcement Guidelines in appendix A to 31 CFR part 501. The table below summarizes the existing and new maximum CMP amounts for OFAC's recordkeeping CMPs.

TABLE 2—MAXIMUM CMP AMOUNTS FOR RECORDKEEPING CMPS

Violation	Existing maximum CMP amount	Maximum CMP amount effective January 13, 2023
Failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged	$25,542	$27,520
Failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than $500,000, irrespective of whether any other violation is alleged	63,855	68,801
Late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due	3,192	3,439
Late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due	6,386	6,881
Late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years	1,278	1,377
Failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license	63,973	68,928

Public Participation

The FCPIA Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 13, 2023.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This rule is not a significant action as defined in section 3.f. of Executive Order 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 553, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, OFAC amends 31 CFR chapter V as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart D—Trading With the Enemy Act (TWEA) Penalties

§ 501.701 [Amended]

■ 2. In § 501.701, in paragraph (a)(3) introductory text, remove ''$97,529'' and add in its place ''$105,083''.

■ 3. Amend appendix A to part 501 as follows:

■ a. In paragraph IV.A., remove ''$25,542'' and add in its place ''$27,520'' and remove ''$63,855'' and add in in its place ''$68,801''.

■ b. In paragraph IV.B., remove ''$3,192'' and add in its place ''$3,439'', remove ''$6,386'' and add in its place ''$6,881'', and remove ''$1,278'' and add in its place ''$1,377''.

■ c. In paragraph IV.C., remove ''$63,973'' and add in its place ''$68,928''.

■ d. In paragraph V.B.2.a.i., remove ''$165,474'' and add in its place ''$178,290'' and remove ''$330,947'' and add in its place ''$356,579''.

■ e. In paragraph V.B.2.a.ii., remove ''$330,947'' in all three locations where it appears and add in its place in all three locations ''$356,579''.

■ f. In paragraph V.B.2.a.v., remove ''$330,947'' and add in its place ''$356,579'', remove ''$97,529'' and add in its place ''$105,083'', remove ''$1,644,396'' and add in its place ''$1,771,754 '', remove ''$87,361'' and add in its place ''$94,127'', and remove ''$14,950'' and add in its place ''$16,108''.

■ g. Revise paragraph V.B.2.a.vi.

The revision reads as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines.

* * * * *

V. * * *

B. * * * 2. * * *

a. * * *

v. The following matrix represents the base amount of the proposed civil penalty for each category of violation:

BILLING CODE 4810–A–P

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at lesser of $178,290 or one-half of the applicable statutory maximum per violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at lesser of $356,579 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

* * * * *

PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 4. The authority citation for part 510 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c, 9201–9255; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13466, 73 FR 36787, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242; E.O. 13570, 76 FR 22291, 3 CFR, 2011 Comp., p. 233; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

Subpart G—Penalties and Finding of Violation

§ 510.701 [Amended]

■ 5. In § 510.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 6. The authority citation for part 535 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Subpart G—Penalties

§ 535.701 [Amended]

■ 7. In § 535.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 8. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart G—Penalties

§ 536.701 [Amended]

■ 9. In § 536.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 10. The authority citation for part 539 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382; 70 FR 38567, 3 CFR, 2005 Comp. p. 170.

Subpart G—Penalties

§ 539.701 [Amended]

■ 11. In § 539.701, in paragraph (a)(2), remove ''$330.947'' and add in its place ''$356,579''.

PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 12. The authority citation for part 541 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201, 3 CFR, 2005 Comp., p. 206; E.O. 13469, 73 FR 43841, 3 CFR, 2008 Comp., p. 1025.

Subpart G—Penalties

§ 541.701 [Amended]

■ 13. In § 541.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 14. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290 (22 U.S.C. 8791 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

Subpart G—Penalties

§ 542.701 [Amended]

■ 15. In § 542.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 16. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart G—Penalties

§ 544.701 [Amended]

■ 17. In § 544.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 546—DARFUR SANCTIONS REGULATIONS

■ 18. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart G—Penalties

§ 546.701 [Amended]

■ 19. In § 546.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 20. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

Subpart G—Penalties and Finding of Violation

§ 547.701 [Amended]

■ 21. In § 547.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 548—BELARUS SANCTIONS REGULATIONS

■ 22. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13405, 71 FR 35485, 3 CFR, 2006 Comp., p. 231.

Subpart G—Penalties

§ 548.701 [Amended]

■ 23. In § 548.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 549—LEBANON SANCTIONS REGULATIONS

■ 24. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart G—Penalties

§ 549.701 [Amended]

■ 25. In § 549.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 551—SOMALIA SANCTIONS REGULATIONS

■ 26. The authority citation for part 551 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13536, 75 FR 19869, 3 CFR, 2010 Comp., p. 203; E.O. 13620, 77 FR 43483, 3 CFR, 2012 Comp., p. 281.

Subpart G—Penalties and Findings of Violation

§ 551.701 [Amended]

■ 27. In § 551.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 552—YEMEN SANCTIONS REGULATIONS

■ 28. The authority citation for part 552 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13611, 77 FR 29533, 3 CFR, 2012 Comp., p. 260.

Subpart G—Penalties and Findings of Violation

§ 552.701 [Amended]

■ 29. In § 552.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 553—CENTRAL AFRICAN REPUBLIC SANCTIONS REGULATIONS

■ 30. The authority citation for part 553 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13667, 77 FR 28387, 3 CFR, 2014 Comp., p. 243.

Subpart G—Penalties and Findings of Violation

§ 553.701 [Amended]

■ 31. In § 553.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 32. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa-9, 7201–7211, 8501–8551, 8701–8795; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854.

Subpart G—Penalties

§ 560.701 [Amended]

■ 33. In § 560.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 34. The authority citation for part 561 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 8501–8551, 8701–8795; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854; E.O. 13871, 84 FR 20761, 3 CFR, 2019 Comp., p. 309.

Subpart G—Penalties

§ 561.701 [Amended]

■ 35. In § 561.701, in paragraph (a)(4), remove ''$330,947'' and add in its place ''$356,579''.

PART 566—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

■ 36. The authority citation for part 566 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205 (50 U.S.C. 1701 note); Pub. L. 115–272, 132 Stat. 4144 (50 U.S.C. 1701 note).

Subpart G—Penalties and Finding of Violation

§ 566.701 [Amended]

■ 37. In § 566.701, in paragraph (b), remove ''$330,947'' and add in its place ''$356,579''.

PART 570—LIBYAN SANCTIONS REGULATIONS

■ 38. The authority citation for part 570 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13566, 76 FR 11315, 3 CFR, 2011 Comp., p. 222; E.O. 13726, 81 FR 23559, 3 CFR, 2016 Comp., p. 454.

Subpart G—Penalties and Findings of Violation

§ 570.701 [Amended]

■ 39. In § 570.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 40. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224; E.O. 13668, 79 FR 31019, 3 CFR, 2014 Comp., p. 248.

Subpart G—Penalties

§ 576.701 [Amended]

■ 41. In § 576.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 578—CYBER–RELATED SANCTIONS REGULATIONS

■ 42. The authority citation for part 587 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13694, 80 FR 18077, 3 CFR 2015 Comp., p. 297; E.O. 13757, 82 FR 1, 3 CFR 2016 Comp., p. 659.

Subpart G—Penalties and Findings of Violation

§ 578.701 [Amended]

■ 43. In § 578.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$356,579''.

PART 583—GLOBAL MAGNITSKY SANCTIONS REGULATIONS

■ 44. The authority citation for part 583 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–328, Div. A, Title XII, Subt. F, 130 Stat. 2533 (22 U.S.C.

2656 note); E.O. 13818, 82 FR 60839, 3 CFR, 2017 Comp., p. 399.

Subpart G—Penalties and Findings of Violation

§ 583.701 [Amended]

■ 45. In § 583.701, in paragraph (c), remove ''$330,947'' and add in its place ''$356,579''.

PART 584—MAGNITSKY ACT SANCTIONS REGULATIONS

■ 46. The authority citation for part 584 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 112–208, Title IV, 126 Stat. 1502 (22 U.S.C. 5811 note).

Subpart G—Penalties and Finding of Violation

§ 584.701 [Amended]

■ 47. In § 584.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 48. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229; E.O. 14033, 86 FR 43905.

Subpart G—Penalties and Findings of Violation

§ 588.701 [Amended]

■ 49. In § 588.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 589—UKRAINE-/RUSSIA—RELATED SANCTIONS REGULATIONS

■ 50. The authority citation for part 589 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 8901–8910, 8921–8930; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13660, 79 FR 13493, 3 CFR, 2014 Comp., p. 226; E.O. 13661, 79 FR 15535, 3 CFR, 2014 Comp., p. 229; E.O. 13662, 79 FR 16169, 3 CFR, 2014 Comp., p. 233; E.O. 13685, 79 FR 77357, 3 CFR, 2014 Comp., p. 313.

Subpart G—Penalties and Findings of Violation

§ 589.701 [Amended]

■ 51. In § 589.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 590—TRANSNATIONAL CRIMINAL ORGANIZATIONS SANCTIONS REGULATIONS

■ 52. The authority citation for part 590 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13581, 76 FR 44757, 3 CFR, 2011 Comp., p. 260; E.O. 13863, 84 FR 10255, 3 CFR, 2019 Comp., p. 267.

Subpart G—Penalties and Findings of Violation

§ 590.701 [Amended]

■ 53. In § 590.701, in paragraph (a)(2), remove ''$330,947'' and add in its place ''$356,579''.

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

■ 54. The authority citation for part 592 continues to read as follows:

Authority: 3 U.S.C. 301; 19 U.S.C. 3901–3913; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13312, 68 FR 45151, 3 CFR, 2003 Comp., p. 246.

Subpart F—Penalties

§ 592.601 [Amended]

■ 55. In § 592.601, in paragraph (a)(2), remove ''$14,950'' and add in its place ''$16,108''.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 56. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); Pub. L. 115–348, 132 Stat. 5055 (50 U.S.C. 1701 note); Pub. L. 115–272, 132 Stat. 4144 (50 U.S.C. 1701 note); E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159; E.O. 13886, 84 FR 48041, 3 CFR, 2019 Comp., p. 356.

Subpart G—Penalties

§ 594.701 [Amended]

■ 57. In § 594.701, in paragraph (a)(2), remove ''$330,947''and add in its place ''$356,579''.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 58. The authority citation for part 597 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2339B; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart G—Penalties

§ 597.701 [Amended]

■ 59. In § 597.701, in paragraph (b)(3), remove ''$87,361'' and add in its place ''$94,127''.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 60. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart G—Penalties

§ 598.701 [Amended]

■ 61. In § 598.701, in paragraph (a)(4), remove ''$1,644,396'' and add in its place ''$1,771,754''.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–00593 Filed 1–12–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 12, 13, and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing seven general licenses (GLs) issued in the Venezuela Sanctions program: GLs 12, 13, 13A, 13B, 13C, 13D, and 13E, each of which was previously made available on OFAC's website and is now expired.

DATES: GLs 12 and 13 were issued on January 28, 2019. See **SUPPLEMENTARY**

INFORMATION for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 28, 2019, OFAC issued GLs 12 and 13 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (83 FR 55243, November 2, 2019). Subsequently, OFAC issued five further iterations of GL 13 which extended the duration and modified the scope of the authorization: on June 6, 2019, OFAC issued GL 13A which superseded GL 13; on June 26, 2019, OFAC issued GL 13B, which superseded GL 13A; on August 5, 2019, OFAC issued GL 13C, which superseded GL 13B; on October 17, 2019, OFAC issued GL 13D, which superseded GL 13C; and on April 3, 2020, OFAC issued GL 13E, which superseded GL 13D. On November 22, 2019, OFAC incorporated the prohibitions of E.O. 13850, as well as any other Executive orders issued pursuant to the national emergency declared in Executive Order 13692 of March 8, 2015, into the Venezuelan Sanctions Regulations, 31 CFR part 591. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 12

Authorizing Certain Activities Necessary To Wind Down of Operations or Existing Contracts With Petróleos de Venezuela, S.A. (PdVSA)

(a) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest are authorized through 12:01 a.m. eastern daylight time, April 28, 2019.

(b) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements, including the importation into the United States of goods, services, or technology not authorized in paragraph (a) of this general license, involving PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to January 28, 2019 are authorized through 12:01 a.m. eastern standard time, February 27, 2019.

(c) Except as authorized by Venezuela General Licenses 7, 8, 11, or 13, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 CFR part 591.

(d) This general license does not authorize:

(1) The divestiture or transfer of any debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) The exportation or reexportation of any diluents from the United States to Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest;

(3) Any transactions or dealings with ALBA de Nicaragua (ALBANISA) or any entity in which ALBANISA owns, directly or indirectly, a 50 percent or greater interest; or

(4) Any transactions or dealings otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Andrea Gacki, *Director, Office of Foreign Assets Control,*

Dated: January 28, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 13

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order 13850, where the only Petróleos de Venezuela, S.A. (PdVSA) entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, July 27, 2019.

(b) Except as authorized by Venezuela General License 11, any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to PdVSA or any entity owned 50 percent or more, directly or indirectly, by PdVSA, other than Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a).

Andrea Gacki, *Director, Office of Foreign Assets Control.*

Dated: January 28, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 13A

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, where the only Petróleos de Venezuela, S.A. (PdVSA) entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, July 27, 2019.

(b) Except as authorized by Venezuela General License 11, any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to PdVSA or any entity owned 50 percent or more, directly or indirectly, by PdVSA, other than Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(3) Any transaction that is otherwise prohibited by E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR. chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license; or

(4) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a).

(e) Effective June 6, 2019, General License 13, dated January 28, 2019, is replaced and superseded in its entirety by this General License No. 13A.

Andrea Gacki, *Director, Office of Foreign Assets Control*,

Dated: June 6, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE NO. 13B

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, where the only Petróleos de Venezuela, S.A. (PdVSA) entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, October 25, 2019.

(b) Except as authorized by Venezuela General License 11, any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to PdVSA or any entity owned 50 percent or more, directly or indirectly, by PdVSA, other than Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(3) Any transaction that is otherwise prohibited by E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR. chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license; or

(4) The unblocking of any property blocked pursuant to any part of 31 CFR. chapter V, except as authorized by paragraph (a).

(e) Effective June 26, 2019, General License 13A, dated June 6, 2019, is replaced and superseded in its entirety by this General License No. 13B.

Andrea Gacki, *Director, Office of Foreign Assets Control,*

Dated: June 26, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 13C

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order 13850 (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, or E.O. of August 5, 2019, where the only Government of Venezuela entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, October 25, 2019.

(b) Except as authorized by Venezuela General License 11, any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to the Government of Venezuela, other than to Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(3) Any transaction that is otherwise prohibited by E.O. of August 5, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR. chapter V, or any

transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license; or

(4) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a).

(c) Effective August 5, 2019, General License 13B, dated June 26, 2019, is replaced and superseded in its entirety by this General License No. 13C.

Andrea Gacki, *Director, Office of Foreign Assets Control*,

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 13D

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884, where the only Government of Venezuela entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, April 14, 2020.

(b) Any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to the Government of Venezuela, other than to Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(3) Any transactions or dealings related to the purchase or acquisition of Venezuelan- origin petroleum or petroleum products, directly or indirectly, by Nynas AB or any of its subsidiaries;

(4) Any transaction that is otherwise prohibited by E.O. 13884, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR. chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license; or

(5) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a).

(d) Effective October 17, 2019, General License 13C, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 13D.

Bradley T. Smith, *Deputy Director, Office of Foreign Assets Control,*

Dated: October 17, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 13E

Authorizing Certain Activities Involving Nynas AB

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), where the only Government of Venezuela entities involved are Nynas AB or any of its subsidiaries, are authorized through 12:01 a.m. eastern daylight time, May 14, 2020.

(b) Any payment to or for the direct or indirect benefit of a blocked person other than Nynas AB or any of its subsidiaries that is ordinarily incident and necessary to give effect to transactions authorized in paragraph (a) of this general license and that come into the possession or control of any U.S. person must be placed into a blocked, interest-bearing account located in the United States in accordance with 31 CFR 591.203.

(c) This general license does not authorize:

(1) Any exportation or reexportation of any goods, services, or technology, directly or indirectly, by U.S. persons, wherever located, or from the United States, to the Government of Venezuela, other than to Nynas AB or any of its subsidiaries, or to any other blocked persons;

(2) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(3) Any transactions or dealings related to the purchase or acquisition of Venezuelan-origin petroleum or petroleum products, directly or indirectly, by Nynas AB or any of its subsidiaries;

(4) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license; or

(5) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a).

(d) Effective April 3, 2020, General License No. 13D, dated October 17, 2019, is replaced and superseded in its entirety by this General License No. 13E.

Andrea Gacki, *Director, Office of Foreign Assets Control,*

Dated: April 3, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–00346 Filed 1–12–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 8K and 41

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Venezuela Sanctions Regulations: GLs 8K and 41, each of which was previously made available on OFAC's website.

DATES: GLs 8K and 41 were issued on November 26, 2022. See **SUPPLEMENTARY**

INFORMATION for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On November 26, 2022, OFAC issued GLs 8K and 41 to authorize certain transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. GL 8K was issued on November 26, 2022 and has an expiration date of May 26, 2023. GL 41 was issued on November 26, 2022 and automatically renews on the first day of each month and is valid for a period of six months from the effective date of GL 41 or the date of any subsequent renewal of GL 41, whichever is later. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 8K

Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Necessary for the Limited Maintenance of Essential Operations in Venezuela or the Wind Down of Operations in Venezuela for Certain Entities

(a) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the limited maintenance of essential operations, contracts, or other agreements, that: (i) are for safety or the preservation of assets in Venezuela; (ii) involve PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest; and (iii) were in effect prior to July 26, 2019, are authorized through 12:01 a.m. eastern daylight time, May 26, 2023, for the following entities and their subsidiaries (collectively, the ''Covered Entities''):

- Halliburton
- Schlumberger Limited
- Baker Hughes Holdings LLC
- Weatherford International, Public Limited Company

Note to paragraph (a): Transactions and activities necessary for safety or the preservation of assets in Venezuela that are authorized by paragraph (a) of this general license include: transactions and activities necessary to ensure the safety of personnel, or the integrity of operations and assets in Venezuela; participation in shareholder and board of directors meetings; making payments on third-party invoices for transactions and activities authorized by paragraph (a) of this general license, or incurred prior to April 21, 2020, provided such activity was authorized at the time it occurred; payment of local taxes and purchase of utility services in Venezuela; and payment of salaries for employees and contractors in Venezuela.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by E.O. 13850, as amended, or E.O. 13884, each as incorporated into the VSR, that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements in Venezuela involving PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, and that were in effect prior to July 26, 2019, are authorized through 12:01 a.m. eastern daylight time, May 26, 2023, for the Covered Entities.

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

(1) The drilling, lifting, or processing of, purchase or sale of, or transport or shipping of any Venezuelan-origin petroleum or petroleum products;

(2) The provision or receipt of insurance or reinsurance with respect to the transactions and activities described in paragraph (c)(1) of this general license;

(3) The design, construction, installation, repair, or improvement of any wells or other facilities or infrastructure in Venezuela or the purchasing or provision of any goods or services, except as required for safety;

(4) Contracting for additional personnel or services, except as required for safety; or

(5) The payment of any dividend, including in kind, to PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest.

(d) This general license does not authorize:

(1) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela;

(2) Any loans to, accrual of additional debt by, or subsidization of PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, including in kind, prohibited by E.O. 13808 of August 24, 2017, as amended by E.O. 13857, and incorporated into the VSR; or

(3) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraphs (a) and (b) of this general license.

(e) Effective November 26, 2022, General License No. 8J, dated May 27, 2022, is replaced and superseded in its entirety by this General License No. 8K.

Andrea M. Gacki, *Director, Office of Foreign Assets Control,*

Dated: November 26, 2022.

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 41

Authorizing Certain Transactions Related to Chevron Corporation's Joint Ventures in Venezuela

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the following activities for or related to the operation and management by Chevron Corporation or its subsidiaries (''Chevron'') of Chevron's joint ventures in Venezuela (collectively, the ''Chevron JVs'') involving Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857, or E.O. 13884, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized:

(1) Production and lifting of petroleum or petroleum products produced by the Chevron JVs, and any related maintenance, repair, or servicing of the Chevron JVs;

(2) Sale to, exportation to, or importation into the United States of petroleum or petroleum products produced by the Chevron JVs, provided that the petroleum and petroleum products produced by the Chevron JVs are first sold to Chevron;

(3) Ensuring the health or safety of personnel or the integrity of operations or assets of the Chevron JVs in Venezuela; and

(4) Purchase and importation into Venezuela of goods or inputs related to the activities described in paragraphs (a)(1)–(3) of this general license,

including diluents, condensates, petroleum, or natural gas products.

Note 1 to paragraph (a)(4). Except as authorized pursuant to the Iranian Transactions Sanctions Regulations, 31 CFR part 560, or otherwise exempt, U.S. persons, wherever located, remain prohibited from engaging in any transaction or dealing in or related to goods or services of Iranian origin, including the purchase or import of Iranian-origin diluents, condensates, petroleum, or natural gas.

(b) This general license does not authorize:

(1) The payment of any taxes or royalties to the Government of Venezuela;

(2) The payment of any dividends, including a dividend in kind, to PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest;

(3) The sale of petroleum or petroleum products produced by or through the Chevron JVs for the exportation to any jurisdiction other than the United States;

(4) Any transaction involving an entity located in Venezuela that is owned or controlled by an entity located in the Russian Federation;

(5) Any expansion of the Chevron JVs into new fields in Venezuela beyond what was in place on January 28, 2019; or

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

(c) This authorization automatically renews on the first day of each month and is valid for a period of six months from the effective date of General License No. 41 or the date of any subsequent renewal of General License No. 41, whichever is later.

Note 2 to General License No. 41. Nothing in this general license relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Andrea M. Gacki, *Director, Office of Foreign Assets Control,*

Dated: November 26, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–00515 Filed 1–12–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD–2016–OS–0045]

RIN 0790–AL58

Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of the Under Secretary of Defense (Comptroller), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

DATES: This rule is effective January 13, 2023.

FOR FURTHER INFORMATION CONTACT: Dzenana Dzanic, 703–508–9277.

SUPPLEMENTARY INFORMATION:

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, codified at 28 U.S.C. 2461, note, as amended, requires agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. Section 2461 requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment set forth therein. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of $1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the DoD's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389–33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629–62631), effective that date. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs to maintain their deterrent effect. The DoD is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2023 of 1.07745 prescribed in OMB Memorandum M–23–05, ''Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.'' The DoD's 2023 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the DoD after the effective date of the new CMP level.

Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 2461) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding 5 U.S.C. 553. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The DoD is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity to comment are not required for this rule. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the DoD, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the DoD anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to

accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

Regulatory Procedures

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

These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). These Executive Orders also emphasize the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated ''not significant'', under section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the OMB under these Executive Orders.

Congressional Review Act, 5 U.S.C. 804(2)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

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

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

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

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

The Paperwork Reduction Act was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal government. The Act requires agencies obtain approval from the OMB before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

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

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

It has been determined that this rule will not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the Federal government and Indian tribes.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

PART 269—[AMENDED]

■ 1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. In § 269.4, revise paragraph (d) to read as follows:

§ 269.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

TABLE 1 TO PARAGRAPH (d)

United States Code	Civil monetary penalty description	Maximum penalty amount as of 2022 ($)	New adjusted maximum penalty amount ($)
National Defense Authorization Act for FY 2005, 10 U.S.C 113, note.	Unauthorized Activities Directed at or Possession of Sunken Military Craft.	144,887	156,108
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	12,722	13,707
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	7,523	8,106
	Subsequent Offense	50,152	54,036
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations.	2,073	2,234
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	12,537	13,508
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	12,537	13,508
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	False claims	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Claims submitted with a false certification of physician license	22,426	24,163

TABLE 1 TO PARAGRAPH (D)—Continued

United States Code	Civil monetary penalty description	Maximum penalty amount as of 2022 ($)	New adjusted maximum penalty amount ($)
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Claims presented by excluded party	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2); (b)(2)(ii).	Employing or contracting with an excluded individual	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Pattern of claims for medically unnecessary services/supplies	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Ordering or prescribing while excluded	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(5).	Known retention of an overpayment	22,426	24,163
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(4).	Making or using a false record or statement that is material to a false or fraudulent claim.	112,131	120,816
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(6).	Failure to grant timely access to OIG for audits, investigations, evaluations, or other statutory functions of OIG.	33,640	36,245
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(3).	Making false statements, omissions, misrepresentations in an enrollment application.	112,131	120,816
42 U.S.C. 1320a–7a(a); 32 CFR 200.310(a).	Unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business in violation of 1128B(b) of the Social Security Act.	112,131	120,816

Dated: January 10, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–00579 Filed 1–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0037]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from January 13, 2023 through 4 a.m. on January 15, 2023. For the purposes of enforcement, actual notice will be used from 8 p.m. on January 9, 2023 until January 13, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

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 contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Shipping Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 8 p.m. on January 9, 2023 through 4 a.m. on January 15, 2023 will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed

from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on January 9, 2023 through 4 a.m. on January 15, 2023 and will be subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

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 size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 8 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the temporary 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 above.

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, 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 establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(d) 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0037 to read as follows:

§ 165.T08–0037 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W.

(b) *Effective period.* This section is effective from 8 p.m. on January 9, 2023 through 4 a.m. on January 15, 2023 . This section is subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into the temporary safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: January 6, 2023.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–00527 Filed 1–12–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0433; FRL–10402–02–R4]

Air Plan Approval; North Carolina; Minor Revisions to Nitrogen Oxides Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a revision to the North Carolina State Implementation Plan (SIP) submitted by the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality, via a letter dated April 13, 2021, and received by EPA on April 14, 2021. This revision contains minor clarifying and typographical edits to North Carolina's nitrogen oxides (NO_X) rule. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective February 13, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0433. All documents in the docket are listed on the *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: Steven Scofield, 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) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing to take?

EPA is finalizing the approval of changes to North Carolina's SIP that were provided to EPA through NCDEQ via a letter dated April 13, 2021.[1] EPA is approving the changes to North Carolina's 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .1400, *Nitrogen Oxides* (hereinafter referred to as Section .1400).[2] The April 13, 2021, revision to the North Carolina SIP transmits changes that do not alter the meaning of the regulations, such as clarifying changes, updated cross-references, and several ministerial language changes.

Specifically, EPA is finalizing the approval of changes to 15A NCAC Subchapter 02D, Rules: .1401, *Definitions;* .1402, *Applicability;* .1403, *Compliance Schedules;* .1404 *Recordkeeping: Reporting: Monitoring;* .1407, *Boilers and Indirect-Fired Process Heaters;* .1408, *Stationary Combustion Turbines;* .1409, *Stationary Internal Combustion Engines;* .1410, *Emissions Averaging;* .1411, *Seasonal Fuel Switching;* .1412, *Petition for Alternative Limitations;* .1413, *Sources Not Otherwise Listed in this Section;* .1414, *Tune-Up Requirements;* .1415, *Test Methods and Procedures;* and .1418, *New Electric Generating Units, Boilers, Combustion Turbines, and Large I/C Engines.*[3]

[1] EPA notes that the submittal was received through the State Planning Electronic Collaboration System (SPeCS) on April 14, 2021. For clarity, this notice will refer to the submittal by the date on the cover letter, which is April 13, 2021.

[2] EPA notes that the Agency received several submittals revising the North Carolina SIP that were transmitted with the same April 13, 2021, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

[3] At this time, EPA is not finalizing the approval of changes to Rule 02D .1423, *Large Internal*

Continued

Through a notice of proposed rulemaking (NPRM), published on November 22, 2022 (87 FR 71286), EPA proposed to approve the April 13, 2021, changes to North Carolina Section 15 NCAC 02D .1400. The details of North Carolina's submission, as well as EPA's rationale for approving the changes, are described in more detail in the November 22, 2022, NPRM. Comments on the November 22, 2022, NPRM were due on or before December 22, 2022. No comments were received on the NPRM, adverse or otherwise.

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, EPA is finalizing the incorporation by reference of 15A NCAC Subchapter 02D .1401, *Definitions;* .1402, *Applicability;* .1403, *Compliance Schedules;* .1404 *Recordkeeping: Reporting: Monitoring;* .1407, *Boilers and Indirect-Fired Process Heaters;* .1408, *Stationary Combustion Turbines;* .1409, *Stationary Internal Combustion Engines;* .1410, *Emissions Averaging;* .1411, *Seasonal Fuel Switching;* .1412, *Petition for Alternative Limitations;* .1413, *Sources Not Otherwise Listed in this Section;* .1414, *Tune-Up Requirements;* .1415, *Test Methods and Procedures;* and .1418, *New Electric Generating Units, Boilers, Combustion Turbines, and Large I/C Engines,* state effective on October 1, 2020, into the North Carolina SIP. 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.[4]

III. Final Action

EPA is finalizing the approval of the April 13, 2021, SIP revision to incorporate various changes to North Carolina's NO_X air provisions into the SIP. Specifically, EPA is proposing to approve various ministerial and minor changes to language and other clarifying changes throughout North Carolina's rules in 02D Section .1400, *Nitrogen Oxides.* EPA is approving these changes because they are consistent with the CAA.

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 March 14, 2023. 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 dioxide, Reporting and recordkeeping requirements.

Dated: December 30, 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.*

Combustion Engines, included in the notice of proposed rulemaking published on November 22, 2022 (87 FR 71286).

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

Subpart II—North Carolina

■ 2. In § 52.1770(c), amend table (1) by removing the entries for ''Section .1401,'' ''Section .1402,'' ''Section .1403,'' ''Section .1404,'' ''Section .1407,'' ''Section .1408,'' ''Section .1409,'' ''Section .1410,'' ''Section .1411,'' ''Section .1412,'' ''Section .1413,'' ''Section .1414,'' ''Section .1415,'' and ''Section .1418;'' and adding in their place entries for ''Rule .1401,'' ''Rule .1402,'' ''Rule .1403,'' ''Rule .1404,'' ''Rule .1407,'' ''Rule .1408,'' ''Rule .1409,'' ''Rule .1410,'' ''Rule .1411,'' ''Rule .1412,'' ''Rule .1413,'' ''Rule .1414,'' ''Rule .1415,'' and ''Rule .1418'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section .1400 Nitrogen Oxides				
Rule .1401	Definitions	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1402	Applicability	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1403	Compliance Schedules	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1404	Recordkeeping: Reporting: Monitoring.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1407	Boilers and Indirect-Fired Process Heaters.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1408	Stationary Combustion Turbines.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1409	Stationary Internal Combustion Engines.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1410	Emissions Averaging	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1411	Seasonal Fuel Switching	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1412	Petition for Alternative Limitations.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1413	Sources Not Otherwise Listed in This Section.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1414	Tune-Up Requirements	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1415	Test Methods and Procedures.	10/1/2020	1/13/2023, [Insert citation of publication].	
Rule .1418	New Electric Generating Units, Large Boilers, and Large I/C Engines.	10/1/2020	1/13/2023, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2022–28658 Filed 1–12–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0265; FRL–9781–02–R4]

Air Plan Approval; North Carolina; Charlotte-Gastonia-Rock Hill Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

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 State of North Carolina, through the North Carolina Department of Environment Quality, Division of Air Quality (DAQ), via a letter dated December 9, 2021. The SIP revision includes the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) Limited Maintenance Plan (LMP) for the North Carolina portion (hereinafter referred to as the Metrolina Area) of the Charlotte-Gastonia-Rock Hill NC–SC 1997 8-hour ozone maintenance area (hereinafter referred to as the ''Charlotte NC–SC 1997 8-hour NAAQS Area'' or ''bi-state Charlotte Area''). The Charlotte NC–SC 1997 8-hour NAAQS Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan and Union Counties and a portion of Iredell County (*i.e.,* Davidson and Coddle Creek Townships) in North Carolina; and the Rock Hill Metropolitan Planning Organization boundary in York County, South Carolina. EPA is finalizing approval because the LMP provides for the maintenance of the 1997 8-hour ozone NAAQS within the Metrolina Area through the end of the second 10-year portion of the maintenance period. This action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Metrolina Area federally enforceable as part of the North Carolina SIP.

DATES: This rule is effective February 13, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0265. 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, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Clean Air Act (CAA or Act), EPA is approving the Metrolina Area's LMP for the 1997 8-hour ozone NAAQS, adopted and submitted by DAQ as a revision to the North Carolina SIP on December 9, 2021. In 2004, the Charlotte NC–SC 1997 8-hour NAAQS Area, which includes the Metrolina Area, was designated as nonattainment for the 1997 8-hour ozone NAAQS. Subsequently, in 2013, after a clean data determination [1] and EPA's approval of a maintenance plan, the North Carolina portion of the Charlotte NC–SC 1997 8-hour NAAQS Area, which includes the Metrolina Area, was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 78 FR 72036 (December 2, 2013).

The Metrolina Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Metrolina Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is finalizing the approval of the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Metrolina Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by DAQ for the first 10-year period.

In a notice of proposed rulemaking (NPRM), published on November 21, 2022 (87 FR 70758), EPA proposed to approve the Area's LMP because the State made a showing, consistent with EPA's prior LMP guidance, that the Charlotte NC–SC 1997 8-hour NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS, have been historically stable, and that it has met all other maintenance plan requirements. The details of North Carolina's submission and the rationale for EPA's action are explained further in the November 21, 2022, NPRM. Comments on the November 21, 2022, NPRM were due on or before December 21, 2022. No comments were received on the November 21, 2022, NPRM, adverse or otherwise.

II. Final Action

In accordance with sections 110(k) and 175A of the CAA, and for the reasons set forth in the November 21, 2022, NPRM, EPA is finalizing the Metrolina Area LMP for the 1997 8-hour ozone NAAQS, as submitted by NCDAQ on December 9, 2021. EPA is finalizing the approval of the Metrolina Area LMP because it includes an acceptable update of 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 retains the relevant provisions of the SIP. EPA also finds that the Metrolina Area qualifies for the LMP option and that, therefore, the Metrolina Area's LMP adequately demonstrates 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 Metrolina Area's 1997 8-Hour Ozone LMP is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Metrolina Area over the second 10-year maintenance period, through 2034, and thereby satisfies 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 information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandates 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).

This SIP revision 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

[1] *See* 76 FR 70656 (November 15, 2011).

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 March 14, 2023. 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: December 30, 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 II—North Carolina

■ 2. In § 52.1770, amend the table in paragraph (e) by adding an entry for ''1997 8-hour Ozone 2nd Maintenance Plan (Limited Maintenance Plan) for the North Carolina portion of the bi-state Charlotte Area'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
* * * *		*	*	*
1997 8-hour Ozone 2nd Maintenance Plan (Limited Maintenance Plan) for the North Carolina portion of the bi-state Charlotte Area.	12/9/2021	1/13/2023	[Insert **Federal Register** citation].	

[FR Doc. 2022–28664 Filed 1–12–23; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–70

[FPMR Case 2023–01; Docket No. GSA–FPMR–2023–0005; Sequence No. 1]

RIN 3090–AK68

Civil Monetary Penalties Inflation Adjustment

AGENCY: The Office of the General Counsel, General Services Administration.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, this final rule applies the inflation adjustments for GSA's civil monetary penalties.

DATES: Effective January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Pound, Assistant General Counsel, General Law Division (LG), General Services Administration, 1800 F Street NW, Washington, DC 20405. Telephone Number 202–501–1460.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

To maintain the remedial impact of civil monetary penalties (CMPs) and to promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Sec. 701 of Pub. L. 114–74) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every year thereafter for these penalty amounts. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments shall apply only to violations which occur after the date the increase takes effect, *i.e.,* thirty (30) days after date of publication in the **Federal Register**. Pursuant to the 2015 Act, agencies are required to adjust the level of the CMP with an initial ''fix'', and make subsequent annual adjustments for inflation. Catch up adjustments are based on the percent change between the Consumer Price Index for Urban Consumers (CPI–U) for the month of October for the year of the previous adjustment, and the October 2015 CPI–U. Annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of adjustment and the prior year's October CPI–U.

II. The Program Fraud Civil Remedies Act of 1986

Sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) set forth the Program Fraud Civil Remedies Act of 1986 (PFCRA).

Specifically, this statute imposes a CMP and an assessment against any person who, with knowledge or reason to know, makes, submits, or presents a false, fictitious, or fraudulent claim or statement to the Government. The General Services Administration's regulations, published in the **Federal Register** (61 FR 246, December 20, 1996) and codified at 41 CFR part 105–70, currently set forth a CMP of up to $12,100 for each false claim or statement made to the agency. Based on the penalty amount inflation factor calculation, derived from originally dividing the October 2021 CPI by the

October 2022 CPI and making the CPI-based annual adjustment thereafter, after rounding, we are adjusting the maximum penalty amount for this CMP to $13,000 for each false claim or statement made to the agency.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking, public comment, and effective date procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA, at 5 U.S.C. 559, provides that a subsequent statute may supersede the APA if it does so expressly. This rulemaking effectuates the statutory requirements set forth in section 4(b)(2) of the 2015 Act, which provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. Furthermore, the APA provides an exception to the usual notice of proposed rulemaking, public comment, and effective date procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B) and 553(d)(3), good cause exists for dispensing with these procedures. The 2015 Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties. GSA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, under the clear terms of the APA and the language of the 2015 Act, this rule is not subject to notice, an opportunity for public comment, or a delayed effective date, and will be final and effective on January 15, 2023.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of E.O. 12866 and has determined that it does not meet the criteria for a significant regulatory action and thus was not subject to review under Section 6(b) of E.O. 12866. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable CMPs. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited conduct, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited conduct in violation of the statute. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or state expenditures.

V. Congressional Review Act

The agency and the Office of Information and Regulatory Affairs, OMB have determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, 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. GSA 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.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). As explained above, GSA is not required to first publish a proposed rule here. Thus, the RFA does not apply to this final rule.

VII. Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 41 CFR Part 105–70

Administrative hearing, Claims, Program fraud.

Robin Carnahan,

Administrator.

Accordingly, 41 CFR part 105–70 is amended as set forth below:

PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 105–70 continues to read as follows:

Authority: 40 U.S.C. 121(c); 31 U.S.C. 3809.

§ 105–70.003 [Amended]

■ 2. Amend § 105–70.003 by—

■ a. Removing from paragraph (a)(1)(iv) the amount ''12,100'' and adding ''13,000'' in its place; and

■ b. Removing from paragraph (b)(1)(ii) the amount ''12,100'' and adding ''13,000'' in its place.

[FR Doc. 2023–00722 Filed 1–12–23; 8:45 am]

BILLING CODE 6820–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 21–450; FCC 22–87; FRS 120419]

Affordable Connectivity Program; Emergency Broadband Benefit Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Fourth Report and Order, the Federal Communications Commission (Commission or FCC) establishes the Affordable Connectivity Program (or ACP) Transparency Data Collection, which will collect information related to the price, subscription rates, and plan characteristics of the internet service offerings of Affordable Connectivity Program participating providers as required by the Infrastructure Investment and Jobs Act (Infrastructure Act).

DATES: Effective February 13, 2023, except for instruction 3 (§ 54.1813(b) through (d)) which is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after the Office of Management and Budget approval of the information collection requirements as

required by the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–7400 or *eric.wu@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Fourth Report and Order (Order) in WC Docket Nos. 21–450, FCC 22–87, adopted on November 15, 2022 and released on November 23, 2022. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-22-87A1.pdf.* The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Fourth Report and Order is to be published elsewhere in the **Federal Register**.

I. Introduction

1. In the Order, the Commission establishes the ACP Transparency Data Collection, which will collect information related to the price, subscription rates, and plan characteristics of the internet service offerings of ACP participating providers as required by Infrastructure Act.

2. The Order fulfills the Congressional mandate to issue final ACP Transparency Data Collection rules regarding the annual collection of information related to the price and subscription rates of internet service offerings of ACP providers to which an ACP household subscribes, no later than one year after the enactment of the Infrastructure Act.

3. The ACP Transparency Data Collection that the Commission establishes will offer an opportunity to collect detailed data about the services to which households in the Affordable Connectivity Program chose to apply the affordable connectivity benefit. The ACP Transparency Data Collection will further leverage information required for the broadband consumer labels, helping to create efficiencies and minimize burdens on providers. The actions the Commission takes in response to Congress's directive will allow the Commission to determine the value being provided by the affordable connectivity benefit to households, and to evaluate our progress towards the program goal of reducing the digital divide, while also balancing the privacy interests of consumers and minimizing burdens on the ACP participating providers that serve the nearly 15 million households enrolled in the Affordable Connectivity Program.

II. Discussion

4. In the Order, the Commission establishes the requirements for the ACP Transparency Data Collection as required by the Infrastructure Act. The Commission discusses the entities required to submit data, the aggregated data to be collected, the timing of the collection, the publication of data, and other administrative aspects of the ACP Transparency Data Collection.

5. *Data Filers.* The Commission first establishes that all providers participating in the Affordable Connectivity Program with enrolled subscribers are required to submit data for the ACP Transparency Data Collection. The City of New York agrees that the Infrastructure Act requires all providers participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection, and the Commission did not receive any other comments regarding this requirement. The Infrastructure Act is clear that the Commission is mandated to collect data relating to the price and subscription rate of ''*each internet service offering of a participating provider*'' to which an eligible household subscribes. The statute has no limiting language to permit the Commission to exclude certain providers based on their size, location, subscribers served, or other characteristics, and the Commission sees no reason to permit any such exclusions. Moreover, requiring all providers to submit data for all subscribers will help the Commission study and evaluate the ACP-supported services received by all subscribers across a diverse group of providers that offer a variety of services and products across the United States, and give a transparent overview of the broadband plans subscribed to by the households enrolled in the Affordable Connectivity Program. The Commission therefore requires every provider participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection.

6. *Collection Structure, Aggregate Collection.* The Commission next establishes an aggregate collection that is designed to capture information about ACP-supported services consistent with the Infrastructure Act. In the *ACP Data Collection Notice,* 87 FR 37459, June 23, 2022, the Commission sought comment on whether to collect data at the subscriber level or aggregate level. In a subscriber-level collection, price and plan characteristics for each subscriber in the Affordable Connectivity Program would be submitted by providers, whereas in an aggregate-level collection, providers would submit to the Commission the number of subscribers for each unique plan for a given geographic area (such as by state). Given these options, the Commission proposed using the National Lifeline Accountability Database (NLAD) to collect subscriber-level data at every enrollment, explaining that such a collection may prioritize ease-of-use for service providers and minimize administrative burdens, and the Commission sought comment on that approach.

7. In response, many providers argue that an NLAD-based subscriber-level collection would be more burdensome than an aggregate collection. Specifically, providers comment that an NLAD-based subscriber-level collection would require all providers to ''pull and report each subscriber's personal information,'' retrain staff, and seek consent from existing subscribers, in addition to making substantial system updates. Commenters contend that potential subscribers that are already hesitant to enroll in government programs may have that hesitancy exacerbated by a request to share information with a government entity. Commenters also point out that NLAD would require modifications to accept the additional information. CTIA claims that the Infrastructure Act ''specifically directs the FCC to conduct the data collection in a manner that minimizes burdens on providers'' and that the record demonstrates that the NLAD-based subscriber-level approach would impose significant burdens. In addition, some commenters feel that a ''continuous'' NLAD-based subscriber-level collection is not consistent with the ''annual collection by the Commission relating to the price and subscription rates of each internet service offering'' as required by the Infrastructure Act. Conversely, several commenters suggest that an NLAD-based subscriber-level collection would be more beneficial than an aggregate collection when it comes to analyzing data, and would also ease administrative burdens. In sum, the record shows that most providers view an aggregate data collection as the least burdensome option.

8. Based upon the record, the Commission declines to adopt a subscriber-level approach for the ACP Transparency Data Collection at this time, finding that the subscriber-level approach as proposed by the Commission may conflict with the statutory requirement to stand up an annual collection and may be too administratively burdensome for subscribers and providers, particularly

with respect to obtaining subscriber consent to the collection of additional subscriber-specific data and in light of privacy concerns.

9. First, the Infrastructure Act requires the Commission to establish ''an annual collection,'' and the Commission finds support in the record for concluding that an aggregate collection would satisfy that requirement. As described further in the following, the collection the Commission establishes in the Order requires providers to submit information as of a particular date and by a deadline. There is little doubt that a collection with a single submission date in a year would be an annual collection. It is less clear whether a subscriber-level collection would comply with the statutory requirement. A subscriber-level approach, as the Commission proposes, would require providers to submit price and plan information each time a consenting subscriber enrolls in the program, which as NTCA argues, could happen so frequently that it would be difficult to describe as an annual collection. Additionally, a subscriber-level collection would possibly also require providers to separately collect data from subscribers who were already enrolled in the Affordable Connectivity Program prior to the data collection rules becoming effective. The Commission finds that the statutory language requiring an annual collection weighs heavily in favor of an aggregated approach.

10. Second, the Commission is mindful of the burdens associated with collecting subscriber consent to the collection of subscriber-specific data. The *ACP Data Collection Notice* pointed out that collecting subscriber-level data implicates statutory privacy regimes such as the Electronic Communications Privacy Act (ECPA), section 222 of the Communications Act of 1934, as amended, and section 631 of the Cable Communications Policy Act of 1984 (Cable Act), which limit the extent to which providers may disclose information about subscribers, including to the government. Each of these statutes allows providers to disclose subscriber-level information, however, if the subscriber consents, and every commenter in the record to address subscriber consent maintains that obtaining it is necessary to collect subscriber data not already collected under ACP rules.

11. Providers argue collecting consent from new and existing subscribers would be administratively burdensome, particularly for smaller providers. There is also a concern, particularly where mistrust of government programs is high, that seeking consent to disclose additional information from subscribers could have a chilling effect on subscriber participation in the Affordable Connectivity Program. The Commission recognizes that in order to require the collection of subscriber-level information, the Commission will not only need to develop a process for the collection of consent from any new subscriber, but the Commission will also possibly need to develop consent processes for subscribers that have already enrolled in the program. With nearly 15 million subscribers already enrolled, it could be an immense undertaking to collect consents from those subscribers, and there is no guarantee that subscribers would respond to a request to provide consent so that the provider could submit price and plan information at the subscriber-level. The Commission thus finds that the burdens associated with subscriber consent also weigh against adopting a subscriber-level collection at this time.

12. The Infrastructure Act does not address at what level of granularity the data should be collected, leaving it to the Commission's reasonable discretion to determine the most appropriate way of collecting the data required. The Commission recognizes the perception among many providers conveyed in the record that an aggregate-level collection is preferred and that an NLAD-based subscriber-level collection would be more burdensome as compared to an aggregate collection. The Commission must balance the need to meet statutory obligations to collect information about the internet services ACP households receive with the need to stand up an annual collection that minimizes burdens for providers and consumers. The Commission finds that the aggregate collection adopted herein strikes that balance by circumventing the need for an enrollment-based collection requiring subscriber consent.

13. The aggregate collection, however, is not without administrative burdens. The Commission disagrees with providers that argue that an aggregate collection would minimize the need for system development, as the Commission or USAC will still need to develop a system through which to collect data, even if it is not done through NLAD. Moreover, the Commission acknowledges that there are some providers who argue that using NLAD for the ACP Transparency Data Collection would not be burdensome. As explained by NaLA, adding only the limited fields of price and unique plan identifier to NLAD for a subscriber-level collection ''would not be unnecessarily burdensome.'' In light of these comments, and consistent with the *ACP Data Collection Notice* and the record, the Commission seeks additional comments in the FNPRM published elsewhere in the **Federal Register**, on the value of a subscriber-level collection through the ACP Transparency Data Collection and the processes for obtaining subscriber consent.

14. As discussed in more detail, for the annual aggregate data collection, providers will need to provide: (1) a unique identifier from the broadband label (or another unique identifier generated by the provider in the case that the provider is not required to file a broadband label for a plan, such as a bundled, grandfathered, or legacy plan) for each plan with an enrolled ACP subscriber; (2) total ACP households subscribed to each such plan; and (3) specified plan characteristics associated with each service plan—all aggregated by ZIP code. The Commission believes at this time that this approach best balances the burdens to collect and report this information with the need for a useful data collection.

15. *Unique Identifier and Broadband Labels.* The Infrastructure Act requires the Commission to ''rely on the price information displayed on the broadband consumer label . . . for any collection of data . . . under section 60502(c).'' In the *ACP Data Collection Notice,* the Commission seeks comment on the interplay between the broadband labels and the ACP Transparency Data Collection, including how to interpret the Infrastructure Act's requirement that the Commission relies on the price information contained in the labels. The broadband labels include a service plan's name, speed, and a unique identifier associated with that plan, along with information relating to monthly price, additional fees (one-time and monthly), and plan characteristics (upload and download speeds, latency, and data caps). Commenters overwhelmingly agree that the Commission shall rely on the upcoming broadband labels to collect plan price and characteristic information in order to reduce the burden that this collection places on providers. The Commission finds here that leveraging broadband labels for purposes of the ACP Transparency Data Collection not only fulfills the statutory requirement, but also makes the ACP data collection more efficient and minimizes the burden on providers by allowing them to cross-reference the information displayed on a broadband label.

16. To allow the Commission to best utilize the information contained in the broadband labels and to collect the data associated with each ACP-supported

plan, providers are required to submit a unique identifier for each service plan to which an ACP household applies the affordable connectivity benefit. As the Commission recognizes in the *Broadband Labels Order,* FCC 22–86, November 17, 2022, the use of a unique identifier is a means of collecting plan data while minimizing the burden on providers. Providers must submit as part of the annual collection of plan information a unique identifier that matches the plan's corresponding broadband label, where a broadband label exists. Where a broadband label does not exist (*e.g.,* grandfathered or legacy plans) or where a broadband label does not uniquely identify the plan to which an ACP household applies the benefit (*e.g.,* bundled service plans), providers are also required to create and submit a unique identifier for any plan to which an ACP household subscribes. In such a case, the provider should use the same format as for plans that are covered by a broadband label. Consistent with the *Broadband Labels Order,* providers will not be permitted to reuse unique identifiers. The Commission directs the Wireline Competition Bureau (Bureau or WCB) with support from the Office of Economics and Analytics (OEA) to develop guidance concerning when a provider is required to formulate a new unique identifier.

17. *Price Information.* The Commission requires providers to submit the same price information as required on the broadband labels. Providers will also, optionally, be able to submit the all-in price with and without the affordable connectivity benefit applied. In the *ACP Data Collection Notice,* the Commission seeks comments on the language in the Infrastructure Act that the Commission ''shall rely on the price information displayed on the broadband consumer label required under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c).'' The Commission also proposes that price information collected would ''include the monthly charge for the internet service offering that a household would be charged absent the application of the affordable connectivity benefit,'' and sought comment on that approach, as well as whether promotion pricing, introductory rates, pre-paid or post-paid, taxes and fees, associated equipment, or other discounts should be included as part of price, and whether such information should be separately itemized and collected.

18. The *Broadband Labels Order* requires providers to display the ''base monthly price for the stand-alone broadband service offering,'' whether the monthly price is an introductory rate, itemized provider-imposed recurring monthly fees (including fees for the rental or leasing of modem and other network connection equipment), and itemized one-time fees (such as a charge for purchasing a modem, gateway, or router, activation fees, deposits, and installation fees). Commenters agree that the price to be reported should reflect the amount that a household would pay absent the ACP discount, and the Commission finds that this price is reflected in the pricing requirements of the *Broadband Labels Order.* The Commission therefore finds that the price required to be submitted for this collection will reflect the same pricing elements as set forth in the *Broadband Labels Order.* Providers should use the same format for providing price information as they will for the broadband labels, and include: (1) the base monthly price for the broadband offering (in the case of bundled offerings, can be the total bundled price or separated out bundled price); (2) whether the monthly price is an introductory rate; (3) itemized provider-imposed recurring monthly fees (excluding government taxes or fees); and (4) itemized one-time fees.

19. Commenters were split as to whether the individual components within the price should be itemized, with some supporting the itemized reporting, while others opposed their inclusion, including because discounts or promotional rates may skew the analysis of average rates, and taxes and fees vary widely, making reporting difficult. To provide more transparency into the prices that households pay, as well as to be consistent with the *Broadband Labels Order,* the Commission requires itemized reporting of provider-imposed monthly recurring fees and one-time fees. The *Broadband Labels Order* requires that providers display whether ''the offered price is an introductory rate, and if so, the price the consumer will be required to pay following the introductory period.'' The Commission finds that requiring providers to submit the same pricing information about introductory rates and post-introductory rates for the ACP Transparency Data Collection will help minimize any confusion about comparing rates, allowing for a more detailed and accurate analysis of rates. The *Broadband Labels Order* also does not require providers to display the amount of any offered discounts (such as those for paperless billing, automatic payment (autopay), or any other discounts), or the amount of government taxes, and the Commission similarly does not require providers to submit such information as part of this data collection. While the Commission will not require providers to display discounts, will instead have optional fields for providers to voluntarily identify discounts.

20. *Broadband Equipment Fees.* The Commission requires providers to submit information about recurring or one-time modem or router rental fees as part of this collection. The Commission concludes that it is appropriate to collect information about recurring or one-time modem or router rental fees, not only because of support in the record, but also because aligning the collection with the requirements of the *Broadband Labels Order* is likely to minimize the burdens on providers. Many commenters suggest that the Commission collects the prices of associated equipment, which may increase transparency about pricing and what households are getting as part of their monthly fee. NTCA, on the other hand, argues that including information such as the price of associated equipment is not necessary as part of this collection because the fact that associated equipment costs are assessed on top of the monthly cost for service ''is not something with which policymakers are unfamiliar.'' The Commission agrees with commenters that pricing information about associated equipment is useful in determining the value provided by the Affordable Connectivity Program. Moreover, because the affordable connectivity benefit can be applied to ''associated equipment'' including modems, routers, hotspots, and antennas, information about the recurring costs for such equipment would help us understand the true price of ACP-supported services. To address NTCA's arguments, the Commission finds that to understand and assess the price of the ACP-supported service, the Commission needs to not only know the presence of charges for associated equipment, but the amounts charged. Furthermore, the *Broadband Labels Order* also requires providers to list monthly charges for the ''rental or leasing of modem and other network connection equipment'' as well as any one-time fees for the purchase of such associated equipment. The Commission finds that adhering to the itemized pricing requirements of specific recurring and one-time fees in the *Broadband Labels Order* is consistent

with the Infrastructure Act, makes for an efficient collection, and will not be burdensome to providers. To fully understand the effect associated equipment may have on price, providers must also submit information on whether a plan requires associated equipment and whether any required associated equipment is included in the base monthly price.

21. *Bundled services pricing.* The Commission also concludes that providers must submit information about the prices of bundled service offerings as part of this collection. The Commission finds that collecting price information for bundled plans supported by the ACP benefit is necessary to fulfill the statutory mandate to collect price information about ACP-supported plans, which includes bundled services. The Commission recognizes that the *Broadband Labels Order* gives providers the option to display pricing information for bundled plans, but as further discussed, the approach the Commission adopts for collecting bundle price information minimizes burdens by not requiring bundle component pricing to be reported separately while ensuring that the Commission collects the price information required. The Commission requires the base monthly price for a bundle to reflect the price for all services in the bundle and find that the prices for different services within the bundle do not need to be separated out. Some commenters urge the Commission to not ''require providers to identify separately the specific prices of discrete services within 'bundled' service packages,'' while other commenters preferred breaking down the costs within bundles. The Commission agrees with those commenters asserting that providers should not be required to separately apportion out the price for broadband and non-broadband components for purposes of the ACP Transparency Data Collection. The Commission finds that the base monthly price for a bundle should reflect the price for all services in the bundle, and the Commission defines bundle as the combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text. Given the complexity of apportioning out the price associated with the bundles that can be supported by the affordable connectivity benefit, the Commission finds that asking providers to report a single base monthly price for bundled plans minimizes the burden on providers and outweighs any benefit of requiring the provider to separately itemize different bundle pieces. While understanding pricing associated with the broadband portion of the bundle may help to understand the value as it relates to the data and speed also reported for that broadband service, the Commission recognizes that apportioning out the price of a broadband service and the voice component for this data collection may be unduly burdensome for providers. When reporting price information for a bundle, for example, if a bundle contains video, broadband, and telephone, and the base monthly price for that bundle is $70, then providers will need to report only $70 and not apportion out the broadband and non-broadband pieces. Providers must also adhere to the requirements for itemization of specific one-time and recurring fees proceeding, but providers will not be required to itemize prices for components that are not related to broadband service (*e.g.,* monthly rental for DVR, set-top box, phone charges).

22. The Commission declines to adopt Altice's proposal to permit providers to report pricing plan information as a series of ranges rather than providing precise information. Altice contends that allowing the submission of data in a range format rather than a more precise format will permit more transparency by allowing for an ''apples-to apples'' comparison of plans, as there may be more comparison points if plans are grouped by range rather than specific characteristics. The Commission does not find that reporting of prices and speeds in this manner would provide useful and accurate data for purposes of determining the prices of ACP-supported services. For example, Altice suggests a provider could put their plan in the $70–89.99 price range and further select a 50–100 Mbps speed range and 250–350 GB data cap. However, under this approach, one subscriber could be paying $89.99 for 50 Mbps speed and a 250 GB data cap, and another subscriber could be paying $70 for a 100 Mbps speed and 350 GB data cap, and those two plans would be deemed similar for comparison purposes, despite one plan offering significantly better service for a significantly lower price. The use of ranges could thus mask important distinctions between service offerings, making it difficult for the Commission to analyze trends in the program with precision.

23. *Optional reporting of all-in price information.* Considering the record, the Commission also finds that it would be effective to collect the all-in price—that is, the actual price that would be paid by the ACP household, absent the application of the affordable connectivity benefit. This price would include the price of any associated equipment, taxes, and fees as well as any non-ACP discounts or promotions offered to the customer. With respect to bundled service offerings, the all-in price should be the entire price of the bundled service, as this will allow us to get a view of the actual expenses paid by ACP households. The Commission finds that collecting the all-in price will help the Commission determine a household's actual broadband expenses, absent the ACP benefit. The Commission agrees with the City of Seattle that collecting all-in price will help the Commission determine progress towards reducing the digital divide as cost is ''one of the primary barriers to broadband adoption'' and collecting all-in price will better inform the Commission and local stakeholders about the pricing of ACP plans.

24. Additionally, collecting the all-in price with the affordable connectivity benefit applied (net-rate charged) will help the Commission determine the efficacy of the Affordable Connectivity Program. In the *ACP Data Collection Notice,* the Commission seeks comments on whether there were ''any other indicators of price that should be collected.'' The Competitive Carriers Association (CCA), CTIA, NCTA—The Internet & Television Association (NCTA), and USTelecom (collectively, the Associations) suggest that the Commission optionally permits providers to submit the ''net-rate charged'' as part of this collection, which they define as the ''recurring monthly price charged to ACP households . . . for ACP-supported services after application of any state or federal low-income benefits or any applicable promotions or discounts.'' They argue that collecting the net-rate charged would allow the Commission to determine the average out-of-pocket costs for ACP households. The Commission finds that information concerning ACP subscribers' out-of-pocket expenses is valuable to the Commission and will assist in determining the efficacy of the ACP benefit in reducing the digital divide, and adopt the Associations' proposal in part. Additionally, providers can optionally submit as part of this collection, the total number of subscribers paying $0 and the average ''all-in'' price for subscribers whose monthly bill is greater than $0, after all discounts and benefits, including the ACP benefit and Lifeline (where applicable), have been applied. By

limiting the collection of net-rate charged to subscribers with out-of-pocket expenses after the application of the affordable connectivity benefit, the Commission ensures that the Commission collects data that most accurately reflects the average out-of-pocket expenses paid by ACP subscribers.

25. The Commission acknowledges comments suggesting that collecting ''granular price information'' including all-in price would be burdensome and would present administrative or technical challenges. Given the mixed support for reporting such information, for purposes of this collection, providers will not be required to submit all-in price or the net-rate charged, and all-in price and net-rate charged will instead be optional fields that providers can choose to submit.

26. *Subscription Rate.* In the *ACP Data Collection Notice,* the Commission sought comment on the meaning of ''subscription rate'' in the statute, and proposed collecting the number of ACP households that subscribe to each unique internet service offering. The Commission further sought comment on what period of time and geographic regions should be covered for the collection. Commenters propose that in an annual aggregate collection, the Commission would collect data from providers once per year on a chosen data submission date on the prices of broadband plans, and the number of ACP subscribers for each plan (indicating the subscription rates of each plan), grouped by state, with the data current as of a reference or ''snapshot'' date. Commenters support aggregating data at a state level as of a specific snapshot date, arguing that it would be less burdensome as providers already track enrollment by state. Some commenters note that under this approach, it would not be necessary to disaggregate the data by month or quarter. Some commenters suggest that data should be organized at the ZIP code and county level, as that may help identify areas in need of broadband assistance. USTelecom, NTCA, and the National Rural Electric Cooperative Association support aggregating data at the ZIP code level as an alternative to aggregating at the state level, as ZIP codes are generally in providers' systems, which would reduce the burdens of data gathering. WISPA recommends that data be collected ''on a census block level, which would be consistent with collection efforts for Form 477 and would avoid imposing new burdens on providers familiar with collecting such information on a census block level.'' Conversely, INCOMPAS argues that an aggregate collection should not be done at the census tract or census block, as it may ''unnecessarily burden competitive providers who do not have the size and resources that incumbents typically enjoy.''

27. The Commission finds that the record supports aggregating the data at the ZIP code level where the subscriber resides as of a single snapshot date, and requires providers to submit subscription rate information consisting of the total number of ACP households that are subscribed to each service plan with an enrolled ACP subscriber. The Commission finds that aggregating at the ZIP code will minimize burdens on providers given that ZIP code information is typically in providers' billing systems, and will provide more informative data for the Commission than aggregating solely at the state level. The Commission will not require providers to submit aggregate data below the ZIP code level at this time. The Commission reminds providers that plans that do not require a unique identifier under the *Broadband Labels Order,* such as bundled or legacy plans, will still require a unique identifier for the purposes of this collection.

28. *Subscription Rate Subcategories for Lifeline, Tribal, and High-Cost.* In addition to collecting the total number of ACP households subscribed to each service plan with an enrolled ACP subscriber by ZIP code, the Commission requires providers to subdivide this data by submitting similar subscribership information for: (1) ACP households also enrolled in the Commission's Lifeline program; (2) ACP households that receive the ACP Tribal enhanced benefit; and (3) ACP households that receive the enhanced benefit for high-cost areas. The *ACP Data Collection Notice* not only proposed to collect total program subscribership data, but it also sought comment on collecting other subscription rate data, including data related to subscription trends. The *ACP Data Collection Notice* suggested using collected data to improve ACP outreach and analyze the connection between the Affordable Connectivity Program and the Lifeline program, and asked about collecting information relating to ACP performance and digital equity.

29. The record on collecting data relating to Lifeline does not oppose collection of aggregate subscribership information relating to ACP subscribers also enrolled in Lifeline for a particular plan. ACA Connects opposes collecting subscriber-level data to analyze the Lifeline-ACP connection, but it suggests that the Commission could facilitate analyzing the connection between Lifeline and the Affordable Connectivity Program by requiring providers to submit data on the number of ACP subscribers that are also enrolled in Lifeline. NCTA asserts that USAC ''presumably already has'' data to analyze the connection between Lifeline and the Affordable Connectivity Program and contends that ''data gathered from providers would be redundant.'' But it makes this argument in the context of opposing a subscriber-level collection and acknowledges that the Commission can conduct a variety of analyses relating to ACP efficacy, consumer outreach, and the digital divide with ''aggregated data for each internet service offering at the state-level.'' The Commission believes that collecting aggregated data on the number of ACP subscribers to a plan that are also enrolled in Lifeline for that plan would allow the Commission to understand the plans and prices that the combined Lifeline and ACP benefits are applied to and help the Commission to assess whether the combined Lifeline and ACP benefits contributes to any significant difference in plan choices compared to the ACP benefit alone. The Commission thus requires providers to submit subscription rate information consisting of the number of ACP households that are subscribed to each service plan with an enrolled ACP subscriber who are also enrolled in Lifeline for that plan. As with total subscribership data, this data is to be aggregated by ZIP code.

30. The Commission further requires providers to submit the number of ACP households receiving the Tribal enhanced benefit that are subscribed to each service plan with an enrolled ACP subscriber and the number of ACP households receiving the high-cost enhanced benefit that are subscribed to each service plan with an enrolled ACP subscriber, by ZIP code. Although the record does not discuss collecting these subcategories of subscribership data, several commenters support collecting data that would allow the Commission to understand the equity outcome and impacts of the Affordable Connectivity Program. Other commenters note that Tribal and rural areas often ''critically lack internet access comparable to the Commission urban counterparts.'' And NCTA states that aggregate data ''can help the Commission understand how ACP 'affects overall broadband adoption and how the program furthers the Commission's efforts to close the digital divide' just as much as individual data would.'' Collecting data on the number of ACP subscribers enrolled in each plan who receive the ACP Tribal or

high-cost enhanced benefits, by ZIP code, would help the Commission understand which plans and prices these enhanced benefits are applied to. This in turn would help the Commission assess whether the enhanced benefit contributes to plans that are of higher, equal, or lower quality compared to the average ACP plan. The Commission directs the Bureau, in consultation with OEA, the Office of Managing Director, and USAC, as appropriate, to establish the electronic format for the submission of aggregated data related to price, subscription rate, and plan characteristics, as well as the process by which providers can submit this aggregated data within the filing window and deadlines established herein. In developing the format, the Bureau should consider allowing providers to rely on the information prepared for broadband labels to the greatest extent possible.

31. *Optional Pricing-related Subscription Rates.* Furthermore, in addition to collecting the subscription rates of plans on which ACP subscribers are receiving Lifeline, ACP Tribal enhanced benefits, or ACP high-cost enhanced benefits, the Commission gives providers the option to submit by plan identifier and ZIP code the total number of subscribers that are on introductory pricing plans; the total number of subscribers that paid a set-up or activation fee; and the total number of subscribers that are paying $0 after all discounts and the ACP benefit are applied. In the *ACP Data Collection Notice* the Commission seeks comments on whether to collect other subscription rate data, whether there was information about subscribers that would be helpful to evaluate the performance of the Affordable Connectivity Program, and asked whether it would be valuable to collect information related to the growth rate.

32. There is support in the record for the collection of information relating to introductory prices. As several provider associations point out, there is value in understanding the extent to which ACP households rely on promotions and discounts, which include introductory rates. While some commenters oppose collecting the introductory rates paid by subscribers, they do not raise any objections to the optional collection of the number of subscribers who are paying introductory rates. The Commission finds that collecting the number of subscribers by plan identifier and ZIP code that are paying introductory rates will assist in determining the growth rate of the program and in evaluating the performance of the program. Knowing the number of ACP subscribers who are currently paying introductory rates will assist the Commission in determining the growth rate of the program, as it will help to understand the number of subscribers who may be subject to upcoming price increases, and may be at risk of dropping out of the program. Additionally, understanding the number of subscribers who are paying introductory rates will give the Commission greater insight into the number of new subscribers that each provider has under the ACP. This information will assist the Commission in evaluating progress towards the ACP program goal of reducing the digital divide and understanding whether ACP subscribers are predominantly new subscribers to broadband internet or are using the ACP benefit to subsidize service they previously paid for. Consistent with the comments of the provider associations, and to avoid burden associated with this more granular subscribership data, at this time the Commission makes the submission of the number of subscribers who are paying introductory rates or who are on time-limited promotional pricing plans optional for ACP participating providers.

33. Likewise, there is general support for the collection of information concerning set-up fees, and no objection to the collection of the number of subscribers who pay set-up fees. The Commission finds that collecting the total number of subscribers who paid a set-up fee by plan identifier and ZIP code will help the Commission understand the costs borne by subscribers to set up or activate service. Set-up fees, particularly in the context of fixed broadband service, can be a barrier to the adoption of broadband service. This information about the number of subscribers who are encountering set-up fees will help the Commission evaluate the efficacy of the ACP, and progress toward the program goal of reducing the digital divide. The Commission acknowledges comments that the mandatory collection of granular pricing and subscription rate data may impose a burden on providers, and therefore at this time will make the submission of the total number of subscribers who are paying set-up fees optional for ACP participating providers.

34. Furthermore, the Commission collects the total number of subscribers who are paying $0 after the application of the ACP benefit, and any non-ACP discounts or promotions, by plan identifier and by ZIP code. There was general support in the record for collecting the actual price of ACP service plans, and for collecting the subscription rate for various service plans. The Commission finds that collecting the total numbers of subscribers in a given ZIP code, and on a given plan, that are paying $0 will help the Commission evaluate the performance of the ACP. Knowing the number of subscribers in a given ZIP code and on a given plan that are fully covered by the ACP benefit will help the Commission understand the value that ACP households are obtaining from the federal subsidy and the progress the Commission is making toward reducing the digital divide. To minimize the burden on providers, the Commission makes the collection of this information optional at this time. Therefore, at this time, submission of the number of subscribers for whom the net-rate charged is $0 aggregated by ZIP code and plan identifier will be optional for ACP participating providers.

35. *Plan Characteristics.* In addition to collecting subscription rates for each plan by provider aggregated at the ZIP code level, the Commission also directs providers to submit service plan characteristics to fulfill requirements under the Infrastructure Act to collect ''data relating to price and subscription rate information.'' In the *ACP Order,* 87 FR 8346, February 14, 2022, the Commission recognizes that collecting service plan characteristics could help the Commission determine the value of the ACP to households and directed the staff to determine the appropriate plan characteristics for the collection. In the *ACP Data Collection Notice,* the Commission proposes using the ACP Transparency Data Collection to collect certain characteristics of ACP service plans. Collecting these data will help the Commission to understand the preferences of the ACP households, and to determine the value of the Affordable Connectivity Program, consistent with the Commission direction in the *ACP Order.* This part of the collection is also consistent with the requirement in the Infrastructure Act to collect ''data *relating* to price and subscription rate information.'' Specifically, in addition to the pricing information on the broadband label the Commission also requires providers to submit the additional plan information found on a broadband label. The Commission will also collect information not included on the broadband label; specifically, maximum advertised speeds, bundle characteristics, and associated equipment requirements for each plan with an enrolled ACP subscriber. Providers will be required to submit this

information for all plans with ACP subscribers; however, some of the fields on a broadband label may not be applicable to legacy plans and will be optional.

36. The Commission disagrees with the commenters who suggest that the Commission is not authorized to collect service plan characteristic information as part of this collection because plan characteristics are ''outside the scope'' of the Infrastructure Act. The Commission finds that plan characteristics are contemplated by the provision of the Infrastructure Act compelling the Commission to collect ''data relating to price and subscription rate information.'' The price of broadband service is determined in part by plan characteristics, including but not limited to upload and download speeds and data caps. In fact, the Commission has found a positive relationship between download speeds and price in the fixed broadband market, and between data caps and price in the pre-paid wireless market. Moreover, the collection of plan characteristic information, including associated equipment requirements, plan latency, and bundle characteristics, is necessary because such information will allow the Commission to contextualize service plan price information and determine the value being provided to eligible households by the ACP.

37. T-Mobile and Altice contend that the Infrastructure Act's direction to rely on the information contained in the broadband labels prevents the Commission from collecting any price or plan characteristic information not contained in the labels, including data cap and bundle characteristic information. The Commission declines to adopt this interpretation. The relevant provision of the Infrastructure Act provides that the Commission ''shall rely on the price information displayed on the broadband consumer label under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c) of the ACP Transparency Data Collection.'' The language of the statute notes that the Commission shall rely on the pricing information on the broadband label but does not state that the Commission is limited to the information displayed on the label. The Commission views this provision of the Infrastructure Act as working alongside the redundancy avoidance provision under section 60502(c)(3) of the (what rule) to avoid imposing duplicative collection requirements on providers, and as an instruction to utilize the price information in the labels where feasible.

38. *Speed.* In the *ACP Data Collection Notice,* the Commission proposes collecting speed information as one metric of plan characteristics covered by the ACP Transparency Data Collection. As speed is one of the information fields contained on the upcoming broadband labels, the Commission requires providers to submit data related to the speed of the services to which ACP households subscribe, in line with the Infrastructure Act's direction to ''rely'' on the broadband labels. Such speed data will include the actual (*i.e.,* typical) download and upload speed and typical latency data that providers will be required to include on the broadband labels, in addition to advertised speed.

39. Commenters generally support the collection of service plan speed. Commenters recognize the importance of broadband speed, describing it as among the ''key characteristics'' utilized by consumers in distinguishing between plans, and suggesting that the collection of speed information could allow the Commission to get a ''more accurate depiction of the service experience'' of ACP subscribers. Moreover, collecting speed information is crucial for the Commission to understand the value being provided by the affordable connectivity benefit, because the speed of a broadband service plan influences what internet applications a household can use.

40. Some commenters suggest that collecting both the advertised and actual speed of ACP service plans will allow the Commission to compare the speeds and get an accurate view of the ''service experience'' of ACP subscribers. Joint commenters Public Knowledge and Common Sense and the City of Seattle argue that by collecting both advertised and actual speed, the Commission will be able to ensure that subscribers are obtaining value from their benefit and are able to use the federal subsidy to receive their intended service. The Commission acknowledges that some commenters argue that collecting speed information or requiring both advertised and actual speeds would be burdensome to providers, but finds that the benefits of collecting such information outweigh any burdens. The Commission finds that the requirement to submit the actual speed of a service plan is not overly burdensome, as providers will be required to produce this information as part of their broadband labels. Furthermore, providers should be accustomed to producing advertised speed information because providers are already required to submit advertised speed as part of the Form 477 collection and provide such information to potential subscribers on their public facing websites in the ordinary course of business. As noted, the collection of advertised speed is also consistent with the requirement in the Infrastructure Act to collect ''data *relating* to price and subscription rate information.'' Therefore, providers will be required to submit the actual and advertised speeds of ACP service plans as part of this collection.

41. Consistent with the Broadband Data Collection definition of advertised speed, the Commission uses the maximum advertised upload and download speed for fixed providers, and the minimum advertised upload and download speeds for mobile providers. For actual speed, the Commission uses the definition adopted in the *Broadband Labels Order:* the typical upload and download speeds for a particular speed tier. For fixed broadband plans, the Commission directs providers to utilize the Measuring Broadband America (MBA) methodology or other relevant testing data. For mobile broadband plans, the Commission requires providers to submit the applicable technology type (*e.g.,* 4G, 5G), and direct providers to use the methodology adopted in the *Broadband Labels Order:* reliable information on network performance that is the result of their own third-party testing.

42. To ensure comprehensive data with respect to ACP-supported plans, the Commission requires providers to submit latency data consistent with the requirements in the *Broadband Labels Order.* Commenters argue that collecting latency data is overly burdensome and suggest that latency is not one of the ''key characteristics'' utilized by consumers in distinguishing between plans. The Commission finds that while there is merit to this argument with respect to grandfathered or legacy plans, which are neither marketed nor available to new consumers, the inclusion of latency on broadband labels warrants the inclusion of these data in the ACP Transparency Data Collection for currently marketed plans. The Commission clarifies that such information will not be required for legacy or grandfathered plans, although such information may be voluntarily submitted by providers.

43. *Data Caps and Connection Reliability.* In the *ACP Data Collection Notice,* the Commission seeks comments on whether to collect information on data caps for ACP-supported services, including the amount of the data cap and the number of ACP households that reached the cap. The Commission agrees with

commenters that information concerning data caps is critical to allowing consumers and the Commission to determine the value provided by a service plan. For example, ACA Connects, in supporting the collection of data cap information, characterizes data caps as among the ''key characteristics'' that subscribers rely upon when choosing between service plans. The City of Seattle also characterized data caps as among ''the most important data to collect on service plan characteristics.'' WISPA argued that the Commission should not collect data cap information, given the burden such a collection would impose on small providers. Like service plan speed, data caps inherently limit the use of a subscriber's broadband connection. A low monthly data cap can prevent subscribers from using applications requiring high bandwidth, including, for example, video streaming and remote education applications. The Commission disagrees with WISPA that the collection of data cap information will be overly burdensome to small providers. Providers will already be required to display data cap information under the *Broadband Labels Order* and frequently provide prospective customers with such information at the point of sale and on their public facing websites. Accordingly, the Commission adopts the proposal to collect information on service plan data caps.

44. There were no objections in the record to the Commission proposals to collect information on the number of subscribers who have reached their monthly data cap and the average amounts by which subscribers have exceeded their cap, and the Commission adopts those proposals herein. These are necessary pieces of information that will allow the Commission to contextualize the price information obtained through this collection and are also consistent with the requirement in the Infrastructure Act to collect ''data *relating* to price and subscription rate information.''

45. In addition, the Commission finds that collecting information on the charges to subscribers to obtain additional data once the cap has been exceeded is necessary to obtain an accurate view of the month-to-month cost ACP subscribers are paying. Accordingly, this additional information about the average overage amount for subscribers on an annual basis will allow the Commission to determine value that subscribers are obtaining from the affordable connectivity benefit, and whether the federal subsidy is covering data cap overage fees or is otherwise helping reduce the digital divide. The Commission therefore requires providers to submit for each plan with at least one subscriber, aggregated at the ZIP code level: the data cap (including de-prioritization and throttling), the number of subscribers who have exceeded the data cap in the previous month, the average amount by which subscribers have exceeded their cap in the previous month as part of the annual aggregate collection of plan characteristic information, and any charges for additional data usages along with the relevant increment (*e.g.,* 1 GB, 500 MB). Providers will be required to report the number of subscribers exceeding the data cap, the average amount by which subscribers exceeded the cap, and the average overage amount paid for the month prior to the snapshot date.

46. In the *ACP Data Collection Notice,* the Commission proposes to define data cap to include data usage restrictions on both pre-paid and post-paid plans, and adopts this proposal. In so doing, the Commission rejects NaLA's argument that the Commission instead shall define a data cap as the ''ultimate level of data usage above which the subscriber has no data service.'' Both throttling (soft caps) and the termination of service if a household exceeds the data allowance impact the ability of consumers to use the service as intended. Furthermore, providers in their advertising materials characterize throttling-based data caps as ''data allowances'' or ''data usage plans.'' To evaluate the value of the affordable connectivity benefit for households, it is important to consider the view of subscribers, and there is support for the Commission finding that consumers view data termination, and throttling and de-prioritization, effectively as a cap on their usage, which impacts their use and enjoyment of the service. Accordingly, as part of the ACP Transparency Data Collection the Commission will collect from providers information on both data caps and data usage restrictions, such as de-prioritization and throttling, consistent with the definition provided in the *ACP Data Collection Notice.*

47. At the same time, the Commission declines to require providers to submit connection reliability data. In the *ACP Data Collection Notice,* the Commission asks whether it should collect additional plan characteristics beyond those related to speed, bundles, and data caps. Some commenters propose that the Commission requires providers to submit information on connection reliability to ''help ensure that public money obtains the intended services.'' The Commission recognizes that determining and reporting these data for purposes of the ACP Transparency Data Collection could be unduly burdensome and could require providers to undergo a highly technical determination to be able to produce these data. Although the Commission finds that the reliability of a broadband service is a key characteristic in determining the value of the ACP-supported service and this metric would help to evaluate whether low-income consumers are receiving the reliable service they deserve through the Affordable Connectivity Program, requiring providers to collect and report reliability data through this collection would be an overly burdensome undertaking, particularly for small providers, and would be difficult to implement at the aggregate level.

48. *Bundle Characteristics.* In the *ACP Data Collection Notice,* the Commission seeks comments on whether to collect information on the characteristics of bundled service offerings (*e.g.,* ''triple-play'' bundles, unlimited voice/text/data plans), including information about the channels offered on bundled video services. A number of commenters supported the collection of bundle characteristics. Others opposed the collection of bundle characteristics, arguing that the Commission lacks the authority to collect bundle characteristics or that such a collection would be burdensome and without value to the Commission. As mentioned, the Commission interprets the Infrastructure Act to permit the Commission to collect plan characteristic information, including bundle characteristics. The fact that the Infrastructure Act refers to a ''*broadband* transparency'' collection is not determinative in our view, as the Infrastructure Act also directs the Commission to collect ''data *relating* to price and subscription rate information.'' The Commission acknowledges comments describing the burdens on providers, but finds that identifying whether a service is bundled, and the type of services that are bundled together, is essential for providing context for the service plan information the Commission receives through the ACP Transparency Data Collection. Understanding that households are applying their affordable connectivity benefit to a plan that includes bundled voice and/or video service tells the Commission about the services offered by a provider and how ACP households are taking advantage of the benefit. The affordable connectivity benefit can be applied to the voice and text portions of a bundled service plan, and such information is therefore

essential to determining the value the affordable connectivity benefit provides enrolled households. Therefore, the Commission requires providers to identify whether a service is bundled and the type of the bundle (*e.g.,* voice, video), and to submit voice or text characteristic information for bundled service offerings, including those services included with mobile broadband. Specifically, the Commission requires providers to submit as part of the annual collection of plan characteristic information the total number of voice minutes and the total number of text messages allotted on a monthly basis, or whether a voice or text offering includes unlimited minutes or text messages.

49. *Legacy Service Plans.* In the *ACP Data Collection Notice* the Commission proposes collecting information, including price and plan characteristic information, from all ACP participating providers, which would include legacy service plans. Altice argues that ''grandfathered plans and other plans that are no longer offered, should not be considered 'internet service offerings' for purposes of this data collection because they are not offered to 'prospective ACP subscribers.' '' The Commission disagrees with this argument, as the Infrastructure Act is clear that the Commission must collect information related to the price and subscription rates of ''each internet service offering of a participating provider . . . to which an eligible household subscribes,'' and this language clearly does not exclude grandfathered or legacy plans. The Commission acknowledges however, that there are special circumstances surrounding legacy offerings that merit differential treatment, including lower numbers of subscribers, the fact that they are no longer currently marketed, and the burdens associated with collecting certain information. Therefore, the Commission will not require providers to submit information concerning typical speed or latency. The Commission will also not require providers to submit information on the introductory monthly charge, the length of the introductory period, if the monthly charge requires a contract, the number of months of a contract (if applicable), and the one-time fees required at purchase.

50. The Commission will, however, require providers to create and submit unique plan identifiers for legacy service plans in a same or similar format as those used in the broadband labels. Lumen and USTelecom argue that the Commission shall not use the ACP Transparency Data collection to impose a requirement to produce broadband labels on grandfathered or legacy plans. The Commission clarifies that while providers will need to submit many of the plan and pricing characteristics contained in the labels, they will not be required to create or display a broadband label that the *Broadband Labels Order* would not otherwise require.

51. *Affordable Connectivity Program Performance Metrics.* In the *ACP Data Collection Notice* the Commission proposes to use information in the ACP Transparency Data Collection for the evaluation of the performance of the ACP in achieving the goals set in the *ACP Order* and sought comment on the performance metrics the Commission shall collect to measure the performance of the ACP. The goals the Commission establishes for the ACP are to (1) reduce the digital divide for low-income consumers; (2) promote awareness and participation in the ACP; and (3) ensure efficient and effective administration of the ACP. For each of these goals, the Commission establishes performance metrics and methods to measure progress.

52. The information collected through the ACP Transparency Data Collection will help the Commission to evaluate the efficacy of the ACP, and to determine the value that ACP enrolled households are obtaining from their benefit. Data on the price and characteristics of plans with ACP enrolled households will help the Commission understand the value that ACP enrolled households are obtaining from the federal subsidy, including which plan characteristics are covered by the benefit, and whether the plans being subsidized are of adequate quality to engage in telework, telehealth, or remote education.

53. *Digital Divide Metrics.* In the *ACP Data Collection Notice,* the Commission ask whether it shall, through the ACP Transparency Data Collection, collect information about whether a subscriber is a first-time subscriber to the provider or a first-time subscriber for fixed or mobile broadband, or whether a household was subscribing to multiple broadband services. In the *ACP Order,* the Commission finds that understanding broadband adoption by first-time subscribers would help measure the Commission's progress toward its first goal of narrowing the digital divide for low-income consumers. Commenters opposed the collection of these metrics as part of the ACP Transparency Data Collection, arguing that providers do not collect this information as a matter of course, and that it would be a substantial burden to submit this information. The Commission still recognizes the utility of such information in permitting non-profit organizations, local and state governments, and the Commission to more effectively target ACP outreach efforts to underserved households and to fulfill the requirements to collect data necessary for determining the program's progress toward the goal of narrowing the digital divide. But the Commission also finds that the ACP Transparency Data Collection might not be the best vehicle for collecting information about first-time users as it could require providers to survey or otherwise assess and report on broadband services the household is receiving beyond those supported by the affordable connectivity benefit. Therefore, although the Commission declines to require the production of such information as part of the ACP Transparency Data Collection at this time, the Commission seeks further comment on how to collect digital divide data in the FNPRM. The Commission also, as discussed, requires providers to submit performance- and equity-related data on the number of ACP subscribers enrolled in Lifeline and ACP subscribers who receive the ACP Tribal or high-cost enhanced benefits. The Commission also reiterates its direction to Commission staff to consider other ways to collect information to determine progress toward the goal of narrowing the digital divide, such as broadband adoption rates for first-time subscribers, and increases in enrollments in areas with low broadband penetration rates. More specifically, the Commission directs the Bureau, with support from OEA, the Consumer and Governmental Affairs Bureau (CGB), and USAC, to explore possible approaches proposed by commenters, such as statistical sampling, or industry or consumer surveys, to collect information about the extent to which ACP subscribers are first-time broadband subscribers, first-time fixed broadband subscribers or are subscribing to multiple broadband services.

54. *Additional Performance Metrics.* In the *ACP Data Collection Notice,* the Commission asks what other data should collect to measure effectiveness in increasing awareness and participation or the administrative efficacy of the ACP. Public Knowledge and Common Sense jointly suggest that the Commission collects information on the ACP enrollment process, connected device offerings, and availability of low-income plans. The City of New York and the Connecticut State Broadband Office propose that the Commission

collects information on the availability and performance of service plans. Providers object to proposals to collect information on providers' enrollment processes, connected device offerings, or plan availability and performance. With consideration of the weight of the record, and the administrative and technical difficulties associated with the collection of information related to awareness of and participation in the Affordable Connectivity Program and the efficient and effective administration of the program, the Commission declines at this time to require providers to submit information on the enrollment process, connected device offerings, plan availability or performance. However, the Commission recognizes the value of information concerning the ACP enrollment process, and seek further comment on collecting data on the enrollment process, connected device offerings, and the availability of low-income plans, and any burdens on providers or subscribers associated with collecting such information. The Commission also directs the Bureau, with support from OEA and USAC, to explore collecting information regarding ACP enrollment through surveys of ACP participating providers, subscribers, and other stakeholders. Additionally, USAC has recently addressed some of these requests through updates to the Companies Near Me tool. The updated tool now shows which providers offer devices and which providers have indicated to USAC they offer plans fully covered by the standard affordable connectivity benefit. Moreover, as described above, the Commission is collecting information on the number of ACP subscribers who pay $0 after application of the discounts and the ACP benefit.

55. *Subscriber Privacy.* In the *ACP Data Collection Notice,* the Commission requests that commenters identify any privacy concerns associated with subscriber- and aggregate-level collections of price, subscription rate, and plan characteristic information. Commenters focus on the privacy implications of a subscriber-level collection, with several commenters arguing that collecting aggregated data avoids privacy concerns that arise from collecting and processing information about individual subscribers. The Commission finds that the collection structure the Commission adopts in this Order, under which providers will submit aggregated data, reduces subscriber privacy concerns as compared to other collection options. Similarly, because the Commission is not collecting as part of the ACP Transparency Data Collection subscriber personally identifiable information (PII) or records or other information pertaining to a subscriber, this collection does not implicate privacy statutes such as the Privacy Act of 1974, ECPA, section 222 of the Communications Act of 1934, as amended, or the Cable Act.

56. Additionally, privacy concerns associated with a subscriber-level collection could potentially be mitigated by adhering to existing safeguards or crafting new ones. For instance, the Commission and USAC currently protect IT systems and resources, including databases containing PII, with robust technical and physical measures, following the standards and guidelines of the National Institute of Standards and Technology (NIST) framework. The Commission also protects PII disclosed to third parties through its use of Memorandums of Understanding and Information Sharing Agreements. Additionally, privacy concerns related to a subscriber-level data collection could be addressed by limiting the amount of subscriber-level data collected to a few relevant variables; modifying the applicable Systems of Records Notice (SORN), Privacy Act Statement, and NLAD Access Agreement; and requiring subscribers' consent to the collection of additional subscriber-level data as part of the ACP Transparency Data Collection. The Commission seeks additional comment on subscriber consent in the FNPRM.

57. *Timing of Collection, Inaugural Collection.* Although the Infrastructure Act requires the Commission to issue final data collection rules by November 15, 2022, it does not specify when the inaugural or subsequent data collections should occur, leaving the matter largely one of agency discretion. For the inaugural collection, there must be adequate time for the agency to receive appropriate administrative review and build the collection system and for providers to review the collection requirements and rules, adapt their processes and systems to compile accurate data, and then to submit the data. The Commission therefore delegates to staff responsibility to set an annual date by which all ACP providers must submit required data as well as establish a reference or ''snapshot'' date for the data submitted by the providers.

58. *Data Submission Date.* The record regarding the inaugural collection reflects a concern that providers, especially smaller providers, have adequate time to comply. ACA Connects suggests that an aggregate, annual collection could commence soon after the Commission receives OMB approval but also argues that collecting the data could ''easily consume'' six months and that OMB approval could take six months or longer. It further asserts that the Commission should take ''special care to ensure that smaller providers with more limited resources have ample time to implement the collection.'' The Commission shares the view that providers need adequate time to implement the collection, both to prevent undue provider burden and to ensure that the Commission receives quality data. The Commission therefore delegates to the Bureau the authority to establish a reasonable data submission date for the inaugural collection, which will be no earlier than ninety (90) days after the Commission announces that OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Bureau to take into account other ACP deadlines or significant dates when setting the data submission date so as to minimize burdens on providers.

59. The inaugural data submission date will likely occur before providers will be required to display broadband labels, and providers will be required to submit ACP Transparency Data Collection data to the Commission separately from the labels, despite the overlap between the information to be collected under the Order and that to be displayed on the labels. The Commission finds that it is appropriate to collect data before the initial publication of, and separately from the broadband labels because the Infrastructure Act includes language suggesting that Congress intended a rapid collection of data. Further, given the potential value of ACP Transparency Data Collection data to evaluating the utility of the Affordable Connectivity Program and progress toward reducing the digital divide, this data should be collected as soon as is feasible. Initiating the collection before the initial implementation of the broadband labels requirement may also allow the Commission to publish information that could be useful for participants in newly established ACP outreach efforts such as the Outreach Grant Program or Your Home, Your internet pilot program.

60. *Rule Revisions.* A relatively rapid data collection is suggested by section 60502(c)(2) of the Infrastructure Act, which states that ''[n]ot later than 180 days after the date on which rules are issued . . . the Commission shall revise the rules to verify the accuracy of the data submitted pursuant to the rules.'' The *ACP Data Collection Notice* sought

comment on how to interpret this provision, and the only commenters to address the issue contend that section 60502(c)(2) of the Infrastructure Act does not require the Commission to begin the data collection within 180 days of the issuance of final data collection rules. ACA Connects maintains that the Infrastructure Act does not indirectly specify a timeframe for the commencement of the inaugural collection by requiring the Commission to revise its rules within 180 days. According to ACA Connects, the requirement that the Commission ''revise its rules to verify the accuracy of the data submitted pursuant to the rules'' does not mean that the Commission must collect data prior to revising the rules: ''[i]nstead, the Commission can adopt measures that will improve its ability to 'verify' the accuracy of data that is submitted in the future.'' ACA Connects also asserts that to read the Infrastructure Act otherwise would result in a futile exercise because it is ''simply unrealistic to believe the Commission could not only complete a data collection, but also complete a rulemaking to 'verify the accuracy' of the data collected'' in 180 days.

61. The Commission believes there may be merit in ACA Connects' interpretation of section 60502(c)(2) of the (what act), under which the statute would not require the Commission to collect data through the ACP Transparency Data Collection before revising its rules within the 180-day timeframe. The Commission thus seeks comment in the FNPRM on how the Commission can improve the rules set forth in the Order, including how to verify the accuracy of provider data. The Commission also delegates authority to the Bureau to issue a supplemental notice, if necessary, to enhance the record and to propose revised data collection rules in accordance with the 180-day timeframe.

62. *Data Reported as of Snapshot Date.* In addition to directing the Bureau to establish an annual data submission date, the Commission delegates to the Bureau the authority to establish a reasonable annual snapshot date or reference date for the submission of certain data. The *ACP Data Collection Notice* sought comment on the ''filing window'' for the collection and asked whether the Commission shall ''require providers to submit data for subscribers enrolled as of a particular date.'' Commenters generally support submitting data based on, or current as of, a snapshot date. The Commission agrees that submitting data as of a snapshot date is appropriate, and requires providers to do so. The Commission directs the Bureau to establish a snapshot date that is no less than sixty (60) days prior to the data submission date. In other words, there must be at least sixty days between the snapshot date and the data submission date.

63. *Subsequent Collections.* As for collections subsequent to the inaugural collection, there was little comment other than support for an annual collection based on a snapshot date. The Commission directs the Bureau to issue a Public Notice each year reminding providers of the snapshot date and data submission date. The snapshot date and data submission date should account for other ACP deadlines or significant dates to minimize burdens on the Commission, USAC, and providers.

64. *ACP Wind-Down Considerations.* In the *ACP Order,* the Commission delegates authority to the staff to establish procedures for the wind-down of the Affordable Connectivity Program. In addition to the delegations and directions in the *ACP Order,* the Commission directs Commission staff to account for the ACP Transparency Data Collection in the wind-down procedures. Staff may, if appropriate, revise collection procedures or waive rules to avoid collection activities that may be unnecessary or lack utility due to the forecasted end of the Affordable Connectivity Program.

65. *Publication of Data.* The Infrastructure Act not only requires the Commission to collect data relating to price and subscription rates but also directs the Commission to ''make data relating to broadband internet access service collected . . . available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information or proprietary information.'' The *ACP Data Collection Notice* sought comment on what data should be made public, how privacy and provider interests can be protected, and the format, method, and timing of publication. Based on the record, at a minimum, the Commission makes publicly available, aggregated at the state level, non-provider-specific data on the average or median prices of plans in which ACP subscribers are enrolled within designated download speed tiers and data on the number of subscribers of plans within those tiers. The Commission directs OEA and USAC to make these data available in a downloadable format (*e.g.,* Comma Separated Values file) not more than six months after the submission date set forth by the Bureau in a Public Notice. Making data available in this fashion will provide greater transparency into broadband services provided by ACP participating providers while protecting personally identifiable information and proprietary information. As further discussed, the Commission also finds that it would be valuable to publish data at the ZIP code level after the initial publication of state-level information, provided that it is done in a manner that protects subscriber information and does not result in the publication, directly or indirectly, of provider-specific information.

66. *Publishing Data While Protecting Against the Disclosure of Personally Identifiable Information or Proprietary Information, Defining Personally Identifiable Information (PII).* The Infrastructure Act requires the Commission to make data available to the public ''without risking the disclosure of personally information or proprietary information'' and further directs the Commission to define ''personally identifiable information'' (PII) via notice and comment rulemaking. Accordingly, the Commission seeks comments on how it shall define the term, and adopt here the definition of PII used by OMB in, among other authorities, OMB Circular A–130 and OMB M–17–12: ''information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.'' The Commission finds that this definition is consistent with the approaches suggested in the record. Further, although the ACP Transparency Data Collection does not currently contemplate the collection of subscriber-level data, the Commission finds that this definition is flexible enough to ensure the protection of subscriber privacy if a subscriber-level component is made part of the collection in the future.

67. Three commenters propose definitions of ''personally identifiable information'' for purposes of the ACP Transparency Data Collection. The Connecticut State Broadband Office recommends the Commission uses the definition of ''personally identifiable information'' that the Commission adopted in 2016, supplemented by U.S. Department of Labor restrictions on the publication of a consumer's telephone number, race, and birth date. In 2016, the Commission defined ''personally identifiable information'' as ''any information that is linked or reasonably linkable to an individual or device'' and further stated that ''information is linked or reasonably linkable to an individual or device if it can reasonably be used on its own, in context, or in combination to identify an individual or device, or to logically associate with

other information about a specific individual or device.'' The Department of Labor guidance further specifies that gender, race, birth date, and geographic indicator are data elements that could be used to indirectly identify a person. The Connecticut State Broadband Office asserts that this definition allows the Commission to refine or include additional data elements as technology advances and more personal information is available online.

68. The City of New York suggests considering the definition of ''identifying information'' in the New York City Administrative Code: ''any information obtained by or on behalf of the city that may be used on its own or with other information to identify or locate an individual.'' Similarly, Common Sense advocates adopting a definition of ''personally identifiable information'' that is consistent with the definition of ''personal information'' used in the California Consumer Privacy Act. The Act defines ''personal information'' as ''information that identifies, relates to, or describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.''

69. These definitions are all consistent with OMB's definition of ''personally identifiable information,'' which the Commission cites in the *ACP Data Collection Notice* and which the Commission adopts here to comply with the Infrastructure Act. Moreover, this definition is broad enough to promote subscriber trust that the Commission will not publish information that could identify a specific subscriber.

70. *Protecting PII in Published Reports.* The Infrastructure Act not only requires the Commission to define PII but also directs to publish data collected without risking the disclosure of PII. The *ACP Data Collection Notice* sought comment on ''how the Commission shall minimize the risk that such information would be disclosed when making data available to the public'' and proposed protecting PII by publishing only aggregate-level data. The record strongly supports this proposal, and the Commission adopts it. Moreover, publishing aggregate-level data—regardless of whether the Commission collects aggregate-level data, subscriber-level data, or a hybrid of the two—aligns with other methods of protecting PII suggested in the record. The Connecticut State Broadband Office, for instance, recommends not disclosing sensitive subscriber information such as a subscriber's social security number, household income, and participation in a government income subsidy program. Publishing only aggregated data is consistent with that recommendation.

71. *Interpreting Proprietary Information.* In addition to directing the Commission to protect PII when publishing data, Congress directed the Commission not to risk the disclosure of proprietary information when making data available to the public. Because the Infrastructure Act does not define ''proprietary information,'' the Commission seeks comments on how to interpret the term. Consistent with Commission practice and as further stated, the Commission directs Commission staff, when making information available to the public, to make sure to guard potentially proprietary and competitive information by not disclosing information that could directly or indirectly identify a specific provider.

72. As an initial matter, the record supports interpreting ''proprietary information'' in the section 60502(c)(4) context to mean the proprietary information of providers, rather than the broad universe of information protected by section 222(a) of the Act or customer proprietary network information protected by section 222(c). As for what ''proprietary information'' means in the context of the ACP Transparency Data Collection, providers and those affiliated with them tend to take a broad view. ACA Connects asserts that because the Commission must avoid even ''risking'' the disclosure of proprietary information, the Commission must err on the side of non-disclosure of any information that might be deemed proprietary. According to ACA Connects, the Commission should thus refrain from disclosing ''any provider-specific data, including any data that can be linked to an individual provider.'' More specifically, several commenters assert that proprietary information covers competitively sensitive provider information, which includes pricing data, subscription rates for broadband service offerings, and ''the churn rate for the provider or for a particular internet service plan offered by an ACP provider.'' If, as ACA Connects contends, the Commission discloses publicly this competitively sensitive data—*e.g.,* each provider's total number of ACP subscribers in each area or each provider's number of ACP subscribers enrolled at different speed tiers—it could chill providers from participating in the Affordable Connectivity Program. ACA Connects also asserts that publishing provider-specific information is not necessary to deliver the transparency the Infrastructure Act requires.

73. Other commenters recommend a narrower interpretation of proprietary information, albeit advocating a relatively broad general definition. As for the latter, the Connecticut State Broadband Office asserts that the Commission looks to the U.S. National Institute of Standards and Technology's (NIST) definition of proprietary information as well as section 0.457 of the Commission's rules. NIST defines ''proprietary information'' as

> Material and information relating to or associated with a company's products, business, or activities, including but not limited to financial information; data or statements; trade secrets; product research and development; existing and future product designs and performance specifications; marketing plans or techniques; schematics; client lists; computer programs; processes; and know-how that has been clearly identified and properly marked by the company as proprietary information, trade secrets, or company confidential information. The information must have been developed by the company and not be available to the Government or to the public without restriction from another source.

As for section 0.457 of the Commission's rules, it makes certain materials presumptively nonpublic and provides that a person may request non-disclosure of ''materials contain[ing] trade secrets or privileged or confidential commercial, financial or technical data'' under section 0.459 of the Commission's rules if the materials are not presumptively nonpublic. Although citing those general definitions, the Connecticut State Broadband office asserts that the Commission shall only withhold confidential information from public view if disclosing the information would impair its ability to obtain necessary information in the future or if disclosing it would cause substantial harm to the competitive position of the submitter of the information.

74. The Connecticut State Broadband Office further generally advocates that the Commission makes ''provider data publicly available'' and asserts that ''ACP elements such as price of plans, plan descriptions, and device offers would not substantially harm the government's ability to obtain future information or cause substantial harm to a provider's competitive position.'' According to the commenter, ''it is only right that the enormous subsidies provided to ISPs through the affordable connectivity program be published and analyzed.'' Similarly, the City of Seattle argues that all pricing data, subscription rates, and service plan data should be publicly released on a provider-specific basis.

75. Unlike in the case of PII, the Infrastructure Act does not require the Commission to define ''proprietary information'' for purposes of the ACP Transparency Data Collection, and the Commission declines to do so because it is not necessary to issue a general definition to ensure that provider interests are protected. The Commission is also disinclined to find that *all* provider-specific data about broadband prices and plan characteristics are necessarily proprietary. For example, USTelecom in its comments has not established that the price of a plan is proprietary, and the broadband labels will include data on plan characteristics, including price.

76. *Protecting Proprietary Information in Published Reports.* Consistent with Congress's directive to avoid risking the disclosure of provider information, and consistent with past Commission practice, the Commission protects provider proprietary and competitively sensitive information by ensuring that any data published cannot be associated directly or indirectly with a specific provider. To effectuate this principle, the Commission directs Commission staff to: (a) publish data aggregated at the state level and only publish data at lower levels of geographic aggregation if doing so sufficiently protects provider identity; (b) publish average or median prices; and (c) publish such data by speed tiers. The Commission is persuaded, however, that the Infrastructure Act militates against the publication of plan-related subscribership data that could be linked to a particular provider, and the Commission clarifies that it does not intend to release as part of the ACP Transparency Data Collection provider-specific data, consistent with its practice not to publish broadband-related data specific to providers in the internet Access Services Reports. ACA Connects, NCTA, and USTelecom state without rebuttal that the number of ACP subscribers that subscribe to a particular plan is competitively sensitive. Although the Commission declines to find that a provider's subscriber numbers are proprietary information in this context, the Commission has protected similar competitively sensitive provider information in other contexts.

77. As with protecting PII, one way to protect provider proprietary information is to publish aggregated data, and doing so is supported by the record. ACA Connects further suggests protecting proprietary provider information by ''disclos[ing] averages or median prices for all ACP-subsidized services within various speed ranges, rather than provider-by-provider disclosure'' because ''[e]ven anonymized provider-level disclosures (*e.g.,* 'Provider A' v. 'Provider B') may be traceable to a specific provider based on their offering of unique speeds or pricing plans and should thus be avoided.'' WISPA suggests a similar approach, albeit for the collection of data rather than its publication, and recommends ''allow[ing] participating providers to report subscription rates by tier with price ranges for each of the provider's geographic locations.'' The Commission finds merit in ACA Connects' proposal, under which it publishes average or median prices for all plans based on download speed tiers rather than by provider. This would sufficiently protect provider information while providing meaningful data to the public, and the Commission directs OEA, in coordination with WCB and USAC, to publish non-provider-specific aggregated average or median price data by download speed tier.

78. *Geographical Aggregation Level.* Although commenters overwhelmingly support publishing aggregated data to protect PII and proprietary information, there were marked disagreements about what level of aggregation was appropriate. Several commenters, all provider-affiliated, argue that aggregated data should be published at the state level because publishing more granular data risks disclosing PII or proprietary information ''by making it possible to link 'price' and 'subscription rate' data to a specific provider'' or because ACP participating providers currently provide data to USAC and the Commission at the State or Study Area Code level. Other commenters advocate for publication at the ZIP code or county level because it is more useful to the public and it is how aggregated ACP data are currently made available by USAC. As explained by the Connecticut State Broadband Office, providing ZIP code level data to the public ''makes it easier for state governments and providers to identify the areas in need of broadband assistance.'' And some commenters recommend that ACP Transparency Data Collection data be published at a smaller-than-ZIP-code level, such as by Census tract, neighborhood, or individual blocks.

79. The Commission finds that publication of aggregated data at the state level is supported by the record and will protect both subscriber and provider information. The Commission thus directs OEA, in coordination with WCB and USAC, to make aggregated data available to the public at the state level. Further, because the public may find more granular data more useful, and because providers will be required to submit data aggregated by ZIP code, the Commission directs OEA, in consultation with WCB, OGC, and USAC to publish data by ZIP code, but only if doing so will not directly or indirectly disclose subscriber PII or result in the publication of provider-specific data. The Commission notes that publication of data at more granular levels than ZIP code could be an option were the Commission collects ACP data at lower levels of aggregation or on a subscriber basis in the future. But regardless of the level at which data is collected, any publication of data must not be specific to any provider even if that requires aggregation of data at levels higher than that at which it is collected.

80. *47 CFR 0.459.* The Infrastructure Act states that Commission protection of PII and proprietary information must be consistent with section 0.459 of the Commission's rules. Section 0.459 provides procedures for requesting that information submitted to the Commission be withheld from public inspection. For instance, if a person submits materials to the Commission but wants the materials withheld from public inspection on the grounds that they contain trade secrets or privileged or confidential commercial, financial, or technical data, and the materials do not fall within the list of presumptively nonpublic materials in section 0.457(d)(1) of the Commission's rules, the person must submit a request for non-disclosure under section 0.459. Unless the Commission provides abbreviated means for requesting confidential treatment, a request under section 0.459(a) must contain a statement of the reasons for withholding the materials from public inspection, including an ''explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged'' and an ''explanation of how disclosure of the information could result in substantial competitive harm.'' The Commission seeks comments on how section 0.459 could be incorporated into its processes for publishing information collected through the ACP Transparency Data Collection.

81. The Connecticut State Broadband Office and NaLA assert that the Commission shall follow its normal procedures—provider information is either presumptively withheld because it falls within a category of section 0.457 or the provider must request non-disclosure under section 0.459. In contrast, ACA Connects argues that the Commission shall not require providers to submit individual requests under

section 0.459 but should instead, in the interest of expediency, add ''any proprietary information received via the ACP Transparency Data Collection'' to the list of materials presumptively withheld from routine public disclosure in section 0.457. Additionally, a few commenters propose that if section 0.459 submissions are required, providers should be able to request non-disclosure by checking a box when submitting data.

82. The Commission agrees with commenters that competitively sensitive information might be proprietary and that providers might want to keep such information confidential. Because the Commission is already refraining from making publicly available any data at the provider level by publishing only aggregated, non-provider-specific data, the Commission does not find it necessary for providers to seek protection of competitively sensitive or proprietary information the Commission has already committed to not make publicly available. The Commission will therefore treat such information as presumptively confidential pursuant to section 0.457(d) of the Commission's rules.

83. *Scope of Data to be Made Public.* As for what aggregated, non-provider-specific data the Commission shall make available to the public, its direct OEA, in coordination with WCB, OGC, and USAC to publish as much data as possible consistent with privacy considerations. At a minimum, OEA and USAC must publish aggregated non-provider-specific data on average or median prices of plans within download speed tiers and data on the total number of ACP subscribers within those tiers, on a state level basis. The Commission further direct OEA, in coordination with WCB, OGC, to the extent necessary to protect PII, and USAC, to publish data on legacy plans—plans which have ACP subscribers but are no longer available to the general public—while minimizing the risk of consumer confusion about the availability of those plans. While it is appropriate to publish data on legacy plans because ACP subscribers are enrolled in them, doing so might require a separate dataset or different variables given that legacy plans are not available to new subscribers.

84. The Commission seeks comments on whether the Commission shall publish only price and subscription rate data, or whether the Commission shall also make publicly available other data proposed to be collected, such as plan characteristics or program-performance data, or data obtained outside the ACP Transparency Data Collection, such as data about the availability of plans fully covered by the affordable connectivity benefit. State and local government commenters urge the Commission to publish all data collected, except for PII. The Connecticut State Broadband Office urges the Commission to publish descriptions of all ACP plans, including whether a device is offered, and data on the performance of those plans. It asserts that these ''additional variables'' help state and local governments understand ''affordability issues in their jurisdiction'' and ''promote transparency in the services ISPs are providing with the benefit of government subsidies and their prices for comparison with unsubsidized services.'' Similarly, the City of New York urges the Commission to collect and publish price, plan, and performance features and ''anticipates that the publication of ACP transparency data will meaningfully enable the City to further inform emerging broadband maps used for policy, service deployments, and adoption investments.''

85. Other commenters agree that all collected data should be published, though they differ somewhat on what should be collected in the first place. Common Sense, for instance, asserts that the Commission shall publish all ACP data collected, which would include information on ''plan prices, subscription rates, plan characteristics, and performance metrics.'' NaLA likewise advocates publishing all collected and analyzed data, but contends that the Commission shall limit the data collection to price and subscription rate data. Nevertheless, NaLA states that ''[i]f the Commission decides to collect data beyond the price and subscription rate data required by the Infrastructure Act,'' it should make such data and related analyses available to the public.

86. As set forth, the Commission will be collecting data on the prices of plans in which ACP subscribers are enrolled, subscription rates of such plans, and characteristics of those plans. The Commission recognizes that these data not only are valuable for the Commission but could be of significant value to state and local governments, consumer groups, and other stakeholders even when aggregated and disassociated from specific providers to protect PII and competitively sensitive or proprietary information. The Commission will therefore publish as much data as possible, consistent with privacy considerations. Consequently, the Commission directs OEA, in coordination with WCB, OGC, and USAC to publish as much data as possible consistent with privacy considerations.

87. *How Data Will Be Made Publicly Available, Format and Method of Publication.* The Infrastructure Act requires the Commission to make data available to the public in a ''commonly used electronic format'' but does not define the term. In light of the record and current Commission practice, the Commission directs OEA and USAC to make data available to the public in a downloadable format, such as a Comma Separated Values file, on the Commission's or USAC's website. As noted in the *ACP Data Collection Notice,* the Commission already make datasets available for viewing in Open Data portals and provide downloadable data in several formats, and commenters generally support ''easy to use'' and ''standardized'' formats. As for the method of publication, the only commenter on this topic suggested that the Commission host the public data, and the Commission directs that this information be made available on the Commission's or USAC's website.

88. *Timing of Publication.* As for when the Commission makes data publicly available, the *ACP Data Collection Notice* noted that the only direction in the Infrastructure Act is that the Commission must define the term ''personally identifiable information'' through notice and comment rulemaking before making any data available to the public. The Commission proposes making data public at least annually and asked several timing related questions, such as whether data should be published on an annual basis or more frequently and how long after collection should the Commission publish data.

89. The record is sparse on these issues. WISPA recommends publishing information ''on an annual basis during a specified window of time each year to ensure (1) consistency for comparison purposes, (2) sufficiently current information, and (3) a process that is not overly burdensome for providers, the Commission, or USAC.'' In contrast, Common Sense asserts that the Commission ''shall publish updated ACP data at regular intervals, as frequently as feasibly possible.'' NaLA does not suggest a particular timeframe in which to make data publicly available but emphasizes the importance of data being disclosed ''in a timely manner so that it is useful for determining the effectiveness of the ACP in meeting its goals as well as for enabling low-income consumers to gain insight into the ACP services available to them.''

90. The Commission finds that making data publicly available on an annual basis aligns with the structure of the data collection, is sufficient to provide greater transparency into broadband services provided by ACP participating providers, and minimizes the burdens of publication on providers and the Commission. Under the collection structure the Commission adopts here, data will be collected annually based on a snapshot date. Making data available publicly annually is consistent with that structure. The Commission further finds that data should be published no later than six months after the data submission date to give WCB, OEA, OGC, and USAC sufficient time to prepare the data for publication, including ensuring that no PII or competitively sensitive or proprietary information will be exposed.

91. *Guidance.* The Infrastructure Act provides that the Commission ''may issue such guidance, forms, instructions, publications, or technical assistance as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section, including to ensure that such programs, projects, or activities are completed in a timely and effective manner,'' and the *ACP Data Collection Notice* sought comment on this provision. Commenters agreed that the Commission should provide support and guidance on data collection through webinars, technical instructions, form instructions, and frequently asked questions. The Commission therefore directs the Bureau, OEA, and USAC to develop provider education and training materials to assist with the ACP Transparency Data Collection rules set forth in this Order and associated processes.

92. *Enforcement.* In the *ACP Data Collection Notice,* the Commission seeks comments on issues relating to the enforcement of the annual data collection rules, including the base forfeiture amount for noncompliance, certification requirements, involuntary removal, and submission deadlines.

93. *Base Forfeiture.* In the *Notice* the Commission proposes to establish a base forfeiture amount proportionate to the level of data ultimately adopted in the proceeding, either on a per-subscriber or on a higher level of aggregation (*e.g.,* ZIP-code, state, SAC). For an aggregate collection, the Commission proposes to establish a base forfeiture amount of $50,000 per state or study area for which a provider has failed to submit ACP Transparency Data Collection information by the applicable deadline.

94. Commenters generally support establishing forfeiture amounts, but some commenters suggest that the Commission adopts a base forfeiture amount proportionate to the number of a providers' ACP subscribers, to avoid chilling small provider participation in the program. Starry argues that ''disproportionate penalties'' might deter provider participation in the Affordable Connectivity Program. Altice suggests that instead of applying additional penalties for missing submissions dated from the submission deadline, that the Commission instead permit a 30-day grace period for providers to come into compliance with the ACP Transparency Data Collection rules. Altice further suggests that the Commission adopts as the base forfeiture amount the $100 per month penalty imposed on providers associated with the failure to file form 499–A, arguing that there is ''little justification for adopting a fine or forfeiture amount for ACP transparency data reporting that is higher than the $100 per month fine for failing to file a Form 499–A.'' Lastly, Altice suggests that instead of instituting a forfeiture amount, the Commission could publish a list of non-compliant providers, and publishing the list would incentive providers to come into compliance to avoid public embarrassment and reputational damages.

95. With consideration of the record and in light of the Commission decision to utilize an aggregate-level approach in this collection, the Commission adopts a base forfeiture amount in line with an aggregate collection. The Commission adopts a base forfeiture amount of the lesser of $22,000 or the latest monthly claim amount, for each state for which a provider has failed to submit complete information. The Commission agrees with WISPA's comment that a base forfeiture amount can be tied to the number of the provider's ACP subscribers to account for differences in provider size, and using the latest monthly claim amount makes that tie to subscribers. The Commission adopted approach is consistent with both Commission precedent and its desire to ensure compliance with the ACP Transparency Data Collection rules. Moreover, it appears that Altice is confusing late fees that USAC applies to USF accounts for late FCC Form 499 filings ($100), with forfeitures the Commission issues in enforcement proceedings for late, missing, or inaccurate FCC Form 499 filings ($50,000). In this proceeding, the Commission seeks comment on forfeitures for rule violations, not late fees assessed by USAC pursuant to Commission rule. The Commission similarly declines to adopt Altice's alternative proposal of a publicized list of non-compliant providers as the means of enforcement, as the Commission finds the preceding approach better balances the incentive to comply with concerns of providers. A ''naughty list'' would likely not adequately penalize or deter providers from failing to submit the annual plan characteristics information required by this Order and the Infrastructure Act.

96. *Filing Deadlines.* In the *ACP Data Collection Notice,* the Commission proposes that providers be required to submit ACP Transparency Data Collection information by a deadline, and that USAC provide the Enforcement Bureau with a list of providers who have failed to submit the required information by the deadline, identifying the subscribers, state and study area, for which the data has not been properly filed. The Commission receives no comments concerning the establishment of a deadline and the sharing of information between USAC and the Enforcement Bureau, and the Commission adopts both proposals. The Commission also asks whether it should impose additional fines each day in addition to the base forfeiture amount that a provider is not in compliance with the ACP Transparency Data Collection rules under section 503(b)(2) of the Act. The Commission did not receive any comments concerning additional daily fines, and declines to adopt any.

97. *Certification.* The Commission receives no comments opposing its proposal to require an officer of each provider to certify, under penalty of perjury, to the accuracy of the data and information provided prior to the submission of each data collection. Consistent with the Commission rule requiring annual certification for participating providers to be completed by the ''officer of the participating provider who oversees Affordable Connectivity Program business activities,'' the Commission adopts this proposal. The Commission directs the Bureau, as part of the electronic process to submit data, to include a process for certifications as to the accuracy of the data and information provided for the data.

98. *Involuntary Removal.* In the *ACP Data Collection Notice* the Commission asks whether a failure to comply with the rules established in this data collection could subject a provider to the involuntary removal process the Commission establishes in the *ACP Order.* Starry suggests that providers that utilize the safe-harbor provisions of the Consolidated Appropriations Act or

engage in ''minor infractions'' not be subject to involuntary removal from the Affordable Connectivity Program. The Commission declines to carve-out violations of the ACP Transparency Data Collection rules from the ACP's involuntary removal process. In the *ACP Order,* the Commission adopts the application of the safe-harbor provision of the Infrastructure Act, which provides that the Commission could not enforce a violation of the Act using sections 501, 502, or 503 or any rules promulgated under those sections if a participating provider demonstrates that it relied in good faith on information provided to such a provider to make any verifications required by the statute. The Commission clarifies that the safe harbor provided by the Infrastructure Act is only applicable to eligibility determinations, as the statute plainly provides. The Commission, therefore, declines to adopt Starry's proposed application of the Safe Harbor.

99. *Digital Equity and Inclusion.* In the *ACP Data Collection Notice,* the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's legal authority. The City of Seattle comments that detailed demographics ''are necessary to fully understand the profile of populations served and where gaps may exist'' and encourages the Commission ''to develop alternative approaches to collect demographic data and publish a demographic profile of ACP subscribers by ZIP code.'' The City of Seattle suggests ''at minimum collect data on whether companies are running credit checks on ACP applicants, denials of enrollments, and whether the ISP is using a third party for credit checks and if they are prohibited from releasing credit and consumer information.'' Common Sense comments that ''relevant demographic data, including the enrollee's race, ethnicity, income, languages spoken, and household size'' should be collected to ''understand the Affordable Connectivity Program's impact on digital equity and support efforts to address digital discrimination.'' Common Sense further suggests that the Commission shall collect information about the enrollment process and provider customer service practices, as well as information about ''providers' device offerings, including the types of devices offered and the price options for each type of device,'' and ''how many devices are distributed and at what price to consumers.'' Commenters did not suggest that any of the Commission's proposals inhibited digital equity and inclusion.

100. As discussed, the Commission adopts an aggregate-level collection. While the additional subscriber-level demographic fields proposed by commenters preceding may be helpful to analyze populations, the Commission is unable to include them given the nature of its collection approach, which does not accommodate the collection of any subscriber-level data. The Commission further finds that the additional data suggested by commenters, such as information on credit checks is not inherently related to information regarding price and subscription rates, and therefore decline at this time to include them for the ACP Transparency Data Collection.

101. *Conclusion.* The ACP Transparency Data Collection the Commission establishes today allows the Commission to collect information related to the price and subscription rates of internet service offerings of ACP providers consistent with the requirements of the Infrastructure Act. The Commission establishes an aggregate-level collection that will collect price, unique identifier, and plan characteristics from each ACP provider for each plan that has a household enrolled in the Affordable Connectivity Program, as well as the number of households that are subscribed to each plan by ZIP code, and the number of households that have reached a data cap, the average amount by which the household has exceeded its data cap, and average overage amount paid by households exceeding the data cap. The Bureau will further set forth deadlines for inaugural and subsequent collections of this information consistent with the Order.

102. The Commission further delegates authority to the Bureau to make necessary adjustments to the ACP Transparency Data Collection and to provide additional detail and specificity to the requirements of the ACP Transparency Data Collection to conform with the intent of the Order.

III. Severability

103. All of the rules that are adopted in the Order are designed to work in unison to implement the ACP Transparency Data Collection. Each separate ACP Transparency Data Collection rule the Commission adopts here, however, serves a particular function in the implementation of the ACP Transparency Data Collection. Therefore, it is the Commissions intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is the Commissions intent that the remaining rules shall remain in full force and effect.

IV. Procedural Matters

104. *Paperwork Reduction Act.* This Fourth Report and Order may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. 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 PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission has described impacts that might affect small businesses in the FRFA. Compliance with the information collection requirements will not be required until OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act.

105. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget 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 Fourth Report & Order, etc. to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

106. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Fourth Report and Order.

107. *Need for, and Objectives of, the Report and Order.* In Infrastructure Act, Congress established the ACP, which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The Affordable Connectivity Program provides funds for an affordable connectivity benefit consisting of a $30.00 per month discount on the price of broadband

internet access services that participating providers supply to eligible households in most parts of the country and a $75.00 per month discount on such prices in Tribal areas. The Commission establishes rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.

108. The Infrastructure Act also directs the Commission to issue ''final rules regarding the annual collection by the Commission relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program.''

109. The Order adopts rules to implement section 60502(c) of the Infrastructure Act, to provide greater transparency into broadband services provided by ACP participating providers, and to allow the Commission to assess its progress towards the ACP program goals. Specifically, the Commission establishes the ACP Transparency Data Collection, a mandatory annual data collection of price, subscription rate and plan characteristic information. The Commission collects plan pricing, unique identifier and plan characteristic information at the ZIP code level.

110. In executing the Commission obligations under the Infrastructure Act establishes rules and requirements in the Order that implement the relevant portions of the Infrastructure Act efficiently and by balancing privacy interests of subscribers and minimizing burdens on participating providers. This action is consistent with the Commission ongoing effort to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband internet access service.

111. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* JSI filed reply comments asserting that ''requiring small providers to complete new NLAD data fields when enrolling new subscribers and updating fields for households already enrolled in the ACP would be highly burdensome.'' While the Commission notes the concerns raised by JSI, the Commission believes that the recordkeeping, reporting, and other compliance requirements adopted in the Order strike a balance between providing small and other affected entities flexibility in reporting data while allowing the Commission to obtain the necessary information to meet its obligations under the Infrastructure Act. The Commission discusses alternatives considered but decline to adopt, that would have increased the costs and/or burdens on small entities.

112. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

113. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

114. *Description and Estimate of the Number of Small Entities to Which These Rules Will Apply.* 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 proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

115. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes 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 Small Business Administration's (SBA) 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.

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

117. 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 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

118. *Wired Broadband internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

119. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the

general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report,* the Commission believes that the majority of wireline internet access service providers can be considered small entities.

120. *Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). 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.

121. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report,* FCC–20–188, 36 FCC Rcd 2945, December 31, 2020, on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, the Commission believes that the majority of wireless internet access service providers can be considered small entities.

122. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small.* The Commission expects the rules adopted in the Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Specifically, the Commission establishes new reporting and disclosure requirements for ACP participating providers in order to comply with the Infrastructure Investment and Jobs Act's (Infrastructure Act) broadband transparency requirement, and to determine the value being provided to eligible households by the ACP. The Commission requires providers to submit unique identifiers, plan characteristic and plan pricing information, and subscription rate information annually at the ZIP code level.

123. The requirements the Commission adopts in the Order continue the Commission's actions to comply with the Infrastructure Act and develop better data to advance its statutory obligations and program goals of closing the digital divide. The Commission concludes that it is necessary to adopt these rules to obtain plan pricing and characteristic information to allow the Commission to target outreach efforts, and ensure that the Commission achieves the goals of the ACP of reducing the digital divide, and increasing participation in and awareness of the program. The Commission is aware of the need to ensure that the benefits resulting from use of the data outweigh the reporting burdens imposed on small entities. The Commission believes that any additional burdens imposed by its reporting approach for providers are outweighed by the significant benefit to be gained from more precise data about ACP participating providers' service offerings. The Commission is likewise cognizant that small entities will incur costs and may have to hire attorneys, consultants, or other professionals to comply with the Order. Although the Commission cannot quantify the cost of compliance with the requirements in the Order, the Commission believes the reporting and other requirements that the Commission has adopted are necessary to comply with the Infrastructure Act, and in its efforts in reducing the digital divide.

124. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* 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 the following four alternatives (among others): ''(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 and 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.''

125. The Commission has considered the comments in the record and is mindful of the time, money, and resources that some small entities may incur to comply with the requirements of this Order. In reaching the requirements the Commission adopts in the Order, there were various approaches and alternatives that the Commission consideres but rejected which prevented small entities from incurring additional burdens and economic impacts. For example, the Commission declines to collect data on connection reliability, or plan coverage, although some comments supported such a collection. The Commission also declines to adopt a pure subscriber level collection, as proposed in the *ACP Data Collection Notice* and supported by a number of commenters, out of a concern for the burdens imposed on small entities. Instead, the Commission adopts an aggregate level collection.

126. Another step taken by the Commission to minimize the compliance burdens on small entities include guidance and support on data collection through webinars, technical instructions, form instructions, and frequently asked questions. In the Order the Commission directs USAC to develop provider education and training programs to reduce the compliance burden on providers in complying with the requirements set forth in the Order.

127. *Report to Congress.* The Commission will send a copy of the Fourth Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Fourth Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fourth Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

128. Accordingly, *it is ordered* that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act,

2021, Public Law 116–260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), this Fourth Report and Order *is adopted.*

129. *It is further ordered* that the Fourth Report and Order *shall be effective* February 13, 2023, except new 47 CFR 54.1813(b) through (d) shall be effective upon announcement in the **Federal Register** of the Office of Management and Budget approval of the information collection requirements as required by the Paperwork Reduction Act.

List of Subjects in 47 CFR Part 54

Internet, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons set forth, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

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

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

■ 2. Add § 54.1813 to subpart R to read as follows:

§ 54.1813 Affordable Connectivity Program Transparency Data Collection.

(a) *Definitions.* For purposes of the Affordable Connectivity Program Transparency Data Collection:

Actual Speed. The term ''actual speed'' means the typical upload and download speeds period for a particular speed tier, either based on Measuring Broadband America (MBA) methodology, or other relevant testing data.

Advertised Speed. The term ''advertised speed'' means the maximum advertised upload and download speeds for fixed broadband plans, and the minimum advertised upload and download speeds for mobile broadband plans.

Base monthly price. The term ''base monthly price'' means the monthly price for a broadband internet service offering that would be paid by a household enrolled in the Affordable Connectivity Program, absent the affordable connectivity benefit. The base monthly price does not include the price of any recurring monthly fees (such as fees providers impose at their discretion, or equipment rental fees), government taxes or fees, or one-time charges (such as installation charges, equipment purchase fee, etc.).

Bundle. The term ''bundle'' means a combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text.

Data Cap. The term ''data cap'' means data usage restrictions on both pre-paid and post-paid plans, including ''soft caps'' where a user's internet traffic is throttled or deprioritized, and ''hard caps'' where a user's access to the internet is discontinued.

Latency. The term ''latency'' means the length of time for a signal to be sent between two defined end points and the time it takes for an acknowledgement of the receipt of the signal to be received.

Legacy plan. The term ''legacy plan'' means an internet service offering in which an ACP subscriber is enrolled that a participating provider is not accepting new enrollment.

Personally identifiable information. The term ''personally identifiable information'' means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

Plan. The term ''plan'' means ''internet service offering'' as defined in § 54.1800(n).

Unique identifier. The term ''unique identifier'' means a machine-readable string of characters uniquely identifying a broadband plan, not containing any special characters. Where a broadband plan is associated with a broadband label under 47 CFR 8.1(a), the unique identifier must be the same as that in the broadband label. Unique identifiers cannot be reused or refer to multiple plans. A provider must develop a new plan identifier, when a plan's components change.

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Publication of data*—(1) *Obligation to publish data.* The Commission will make aggregated, non-provider-specific data relating to broadband internet access service information collected in paragraph (b) of this section available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information, as defined in paragraph (a)(8) of this section, or proprietary information.

(2) *Requests for withholding from public inspection.* When submitting information to the Commission under paragraph (c) of this section, a participating provider may submit a request that information be withheld from public inspection under § 0.459 of this chapter.

(f) *Enforcement.* A violation of the collection requirement occurs where a provider fails to submit ACP Transparency Data Collection information by the compliance date for a state in which the provider has ACP-enrolled subscribers. A base forfeiture amount for each state is the lesser of $22,000 or the latest monthly claim amount, for each state for which a provider has failed to submit complete information.

(g) *Compliance.* Paragraphs (b) through (d) of this section may contain information collection and/or recordkeeping requirements. Compliance with paragraphs (b) through (d) of this section will not be required until this paragraph (g) of this section is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraphs (b) through (d) of this section by subsequent Public Notice and to cause this section to be revised accordingly.

■ 3. Delayed indefinitely., amend § 54.1813 by adding paragraphs (b) through (d) to read as follows:

(b) *Information to be collected.* (1) For each plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers shall submit, in an electronic format as directed by the Commission at the ZIP code level, by the deadline described in paragraph (c) of this section,

(i) The unique identifier with the following plan characteristics:

(A) Base monthly price,

(B) Whether the base monthly price is introductory, and if so, the term of the introductory price and the post-introductory price,

(C) Itemized provider-imposed recurring monthly fees,

(D) Itemized one-time fees,

(E) Speed (actual and advertised speeds),

(F) Latency,

(G) Data caps (including de-prioritization and throttling), any charges for additional data usages along with the relevant increment (*e.g.,* 1 GB, 500 MB),

(H) Whether the service is bundled, the high-level components of the

bundle, and voice minutes or number of text messages included as part of the bundle if applicable,

(I) Whether any associated equipment is required, whether any required associated equipment is included in the advertised cost, and the one-time fee or rental cost for required associated equipment;

(ii) The number of ACP households subscribed;

(iii) The number of ACP households that have reached a data cap during month prior to the snapshot date;

(iv) The average amount by which ACP households have exceeded the data cap for the month prior to the snapshot date;

(v) The average overage amount paid by ACP households exceeding a data cap for the month prior to the snapshot date;

(vi) The number of ACP households receiving the ACP Tribal enhanced benefit;

(vii) The number of ACP households receiving the ACP high-cost enhanced benefit;

(viii) The number of ACP households who are also enrolled in Lifeline for that plan;

(2) *Legacy plans.* For each legacy plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers are required to submit all of the characteristics identified in paragraph (b)(1) of this section except: speed (actual and advertised), latency, introductory monthly charge, the length of the introductory period, and any one-time fees.

(c) *Timing of collection.* No later than the compliance date to be established by the Wireline Competition Bureau pursuant to paragraph (g) of this section and annually thereafter, participating providers must submit to the Commission the information in paragraph (b) of this section for all plans in which an Affordable Connectivity Program household is subscribed. The information must be current as of an annual snapshot date established and announced by the Bureau.

(d) *Certifications.* As part of the data collection required by paragraph (b) of the section, an officer of the participating provider shall certify, under penalty of perjury, that:

(1) The officer is authorized to submit the data collection on behalf of the participating provider; and

(2) The data and information provided in the data collection is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted.

[FR Doc. 2022–28435 Filed 1–12–23; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 8)]

Civil Monetary Penalties—2023 Adjustment

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 13, 2023.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, sec. 701, 129 Stat. 584, 599–601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October of the previous year and the October CPI–U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. 11901–11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.[1] The Board has regulations at 49 CFR part 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 CFR part 1022 to make an annual inflation adjustment to the civil monetary penalties in conformance with the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations that occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.07745, which reflects the percentage change between the October 2022 CPI–U (298.012) and the October 2021 CPI–U (276.589). The table at the end of this decision shows the statutory citation for each civil penalty, a description of the provision, the adjusted statutory civil penalty level for 2022, and the adjusted statutory civil penalty level for 2023.

III. Final Rule

The final rule set forth at the end of this decision is being issued without notice and comment pursuant to the rulemaking provision of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), which does not require that process ''when the agency for good cause finds'' that public notice and comment are ''unnecessary.'' Here, Congress has mandated that the agency make an annual inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Given the absence of discretion, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a

[1] The Board also has various criminal penalty authority, enforceable in a Federal criminal court. Congress has not, however, authorized Federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

V. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. 804(2).

VI. Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the final rule will be published in the **Federal Register**.

2. This decision is effective on its date of publication in the **Federal Register**.

Decided: January 9, 2023.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Primus concurred with a separate expression.

BOARD MEMBER PRIMUS, concurring:

Today's decision faithfully carries out the mandate of the 2015 Act by adjusting the Board's civil penalties for inflation. I write separately, however, to express concern about the adequacy of the penalties afforded by statute. The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (1990 Act). The 1990 Act, in turn, relied on congressional findings that:

> (1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;
>
> (2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;
>
> (3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties . . .

104 Stat. at 890. Congress therefore stated that its purposes in enacting the 1990 Act included ''maintain[ing] the deterrent effect of civil monetary penalties and promot[ing] compliance with the law.'' *Id.*

I question whether the penalties that the Board is permitted by statute to impose are sufficient to provide the deterrent effect that Congress intended, as applied to Class I railroads. Consider, as an example, the default penalty of $5,000 per violation, set forth in 49 U.S.C. 11901(a). Inflation adjustments since 2012 have increased this penalty to the $9,413 per violation stated in the Board's decision today. *See Civ. Monetary Penalty Inflation Adjustment Rule,* EP 716, slip op. at 6 (STB served Oct. 22, 2012) (making an initial adjustment from $5,000 to $5,500). But the $5,000 baseline from which the Board began its inflation adjustments in 2012 was established in a different century—not even the 20th century, but the 19th. In fact, that $5,000 penalty per violation was enacted in the Interstate Commerce Act of 1887, which created the Board's predecessor, the Interstate Commerce Commission, and established the first federal regulation of the nation's railroads. Interstate Commerce Act, § 10, 24 Stat. 379, 382–83 (1887).

Needless to say, the value of $5,000 has changed far more than these adjustments suggest. According to an online calculator offered by the Federal Reserve Bank of Minneapolis (which reaches back only to 1913, thus understating inflation compared to an 1887 value), the 2022 equivalent would have been almost $150,000.[2] As a concrete example, real estate listings in 1887 offered houses in the District of Columbia for $1,700 to $7,800 (the latter a 12-room mansion). *See For Sale—Houses,* Wash. Post, May 22, 1887, at 3. These penalties are not even a slap on the wrist. Other independent federal agencies, by contrast, have civil penalty authority that is more commensurate with the times. *See, e.g., FTC Publishes Inflation-Adjusted Civil Penalty Amounts for 2023* (including penalties as high as $1,426,319).[3]

Class I railroads, meanwhile, reported between $388 million and $7 billion in adjusted net railway operating income for 2021, the most recent year available. *See R.R. Revenue Adequacy—2021 Determination,* EP 552 (Sub-No. 26), App. B (STB served Sept. 6, 2022). The idea that $9,413 per violation will deter entities of this size from ''knowingly violating this part or an order of the Board under this part,'' § 11901(a), is farfetched to say the least. Congress should act to restore the deterrent effect of these civil monetary penalties and promote compliance with the law.

[2] *https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator,* last visited Jan. 9, 2023.

[3] *https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2023,* last visited Jan. 9, 2023.

List of Subjects in 49 CFR Part 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 5 U.S.C. 551–557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 14916, 16101, 16103.

■ 2. Revise § 1022.4(b) to read as follows:

§ 1022.4 Cost-of-living adjustments of civil monetary penalties.

* * * * *

(b) The cost-of-living adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

TABLE 1 TO PARAGRAPH (b)

U.S. Code citation	Civil monetary penalty description	2022—Penalty amount	2023—Adjusted penalty amount
		EP 716_7 (2022)	EP 716_8 (2023)
Rail Carrier			
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	$8,736	$9,413
49 U.S.C. 11901(b)	For each violation under section 11124(a)(2) or (b)	874	942
49 U.S.C. 11901(b)	For each day violation continues	45	48
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under sections 10901–10906.	8,736	9,413
49 U.S.C. 11901(d)	For each violation under section 11123 or section 11124(a)(1)	174–$874	187–$942
49 U.S.C. 11901(d)	For each day violation continues	87	94
49 U.S.C. 11901(e)(1), (4)	For each violation under sections 11141–11145, for each day	874	942
49 U.S.C. 11901(e)(2), (4)	For each violation under section 11144(b)(1), for each day	174	187
49 U.S.C. 11901(e)(3)–(4)	For each violation of reporting requirements, for each day	174	187
Motor and Water Carrier			
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day	1,195	1,288
49 U.S.C. 14901(a)	For each violation under section 13901 or section 13902(c)	11,957	12,883
49 U.S.C. 14901(a)	For each violation related to transportation of passengers	29,893	32,208
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under section 3001 of the Solid Waste Disposal Act.	23,915–47,829	25,767–51,534
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	1,746	1,881
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	17,473	18,826
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	43,678	47,061
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	3,494	3,765
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	8,736	9,413
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	174,724	188,257
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	349	376
49 U.S.C. 14904(a)	For all subsequent violations	438	472
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	874	942
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	3,494	3,765
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under section 13702	874	942
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations	3,494	3,765
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of section 14103(a), and knowingly authorizing, consenting to, or permitting a violation of section 14103(a) or (b).	17,473	18,826
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	2,392	2,577
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	5,978	6,441
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	8,736	9,413
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of section 14908(a)(1)	3,494	3,765
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	874	942
49 U.S.C. 14915(a)(1)–(2)	Minimum penalty for holding a household goods shipment hostage, for each day.	13,885	14,960
49 U.S.C. 14916(c)(1)	Maximum penalty for each knowing violation under section 14916(a) for unlawful brokerage activities.	11,957	12,883
Pipeline Carrier			
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	8,736	9,413
49 U.S.C. 16101(b)(1), (4)	For each recordkeeping violation under section 15722, each day	874	942
49 U.S.C. 16101(b)(2), (4)	For each inspection violation liable under section 15722, each day	174	187
49 U.S.C. 16101(b)(3)–(4)	For each reporting violation under section 15723, each day	174	187
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	1,746	1,881

[FR Doc. 2023–00630 Filed 1–12–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No: 210325–0071]

RTID 0648–XC671

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2023 Management Area 1B Possession Limit Adjustment

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

ACTION: Temporary rule; possession limit adjustment.

SUMMARY: NMFS is implementing a 2,000-lb (907.2-kg) possession limit for Atlantic herring for Management Area 1B. This is required because NMFS projects that herring catch from Area 1B will reach 92 percent of the Area's current sub-annual catch limit before the end of the fishing year. This action is intended to prevent overharvest of herring in Area 1B, which would result in additional catch limit reductions in a subsequent year.

DATES: Effective 00:01 hr local time, January 11, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, 978–281–9196.

SUPPLEMENTARY INFORMATION: The Regional Administrator of the Greater Atlantic Regional Office monitors Atlantic herring fishery catch in each Management Area based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(i)(A) require that NMFS implement a 2,000-lb (907.2-kg) possession limit for herring for Area 1B beginning on the date that catch is projected to reach 92 percent of the sub-annual catch limit (ACL) for that area.

Based on vessel reports, dealer reports, and other available information the Regional Administrator projects that the herring fleet will have caught 92 percent of the Area 1B sub-ACL by January 6, 2023. Therefore, effective 00:01 hr local time January 11, 2023, through December 31, 2023, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb (907.2-kg) of herring per trip or more than once per calendar day in or from Area 1B.

Vessels that enter port before 00:01 hr local time on January 11, 2023, may land and sell more than 2,000 lb (907.2 kg) of herring from Area 1B from that trip, provided that catch is landed in accordance with state management measures. Vessels may transit or land in Area 1B with more than 2,000 lb (907.2 kg) of herring on board, provided that: The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

Also effective 00:01 hr local time, January 11, 2023, through 24:00 hr local time, December 31, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from Area 1B, unless it is from a vessel that enters port before 00:01 hr local time on January 11, 2023, and catch is landed in accordance with state management measures.

The projected catch is 92 percent of the current Area 1B sub-ACL. The current Area 1B sub-ACL is equal to the 2023 Area 1B sub-ACL that was previously implemented through Framework Adjustment 8 to the Atlantic Herring Fishery Management Plan (FMP), which will remain in place until it is revised through the specification process. NMFS is working on implementing updated 2023 specifications as soon as practicable consistent with the specifications process.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public interest, and impracticable. Ample prior notice and opportunity for public comment has been provided for the required implementation of this action. The requirement to implement this possession limit was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives. Further, the regulations requiring NMFS to implement this possession limit also were subject to public notice and opportunity to comment, when they were first adopted in 2014. Herring fishing industry participants monitor catch closely and anticipate potential possession limit adjustments as catch totals approach Area sub-ACLs. The regulation provides NMFS with no discretion and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2023 herring fishing year began on January 1, 2023. Data indicating that the herring fleet will have landed at least 92 percent of the 2023 sub-ACL allocated to Area 1B only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the sub-ACL quickly, especially in this fishing year where annual catch limits are unusually low. If implementation of this possession limit adjustment is delayed to solicit prior public comment, the 2023 sub-ACL for Area 1B will likely be exceeded; thereby undermining the conservation objectives of the Herring FMP. If sub-ACLs are exceeded, the excess must be deducted from a future sub-ACL and would reduce future fishing opportunities. The public expects these actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C 553(d)(3).

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

Dated: January 10, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–00602 Filed 1–10–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC668]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or

pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2023 total allowable catch of Pacific cod to be harvested.

DATES: Effective January 10, 2023, through 2400 hours, Alaska local time (A.l.t.), December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2023 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,019 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and inseason adjustment (87 FR 80090, December 29, 2022).

The 2023 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 2,413 mt as established by final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and inseason adjustment (87 FR 80090, December 29, 2022).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 950 mt of the A season apportionment of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 950 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2023 Pacific cod included in final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and inseason adjustment (87 FR 80090, December 29, 2022) are revised as follows: 69 mt to the A season apportionment and 748 mt to the annual amount for vessels using jig gear, and 3,363 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt 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 impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 9, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: January 9, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–00543 Filed 1–10–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 9

Friday, January 13, 2023

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–2023–0009; Project Identifier MCAI–2022–00789–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 supersede Airworthiness Directive (AD) 2020–05–16, which applies to certain Airbus SAS Model A319–115 airplanes; Model A320–214, –216, –232, –251N, and –271N airplanes; and Model A321–211, –231, –251N, –251NX, –253N, –271N, –271NX, and –272N airplanes. AD 2020–05–16 requires a one-time detailed inspection of certain attaching points on the left-hand and right-hand wings for the correct installation of certain hardware, and, depending on findings, accomplishment of applicable corrective actions. Since the FAA issued AD 2020–05–16, a determination was made that additional airplanes are subject to the unsafe condition. This proposed AD would continue to require the actions in AD 2020–05–16 and would add airplanes to the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 27, 2023.

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–2023–0009; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0009.
- 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.

FOR FURTHER INFORMATION CONTACT: Hyeyoon Jang, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone (817) 222–5584; email *hye.yoon.jang@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–2023–0009; Project Identifier MCAI–2022–00789–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 Hyeyoon Jang, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone (817) 222–5584; email *hye.yoon.jang@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 FAA issued AD 2020–05–16, Amendment 39–19866 (85 FR 15938, March 20, 2020) (AD 2020–05–16), for certain Airbus SAS Model A319–115 airplanes; Model A320–214, –216, –232, –251N, and –271N airplanes; and Model A321–211, –231, –251N, –251NX, –253N, –271N, –271NX, and –272N airplanes. AD 2020–05–16 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0233, dated September 18, 2019; corrected September 19, 2019 (EASA AD 2019–0233), to correct an unsafe condition.

AD 2020–05–16 requires a one-time detailed inspection of certain attaching points on the left-hand and right-hand wings for the correct installation of certain hardware, and, depending on findings, accomplishment of applicable corrective actions. The FAA issued AD 2020–05–16 to address incomplete installations of the over wing panel lug attachments in the production assembly line, which, if not detected and corrected, could reduce the structural integrity of the wing.

Actions Since AD 2020–05–16 Was Issued

Since the FAA issued AD 2020–05–16, EASA superseded EASA AD 2019–0233, and issued EASA AD 2022–0111, dated June 15, 2022 (EASA AD 2022–0111) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A319–115 airplanes; Model A320–214, –216, –232, –251N, and –271N airplanes; and Model A321–211, –231, –251N, –251NX, –252NX, –253N, –253NX, –271N, –271NX, and –272N airplanes. The MCAI states that since EASA AD 2019–0233 was issued, Airbus identified additional affected airplanes.

The FAA is issuing this AD to address incomplete installations of the over wing panel lug attachments in the production assembly line, which, if not detected and corrected, could reduce the structural integrity of the wing. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0009.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–05–16, this proposed AD would retain all of the requirements of AD 2020–05–16. Those requirements are referenced in EASA AD 2022–0111, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0111 specifies procedures for a one-time detailed inspection of certain attaching points on the left-hand and right-hand wings for the correct installation of certain hardware (bolt, nut, washer, and cotter pin), and, depending on findings, accomplishment of applicable corrective actions. Corrective actions include installing missing hardware, properly orienting hardware, and performing a damage assessment for cracks and deformed parts in the event of missing hardware, and repair. For certain airplanes, EASA AD 2022–0111 also specifies reporting the inspection results to Airbus. 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 retain all requirements of AD 2020–05–16. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0111 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0111 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0111 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 2022–0111 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 2022–0111. Service information required by EASA AD 2022–0111 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0009 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, 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
2 work-hours × $85 per hour = $170	$0	$170	$22,700

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be up to $11,135, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition actions 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 these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 20 work-hours × $85 per hour = $1,700	Up to $77,850	Up to $79,550.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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 (AD) 2020–05–16, Amendment 39–19866 (85 FR 15938, March 20, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–0009; Project Identifier MCAI–2022–00789–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

This AD replaces AD 2020–05–16, Amendment 39–19866 (85 FR 15938, March 20, 2020) (AD 2020–05–16).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0111, dated June 15, 2022 (EASA AD 2022–0111).

(1) Model A319–115 airplanes.

(2) Model A320–214, –216, –232, –251N, and –271N airplanes.

(3) Model A321–211, –231, –251N, –251NX, –252NX, –253N, –253NX, –271N, –271NX, and –272N airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of incomplete installations of the over wing panel lug attachments in the production assembly line and a determination that additional airplanes are subject to the unsafe condition. The FAA is issuing this AD to address these incomplete installations. The unsafe condition, if not addressed, could result in reduced structural integrity of the wing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0111.

(h) Exceptions to EASA AD 2022–0111

(1) Where EASA AD 2022–0111 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0111 refers to October 2, 2019 (the effective date of EASA AD 2019–0233), this AD requires using April 24, 2022 (the effective date of AD 2020–05–16).

(3) Where paragraph (5) of EASA AD 2022–0111 specifies to ''contact Airbus for approved instructions, and within the compliance time identified therein, accomplish those instructions accordingly'' if discrepancies are detected, for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) The ''Remarks'' section of EASA AD 2022–0111 does not apply to this AD.

(5) Where paragraph (2) of EASA AD specifies a compliance time, for this AD the compliance time is ''before exceeding 14,000 flight hours or 7,000 flight cycles, whichever occurs first since airplane first flight; or within 30 days after the effective date of this AD; whichever occurs later.''

(i) No Reporting Requirement for Certain Airplanes

For Group 1 airplanes, as identified in EASA AD 2022–0111, this AD does not require reporting.

(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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office. (ii) AMOCs approved previously for AD 2020–05–16 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0111 that are required by paragraph (g) of this AD.

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

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

(k) Additional Information

For more information about this AD, contact Hyeyoon Jang, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone (817) 222–5584; email *hye.yoon.jang@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0111, dated June 15, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0111, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on January 4, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–00186 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0014; Project Identifier MCAI–2022–01160–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 A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 27, 2023.

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–2023–0014; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0014.
- 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@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–2023–0014; Project Identifier MCAI–2022–01160–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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@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 2022–0173, dated August 24, 2022 (EASA AD 2022–0173) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300B4–601, A300B4–603, A300B4–620, A300B4–622, A300B4–605R, A300B4–622R, A300C4–620, A300C4–605R, A300F4–605R, A300F4–622R and A300F4–608ST airplanes. Model A300C4–620 and A300F4–608ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2022–0173 specifies that it requires a task (limitation) related to the replacement of life-limited parts already in Airbus A300–600 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations Items (SL–ALI) Revision 02 that is required by EASA AD 2017–0204 (which corresponds to FAA AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19)), and that incorporation of EASA AD 2022–0173 invalidates (terminates) prior instructions for that task. For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R and F4–622R airplanes only: this proposed AD therefore would terminate the limitations for the safe life limits required by paragraph (g) of AD 2018–18–19, for the tasks identified in the service information referenced in EASA AD 2022–0173 only.

The FAA is proposing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0014.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0173, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. 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**.

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 described 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 revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0173 described previously, as incorporated by reference. Any differences with EASA AD 2022–0173 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0173 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0173 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 2022–0173 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 2022–0173. Service information required by EASA AD 2022–0173 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0014 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI

ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOC paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has 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–2023–0014; Project Identifier MCAI–2022–01160–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

This AD affects AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 C4–605R Variant F airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0173, dated August 24, 2022 (EASA AD 2022–0173).

(h) Exceptions to EASA AD 2022–0173

(1) This AD does not adopt the requirements specified in paragraph (1) of EASA AD 2022–0173.

(2) Paragraph (2) of EASA AD 2022–0173 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2022–0173 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2022–0173, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (3) of EASA AD 2022–0173.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0173.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0173.

(j) Terminating Action for AD 2018–18–19

For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R and F4–622R airplanes

only: Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2018–18–19, for the tasks identified in the service information referenced in EASA AD 2022–0173 only.

(k) 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 (l) 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 local flight standards district office/certificate holding district office.

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

(l) Additional Information

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

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0173, dated August 24, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0173, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 January 6, 2023.

Christina Underwood,

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

[FR Doc. 2023–00448 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0679; Project Identifier MCAI–2021–01213–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that would have applied to all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This action revises the NPRM by proposing to require revising the existing maintenance or inspection program, as applicable, to incorporate two aircraft maintenance manual (AMM) tasks. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by February 27, 2023.

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–2022–0679; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, 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: Chirayu A. Gupta, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0679; Project Identifier MCAI–2021–01213–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 SNPRM.

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 SNPRM 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 SNPRM, 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 SNPRM. Submissions containing CBI should be sent to Chirayu A. Gupta, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on June 16, 2022 (87 FR 36269). The NPRM was prompted by AD CF–2021–38, dated November 5, 2021, issued by Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2021–38, dated November 5, 2021, to address an unsafe condition.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new and more restrictive airworthiness limitations.

You may examine Transport Canada AD CF–2021–38, dated November 5, 2021, in the AD docket at regulations.gov under Docket No. FAA–2022–0679.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the FAA determined it was necessary to require revising the existing maintenance or inspection program, as applicable, to incorporate two AMM tasks.

In addition, Transport Canada revised AD CF–2021–38, dated November 5, 2021, and issued Transport Canada AD CF–2021–38R1, dated May 25, 2022 (Transport Canada AD CF–2021–38R1) (also referred to as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states there have been in-service reports of emergency ram air valve part number GG670–95019–1 stuck in closed or partially open positions. An investigation revealed that the emergency ram air valve is failing due to corrosion of multiple sub-components, which causes an increase in the breakaway torque that cannot be overcome by the valve actuator. This condition, if not corrected, could result in a complete loss of outside air supply, leading to an increase in flight deck and cabin temperatures and a possible increased level of contaminated air (carbon monoxide, carbon dioxide, or ozone).

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0679.

Comments

The FAA received comments from the Air Line Pilots Association, International, who supported the NPRM without change.

The FAA received additional comments from MHI RJ Aviation ULC. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Model Designations

MHI RJ Aviation ULC requested that paragraph (g)(1) of the proposed AD be revised to read ''[MHI RJ] CRJ550/700/900/1000 Series Regional Jet Series'' instead of ''[MHI RJ] CRJ700/900/1000 Series Regional Jet Series.''

The FAA disagrees. The citations for required documents match the nomenclature of the cited documents. For the Temporary Revision (TR) ALI–0744, dated April 27, 2021, the first page of the document only identifies ''CRJ700/900/1000 Series Regional Jet.'' Therefore, the correct citation should be ''[MHI RJ] CRJ700/900/1000 Series Regional Jet Temporary Revision (TR) ALI–0744, dated April 27, 2021.'' However, that temporary revision is no longer cited in this proposed AD; therefore, the FAA has not changed this proposed AD in this regard.

Request To Revise Reference to the MCAI

MHI RJ Aviation ULC requested that paragraph (j)(1) of the proposed AD be revised to refer to ''CF–2021–38R1'' instead of ''CF–2021–38.''

The FAA agrees and has revised paragraph (j)(1) of this proposed AD (of the SNPRM) accordingly.

Additional Changes Made to This Proposed AD

This proposed AD (of the SNPRM) introduces new candidate certification maintenance requirement (CCMR) intervals that the FAA cannot mandate as CCMRs as specified in the temporary revisions cited in the proposed A. Therefore, the FAA proposes to mandate two AMM tasks as specified in Figure 1 to paragraph (g)(1) and Figure 2 to paragraph (g)(2) of the proposed AD (of the SNPRM). In addition, the figures include the on-condition replacement requirements specified in Transport Canada AD CF–2021–38R1, which were not included in the proposed AD (of the NPRM).

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 SNPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements in This SNPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate two AMM tasks.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,158 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

estimates the average total cost per operator to be $7,650 (90 work-hours x $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0679; Project Identifier MCAI–2021–01213–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC airplanes, certificated in any category, identified in paragraphs (c)(1) through (5) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(2) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(4) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Reason

This AD was prompted by a determination that the existing maintenance or inspection program, as applicable, must be revised to incorporate two aircraft manual (AMM) tasks. The FAA is issuing this AD to address in-service reports of emergency ram air valve part number (P/N) GG670–95019–1 stuck in closed or partially open positions, which, if not corrected could result in a complete loss of outside air supply, leading to an increase in flight deck and cabin temperatures and a possible increased level of contaminated air (carbon monoxide, carbon dioxide, or ozone).

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

(1) Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in figure 1 to paragraph (g)(1) of this AD. The initial compliance time for doing the task is at the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

Figure 1 to paragraph (g)(1) – *AMM Task for the Ram-Air Valve*

Effectivity	Interval	AMM Task Number *
All	1800 FH	21-52-04-710-801-A01, as specified in AMM Revision 70, dated May 25, 2022, or later revisions
* If, during any of the operational checks of the valve, the valve itself is found inoperable, before further flight, remove and replace valve P/N GG670-95019-1 with a serviceable part. The replacement of an inoperable valve with a serviceable valve on an airplane can be deferred in accordance with the applicable instructions and limitations of MMEL item 21-52-01, sub-item 2 or 3 (only for models CL-600-2C10 or CL-600-2D15/CL-600-2D24 respectively). To defer the valve replacement, the ram air shutoff valve is deactivated in the open position in accordance with AMM task 21-52-00-040-802 and the airplane is operated in accordance with the MMEL operating procedure.		

(i) For airplanes that have accumulated less than 1,800 flight hours since the last operational check of the ram air shutoff valve was performed as specified in AMM Task 21–52–04–710–801–A01, and for airplanes that have accumulated less than 1,800 flight hours from the date of issuance of the original airworthiness certificate or original export certificate of airworthiness: Within 90 days after the effective date of this AD, or before accumulating 1,800 total flight hours, whichever occurs later.

(ii) For airplanes that have accumulated 1,800 flight hours or more since the last operational check of the ram air shutoff valve was performed as specified in AMM Task 21–52–04–710–801–A01, and for airplanes that have accumulated 1,800 flight hours or more since the date of issuance of the original airworthiness certificate or original export certificate of airworthiness and for which no operational check of the valve has been performed: Within 90 days after the effective date of this AD or before accumulating 3,000 total flight hours, whichever occurs later.

(2) Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in figure 2 to paragraph (g)(2) of this AD. The initial compliance time for doing the task is at the applicable time specified in paragraph (g)(2)(i) or (ii) of this AD.

Figure 2 to paragraph (g)(2) – *AMM Task for the Pack Discharge and Ram-Air Supply Ducts*

Effectivity	Interval	AMM Task Number *
All	17600 FH	21-51-00-220-801-A01, as specified in AMM Revision 70, dated May 25, 2022, or later revisions
* If damage is found during any of the detailed inspections of the pack discharge and ram air supply ducts, such as: wear, cuts, holes, signs of leakage, signs of overheating, or damage to the duct insulation, before further flight, replace the damaged component(s) in accordance with AMM 21-52-06 for the ram air supply duct, AMM 21-51-26 for the left pack discharge duct, and AMM 21-51-28 for the right pack discharge duct. If parts are not available, contact MHI RJ for an approved disposition. The approved disposition must specifically refer to Part II. of Transport Canada AD CF-2021-38R1.		

(i) For airplanes that have accumulated less than 17,600 flight hours since the last detailed inspection of the pack discharge and ram air supply ducts was performed as specified in AMM Task 21–51–00–220–801–A01, and for airplanes that have accumulated less than 17,600 flight hours since the date of issuance of the original airworthiness certificate or original export certificate of airworthiness: Within 90 days after the effective date of this AD, or before accumulating 17,600 total flight hours, whichever occurs later.

(ii) For airplanes that have accumulated 17,600 flight hours or more since the last detailed inspection of the pack discharge and ram air supply ducts as specified in AMM Task 21–51–00–220–801–A01, and for airplanes that have accumulated 17,600 flight hours or more since the date of issuance of the original airworthiness certificate or original export certificate of airworthiness, and for which no detailed inspection of the pack discharge and ram air supply ducts has been performed: Within 90 days after the effective date of this AD.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2021–38R1, dated May 25, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0679.

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

(k) Material Incorporated by Reference

None.

Issued on January 2, 2023.

Christina Underwood,

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

[FR Doc. 2023–00130 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0011; Project Identifier MCAI–2022–00211–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 supersede Airworthiness Directive (AD) 2013–07–03, which applies to all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. AD 2013–07–03 requires repetitive inspections for degradation of the bogie pivot pins and for any cracks and damage of the pivot pin bushes of the main and central landing gear; an inspection of the affected bogie pivot pins for corrosion and base metal cracks; and repairing or replacing bogie pivot pins and pivot pin bushes, if necessary. Since the FAA issued AD 2013–07–03, a modification was developed that addresses the unsafe condition and it was determined that a parts installation prohibition is necessary. This proposed AD would continue to require certain actions in AD 2013–07–03, add an optional modification that would terminate the repetitive inspections, and add a parts installation prohibition, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 27, 2023.

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–2023–0011; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0011.
- 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.

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–2023–0011; Project Identifier MCAI–2022–00211–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

The FAA issued AD 2013–07–03, Amendment 39–17407 (78 FR 21227, April 10, 2013) (AD 2013–07–03), for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. AD 2013–07–03 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2012–0053, dated March 30, 2012, to correct an unsafe condition.

AD 2013–07–03 requires repetitive detailed inspections for degradation of the bogie pivot pins and for any cracks and damage of the pivot pin bushes of the main and central landing gear; a magnetic particle inspection of the affected bogie pivot pins for corrosion and base metal cracks; and repairing or replacing bogie pivot pins and pivot pin bushes, if necessary. The FAA issued AD 2013–07–03 to detect and correct cracks and damage to the main and central landing gear, which could result in the collapse of the landing gear and adversely affect the airplane's continued safe flight and landing.

Actions Since AD 2013–07–03 Was Issued

Since the FAA issued AD 2013–07–03, EASA superseded EASA AD 2012–

0053, dated March 30, 2012, and issued EASA AD 2022–0025R2, dated August 9, 2022 (EASA AD 2022–0025R2) (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 and A330–343 airplanes; and Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–542, A340–642 and A340–643 airplanes. Model 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 proposed AD therefore does not include those airplanes in the applicability.

The MCAI states that since EASA issued AD 2012–0053, dated March 30, 2012, Airbus developed mod 207165 and mod 207649, introducing a new bogie pivot pin for certain main landing gear. The MCAI includes the modification as an optional terminating action for the repetitive inspections. The MCAI also determined that a parts installation prohibition is necessary. The MCAI also states that main and central landing gear overhauls contains actions that are equivalent to those required by EASA AD 2012–0053, dated March 30, 2012, and therefore, credit is provided for those actions.

The FAA is issuing this AD to address cracks and damage to the main and central landing gear. The unsafe condition, if not addressed, could result in the collapse of the landing gear and consequent damage to the airplane and injury to occupants. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0011.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2013–07–03, this proposed AD would retain certain requirements of AD 2013–07–03. Those requirements are referenced in EASA AD 2022–0025R2, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0025R2 specifies procedures for repetitive detailed inspections for degradation of the bogie pivot pins and for any cracks and damage of the pivot pin bushes of the main and central landing gear; an non-destructive test (NDT) inspection (*i.e.,* magnetic particle inspection) of the affected bogie pivot pins for corrosion and base metal cracks; and corrective actions if necessary (*i.e.,* repairing or replacing bogie pivot pins and pivot pin bushes). EASA AD 2022–0025R2 also provides an optional modification, which terminates the repetitive inspections. EASA AD 2022–0025R2 also includes a parts installation prohibition for the affected parts.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in 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 EASA AD 2022–0025R2 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0025R2 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0025R2 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 2022–0025R2 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 2022–0025R2. Service information required by EASA AD 2022–0025R2 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0011 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 115 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2013-07-03	22 work-hours × $85 per hour = $1,870	$0	$1,870	$215,050

ESTIMATED COSTS FOR NEW OPTIONAL ACTION

Labor cost	Parts cost	Cost per product
24 work-hours × $85 per hour = $2,040	Up to $30,150	Up to $32,190.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 8 work-hours × $85 per hour = $680	Up to $2,122	Up to $2,802.

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 (AD) AD 2013–07–03, Amendment 39–17407 (78 FR 21227, April 10, 2013); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–0011; Project Identifier MCAI–2022–00211–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

This AD replaces AD 2013–07–03, Amendment 39–17407 (78 FR 21227, April 10, 2013) (AD 2013–07–03).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (5) of this AD; certificated in any category.

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

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

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

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

(5) Model A340–541 and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the bogie pivot pin of the main and central landing gear bogie beams. Investigation indicated these finding were the result of material heating due to friction between the bogie pivot pin and bush, leading to chrome detachment and chrome dragging on the bogie pivot pin. Since issuance of AD 2013–07–03, an optional terminating modification was developed and it was also determined that a parts installation prohibition is necessary. The FAA is issuing this AD to address cracks and damage to the main and central landing gear. The unsafe condition, if not addressed, could result in the collapse of the landing gear and consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0025R2, dated August 9, 2022 (EASA AD 2022–0025R2).

(h) Exceptions to EASA AD 2022–0025R2

(1) Where EASA AD 2022–0025R2 refers to March 1, 2022 (the effective date of EASA AD 2022–0025, dated February 15, 2022), this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0025R2 refers to April 13, 2012 (the effective date of EASA AD 2012–0053, dated March 30, 2012), this AD requires using May 15, 2013 (the effective date of AD 2013–07–03).

(3) Where paragraph (4) of EASA AD 2022–0025R2 specifies corrective actions for the non-destructive test (NDT) inspection, replace the text ''the base metal of the affected part is found corroded'' with ''the bogie pivot pin is found corroded or the base metal is found cracked.''

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0025R2.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0025R2 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2013–07–03 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0025R2 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions

from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(k) Additional Information

For more information about this AD, contact 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.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0025R2, dated August 9, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0025R2, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on January 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–00262 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1661; Project Identifier MCAI–2022–00714–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by a report that in case of a flap, slat, or slat-flap failure in flight, resetting the slat flap control unit (SFCU) to clear the error using the airplane flight manual (AFM) could result in the stall protection computer (SPC) setting the low-speed cue to the most conservative stall advance mode. This proposed AD would require revising the non-normal procedures section of the existing AFM to provide the flightcrew with procedures for addressing failure warnings in the slat and flap control systems. 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 February 27, 2023.

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–2022–1661; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1661; Project Identifier MCAI–2022–00714–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or

responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–30, dated June 3, 2022 (Transport Canada AD CF–2022–30) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states in case of a flap, slat, or slat-flap failure in flight, resetting the SFCU to clear the error using the AFM could result in the SPC setting the low-speed cue to the most conservative stall advance mode instead of that published in the AFM. This condition could result in unexpected stall warnings (aural and visual) as well as stick shaker activation during approach for a landing, increasing flightcrew workload during a critical phase of flight. The higher landing speed could consequently require a greater landing distance and possible diversion to a longer runway.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1661.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information. This service information specifies procedures for revising the non-normal procedures section of the existing AFM to provide the flightcrew with procedures for addressing failure warnings in the slat and flap control systems. These documents are distinct since they apply to different airplane models.

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global Express AFM, Publication No. CSP 700–1, Revision 112, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, Revision 112, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1, Revision 73, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 5500 AFM, Publication No. CSP 700–5500–1, Revision 14, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5500 AFM.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 6000 AFM, Publication No. CSP 700–1V, Revision 42, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.)
- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 6500 AFM, Publication No. CSP 700–6500–1, Revision 14, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 6500 AFM.)

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Transport Canada AD CF–2022–30 requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require

pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 450 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
1 work-hour × $85 per hour = $85	$0	$85	$38,250

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:

Bombardier, Inc.: Docket No. FAA–2022–1661; Project Identifier MCAI–2022–00714–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, having serial numbers 9001 through 9998 inclusive and 60001 through 60097 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that in case of a flap, slat, or slat-flap failure in flight, resetting the slat flap control unit (SFCU) to clear the error using the airplane flight manual (AFM) could result in the stall protection computer (SPC) setting the low-speed cue to the most conservative stall advance mode. The FAA is issuing this AD to address a flap, slat, or slat-flap failure warning. The unsafe condition, if not addressed, could result in unexpected stall warnings (aural and visual) as well as stick shaker activation during approach for a landing, increasing flightcrew workload during a critical phase of flight. The higher landing speed could consequently require a greater landing distance and possible diversion to a longer runway.

(f) Compliance

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

(g) Revision of the Existing AFM

Within 30 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in the AFM sections of the applicable AFM revisions specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g)—AFM References

BILLING CODE 4910–13–P

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A10 (Global Express)	Bombardier Global Express AFM, Publication No. CSP 700-1[1]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 112, dated May 19, 2022
BD-700-1A10 (Global Express XRS)	Bombardier Global Express AFM, Publication No. CSP 700-1A[2]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 112, dated May 19, 2022
BD-700-1A11 (Global 5000)	Bombardier Global 5000 AFM, Publication No. CSP 700-5000-1[3]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 73, dated May 19, 2022

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A11 (Global 5000 ft. GVFD)	Bombardier Global 5000 Featuring Global Vision Flight Deck AFM, Publication No. CSP 700-5000-1V[4]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 42, dated May 19, 2022
BD-700-1A11 (Global 5500)	Bombardier Global 5500 AFM, Publication No. CSP 700-5500-1[5]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 14, dated May 19, 2022
BD-700-1A10 (Global 6000)	Bombardier Global 6000 AFM, Publication No. CSP 700-1V[6]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 42, dated May 19, 2022

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A10 (Global 6500)	Bombardier Global 6500 AFM, Publication No. CSP 700-6500-1[7]	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 14, dated May 19, 2022

[1] For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-1, use Document Identification No. GL 700 AFM-1.

[2] For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700-1A, use Document Identification No. GL 700 AFM-1A.

[3] For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1, use Document Identification No. GL 5000 AFM.

[4] For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1V, use Document Identification No. GL 5000 GVFD AFM.

[5] For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1V, use Document Identification No. GL 5500 AFM.

[6] For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-1V, use Document Identification No. GL 6000 AFM.

[7] For obtaining the procedures for Bombardier Global 6500 AFM, Publication No. CSP 700-6500-1, use Document Identification No. GL 6500 AFM.

BILLING CODE 4910–13–C

(h) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (i)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF–2022–30, dated June 3, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1661.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global Express AFM, Publication No. CSP 700–1, Revision 112, dated May 19, 2022.

Note 1 to paragraph (j)(2)(i): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.

(ii) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, Revision 112, dated May 19, 2022.

Note 2 to paragraph (j)(2)(ii): For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.

(iii) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1, Revision 73, dated May 19, 2022.

Note 3 to paragraph (j)(2)(iii): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.

(iv) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

Note 4 to paragraph (j)(2)(iv): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

(v) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5500 AFM, Publication No. CSP 700–5500–1, Revision 14, dated May 19, 2022.

Note 5 to paragraph (j)(2)(v): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5500 AFM.

(vi) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 6000 AFM, Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

Note 6 to paragraph (j)(2)(vi): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(vii) C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 6500 AFM, Publication No. CSP 700–6500–1, Revision 14, dated May 19, 2022.

Note 7 to paragraph (j)(2)(vii): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 6500 AFM.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on January 2, 2023.

Christina Underwood,

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

[FR Doc. 2023–00077 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0013; Project Identifier MCAI–2022–01085–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–09–03 and AD 2018–20–07, which apply to all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. AD 2017–09–03 and AD 2018–20–07 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2017–09–03 and AD 2018–20–07, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2018–20–07 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 27, 2023.

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–2023–0013; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0013.
- For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website dassaultfalcon.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0013; Project Identifier MCAI–2022–01085–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–231–3226; email *tom.rodriguez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2018–20–07, Amendment 39–19441 (83 FR 49789, October 3, 2018) (AD 2018–20–07), for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. AD 2018–20–07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2018–0026, dated January 30, 2018 (EASA 2018–0026) (which corresponds to FAA AD 2018–20–07), to correct an unsafe condition.

AD 2018–20–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations. The FAA issued AD 2018–20–07 to address reduced structural integrity of the airplane. AD 2018–20–07 specifies that accomplishing the revision required by that AD terminates all requirements of AD 2017–09–03, Amendment 39–18865 (82 FR 21467, May 9, 2017) (AD 2017–09–03). AD 2018–20–07 also specifies that it terminates the requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05) and AD 2012–02–18, Amendment 39–16941 (77 FR 12175, February 29, 2012) (AD 2012–02–18) for certain Dassault Aviation Model MYSTERE–FALCON 50 airplanes. AD 2012–02–18 has since been removed (84 FR 11640, March 28, 2019). This proposed AD would therefore supersede AD 2017–09–03 and terminate the requirements of AD 2010–26–05 for Dassault Aviation Model MYSTERE–FALCON 50 airplanes only.

Actions Since AD 2018–20–07 Was Issued

Since the FAA issued AD 2018–20–07, EASA superseded AD 2018–0026 and issued EASA AD 2022–0166, dated August 11, 2022 (EASA AD 2022–0166) (referred to after this as the MCAI), for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–0013.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0166. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require Chapter 5–40, Airworthiness Limitations, DGT 113872, Revision 24, dated July 2017, of the Dassault Falcon 50/50EX Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of November 7, 2018 (83 FR 49789, October 3, 2018).

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described 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 retain all requirements of AD 2018–20–07. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0166 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0166 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to

use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0166 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0166 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 2022–0166 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 2022–0166. Service information required by EASA AD 2022–0166 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2023–0013 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 239 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–20–07 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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 (AD) AD 2017–09–03, Amendment 39–18865 (82 FR 21467, May 9, 2017) and AD 2018–20–07, Amendment 39–19441 (83 FR 49789, October 3, 2018); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2023–0013; Project Identifier MCAI–2022–01085–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

(1) This AD replaces AD 2017–09–03, Amendment 39–18865 (82 FR 21467, May 9, 2017) (AD 2017–09–03) and AD 2018–20–07, Amendment 39–19441 (83 FR 49789, October 3, 2018) (AD 2018–20–07).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05);

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE–FALCON 50 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

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

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–20–07, with no changes. Within 90 days after November 7, 2018 (the effective date of AD 2018–20–07), revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113872, Revision 24, dated July 2017, of the Dassault Falcon 50/50EX Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, DGT 113872, Revision 24, dated July 2017, of the Dassault Falcon 50/50EX Maintenance Manual, or within 90 days after November 7, 2018, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained Restrictions on Alternative Actions and Intervals With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2018–20–07, with no changes. After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(i) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0166, dated August 11, 2022 (EASA AD 2022–0166). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2022–0166

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0166 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0166 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0166 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0166, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0166 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0166 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0166.

(l) Terminating Actions for AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of AD 2010–26–05 for Dassault Aviation Model MYSTERE-FALCON 50 airplanes only.

(m) 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 (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(n) Additional Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–231–3226; email *tom.rodriguez@faa.gov.*

(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 [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0166, dated August 11, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 7, 2018 (83 FR 49789, October 3, 2018).

(i) Chapter 5–40, Airworthiness Limitations, DGT 113872, Revision 24, dated July 2017, of the Dassault Falcon 50/50EX Maintenance Manual.

(ii) [Reserved]

(5) For EASA AD 2022–0166, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(6) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website *dassaultfalcon.com.*

(7) 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.

(8) 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 January 6, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–00372 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0012; Project Identifier MCAI–2022–01317–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional 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 ATR—GIE Avions de Transport Régional Model ATR42–500 and 72–212A airplanes. This proposed AD was prompted by in-service experience that has shown that the lateral flight guidance of the flight director/auto pilot

may not limit HI BANK turns in severe icing conditions. This proposed AD would require the replacement of the affected new avionics suite (NAS), as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of the affected NAS on any airplane. 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 February 27, 2023.

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–2023–0012; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0012.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@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–2023–0012; Project Identifier MCAI–2022–01317–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 Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@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 2022–0206, dated October 7, 2022 (EASA AD 2022–0206) (also referred to as the MCAI), to correct an unsafe condition for certain ATR—GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. The MCAI states that in-service experience has shown that the lateral flight guidance of the flight director/auto pilot may not limit HI BANK turns in severe icing conditions. The airplane is only protected during LO BANK turns. This condition, if not addressed, could result in loss of control of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–0012.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0206 specifies procedures for replacement of the affected NAS with NAS standard 2.2 or 3.1, or later approved NAS standard. EASA AD 2022–0206 also prohibits the installation of the affected NAS on any airplane. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described 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 2022–0206 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0206 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0206 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 2022–0206 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 2022–0206. Service information required by EASA AD 2022–0206 for compliance will be available at regulations.gov under Docket No. FAA–2023–0012 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 20 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
1 work-hour × $85 per hour = $85	*$0	$85	$1,700

*The FAA has received no definitive data on which to base the cost estimates for the parts specified in this proposed AD.

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:

ATR—GIE Avions de Transport Régional: Docket No. FAA–2023–0012; Project Identifier MCAI–2022–01317–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0206, dated October 7, 2022 (EASA AD 2022–0206).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by in-service experience that has shown that the lateral flight guidance of the flight director/auto pilot may not limit HI BANK turns in severe icing conditions. The FAA is issuing this AD to address the lateral flight guidance not limiting HI BANK turns in severe icing conditions. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0206.

(h) Exceptions to EASA AD 2022–0206

(1) Where EASA AD 2022–0206 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0206.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0206 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design

Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0206, dated October 7, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0206, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on January 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–00263 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R01–OAR–2022–0961, FRL–10562–01–R1]

Approval and Promulgation of Air Quality Implementation Plan; Mohegan Tribe of Indians of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve amendments to the Mohegan Tribe of Indians of Connecticut (the Mohegan Tribe, Mohegans, or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering New Source Review (NSR) under the CAA on December 26, 2006. The proposed TIP includes permitting requirements for minor sources of air pollution not covered by the Tribe's existing federally approved TIP. The purpose of the proposed TIP is to enable the Tribe to attain and maintain the National Ambient Air Quality Standards (NAAQS) within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

DATES: Written comments must be received on or before February 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2022–0961 at *https://www.regulations.gov,* or via email to *Isenberg.Madeline@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, 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 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://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact 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 legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Madeline Isenberg, Air Permits, Toxics and Indoor Programs Branch, EPA Region 1, 5 Post Office Square (Mail Code: 05–2), Boston, MA, 02109–3912, telephone number (617) 918–1271, email: *Isenberg.Madeline@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. CAA Requirements and the Role of Indian Tribes
II. Background on the Mohegan Tribe and CAA Requirements
III. Background on Mohegan Tribe's TIP
IV. Overview of the Mohegan Tribe's July 2022 TIP Revision
V. EPA's Evaluation of the Mohegan Tribe's July 2022 TIP Revision
VI. Proposed Action
VII. Incorporation by Reference
VIII. Statutory and Executive Order Reviews

I. CAA Requirements and the Role of Indian Tribes

A. How did the 1990 CAA amendments include Indian Tribes?

Under the 1990 amendments to the CAA, the EPA may approve eligible Tribes to administer certain provisions of the CAA. Pursuant to section 301(d)(2) of the CAA, EPA promulgated the Tribal Authority Rule (TAR) on February 12, 1998 (63 FR 7254). The TAR specifies the CAA provisions for which it is appropriate to treat Tribes in the same manner as states, the eligibility criteria the Tribes must meet if they choose to seek such treatment, and the procedure by which EPA reviews a Tribe's request for an eligibility determination.

As a general matter, EPA determined in the TAR that it is not appropriate to treat Tribes in the same manner as states for purposes of specific plan submittal and implementation deadlines for NAAQS-related requirements. *See* 40 CFR 49.4. Thus, Tribes are generally not subject to CAA provisions which specify a deadline by which something must be accomplished. For example, provisions mandating the submission of state implementation plans do not apply to the Tribes. Furthermore, under the TAR at 40 CFR 49.7(c), a Tribe may choose to implement reasonably severable portions of the various CAA programs, as long as it can demonstrate that its proposed air program is not integrally related to program elements

that are not included in the plan submittal and is consistent with applicable statutory and regulatory requirements. This modular approach is intended to give Tribes the flexibility to address their most pressing air resource issues and acknowledges that Tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, a Tribe's proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a state submittal. *See* 40 CFR 49.9(h). EPA expects Tribes to fully implement and enforce their approved programs and, as with states, EPA retains its discretionary authority to impose sanctions for failure to implement an air program.

Where the provisions of the act or implementing regulations governing the program for which the Tribe seeks approval require criminal enforcement authority, the Tribe may enter into a memorandum of agreement with the appropriate EPA Region to provide for criminal enforcement by EPA. *See* 40 CFR 49.7(a)(6) and 49.8.

B. What criteria must a Tribe demonstrate to be treated in the same manner as a state under the CAA?

Under section 301(d) of the Clean Air Act, 42 U.S.C. 7601, and the TAR at 40 CFR 49.6, EPA may treat a Tribe in the same manner as a state for purposes of administering certain CAA programs or grants if the Tribe demonstrates that (1) it is federally recognized; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the Tribe pertain to the management and protection of air resources within the Tribe's reservation or within non-reservation areas under the Tribe's jurisdiction; and (4) it can reasonably be expected to be capable of carrying out the functions for which it seeks approval.

C. What is an implementation plan for criteria air pollutants, and what must it contain?

Implementation plans are a set of programs and regulations submitted by states and, if they so choose, by Tribes, that outline a definite plan by which the state or Tribe intends to help attain or maintain the NAAQS. NAAQS have been established for the following six pollutants: ozone; carbon monoxide; particulate matter; sulfur dioxide; lead; and nitrogen dioxide. The EPA calls these pollutants ''criteria pollutants.'' Once approved by EPA, implementation plans become enforceable as a matter of Federal law.

Implementation plans are governed by section 110 of the CAA, 42 U.S.C. 7410. Under sections 110(o) and 301(d) of the CAA and the TAR at 40 CFR 49.9(h), any TIP submitted to EPA shall be reviewed in accordance with the provisions for review of state implementation plans (SIPs) set forth in CAA section 110. Thus, the TIP must include not only the substantive rules by which the Tribe proposes to help achieve NAAQS, but also it must also provide assurances that the Tribe will have adequate personnel, funding, and authority to administer the plan, as required by CAA section 110(a)(2)(E), and requirements governing conflicts of interest, as required by CAA section 128. Under section 128, implementation plans must contain requirements that (1) any ''board or body'' that approves permits or enforcement orders have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or orders and (2) conflicts of interest are disclosed. EPA does not intend to read section 128 to limit a Tribe's flexibility in creating a regulatory infrastructure that ensures an adequate separation between the regulator and the regulated entity (59 FR 43956, 43964 (August 25, 1994).

EPA will evaluate the elements submitted in each TIP on a case-by-case basis to ensure the selected program is reasonably severable under the CAA, and that the TIP has control measures that adequately address the specific types of pollution of concern on the reservation. Once EPA approves the TIP, its provisions are enforceable by the Tribe, by EPA, and by citizens. As with SIPs, EPA maintains an ongoing oversight role to ensure the approved TIP is adequately implemented and enforced and to provide technical and policy assistance. An important aspect of EPA's oversight role is that EPA retains legal authority to bring an enforcement action against a source violating the approved TIP.

II. Background on the Mohegan Tribe and CAA Requirements

The Mohegan Tribe of Indians of Connecticut is an Indian Tribe federally recognized on March 7, 1994, by Congressional legislation (Pub. L. 103–377, October 19, 1994.). The Secretary of the Interior recognizes the ''Mohegan Tribe of Connecticut'' (86 FR 7554 January 29, 2021). On May 4, 2005, the Mohegan Tribe of Indians of Connecticut submitted a request that we find the Tribe eligible for TAS pursuant to § 301(d)(2) of the CAA and Title 42, part 49 of the Code of Federal Regulations (CFR), for the purpose of implementing its CAA permitting program. The Mohegans also submitted for EPA approval its tribal implementation plan (''TIP'') on May 4, 2005.

The Tribe requested a TAS eligibility determination pursuant to the CAA and the TAR for the purpose of administering its TIP within reservation lands. The operative portion of the Mohegan TIP was the Tribe's Area Wide NO_X Emission Limitation Regulation.

Based on the information submitted by the Tribe and after consideration of comments received in response to notice of the Tribe's TAS request, EPA determined that the Mohegan Tribe met the TAS eligibility requirements for the purpose of administering and enforcing a TIP and similar air pollution control programs for minor sources under section 110 of the Act. *See* CAA 301(d)(2) and 40 CFR 49.9(g).

The EPA drafted a decision document titled ''Mohegan Tribe of Indians of Connecticut: Eligibility Determination Under 40 CFR part 49 for a Clean Air Act Tribal Implementation Plan'' (TAS Decision Document, included in the docket of this rulemaking), which was dated December 20, 2006, and signed by Robert W. Varney, Regional Administrator, EPA Region 1 on December 26, 2006.

III. Background on Mohegan Tribe's TIP

The Mohegan Tribe's TIP, submitted on May 4, 2005, and amended on August 22, 2007, consisted of a tribal ordinance, entitled ''Area Wide NO_X Emissions Limitation Regulation,'' which established a limit on nitrogen oxide (''NO_X'') emissions from stationary sources owned by the Mohegan Tribal Gaming Authority and located within the external boundaries of the Mohegan Reservation in Connecticut. The TIP was intended to function as a federally enforceable synthetic minor limit to keep the six boilers at the Mohegan Sun Casino from triggering major source NSR and Title V operating permit requirements for major sources. EPA granted approval of the Mohegan TIP in a final rule published on November 14, 2007 (72 FR 63988).

The Mohegan Environmental Protection Department (MEPD) assumes responsibility for administering the Mohegan TIP. The MEPD was established by Resolution of the Tribal Council on December 18, 2002, pursuant to the Council's constitutional authority to promote the health and general welfare of the Tribe and to

establish a basic departmental structure for the executive branch. The MEPD is an executive department of the Office of the Chief of Staff to the Chairman of the Tribal Council and reports monthly to the Chief of Staff and quarterly to the Tribal Council. *See* Ordinance 2002–12 (''MEPD Ordinance'') (Tribal Application, Exhibit 11) sections 2 and 5; Tribal Application, Exhibit 5 (chart depicting governmental structure).

The MEPD is ''charged with the development, administration and enforcement of the Tribal Implementation Plan enacted pursuant to the Clean Air Act and any such other environmental program approved by the Tribal Council.'' *See* MEPD Ordinance, section 3. In particular, the MEPD Administrator has authority to develop and promulgate guidance, rules, and regulations to implement tribal environmental programs, with Tribal Council approval; to enforce environmental and natural resource rules and regulations; to promulgate reasonable and appropriate enforceable policies and procedures and a schedule of civil/criminal penalties to be assessed for violations of the MEPD's rules and regulations, with Tribal Council approval; and, where the Tribe is precluded from asserting criminal enforcement authority, to execute agreed upon procedures concerning alleged criminal violations. *See* MEPD Ordinance section 4.

Furthermore, EPA Region 1 and the Mohegan Tribe of Indians of Connecticut have entered into a memorandum of agreement with each other outlining general terms for the cooperation of criminal enforcement matters as provided by section 113(c) of the CAA, 42 U.S.C. 7413(c). The agreement, entitled ''Memorandum of Agreement Between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region 1 (a copy of which is provided in the docket of this action) provides procedures of communication as they relate to investigative leads of potential criminal enforcement matters concerning non-Native Americans and Native Americans.

The Tribe submitted a revision to its TIP on April 17, 2009. The revision included a monthly NO_X emissions limitation for new emission units, namely uncontrolled diesel generators and controlled diesel generators. The revisions also vested the Administrator of the MEPD with enforcement authority for violations of the Mohegan TIP. Specifically, the revisions provided the Administrator with the authority to assess civil penalties of up to $25,000 per violation per day, as well as to issue cease and desist orders for violations of the Mohegan TIP. The Mohegan Gaming Disputes Court formerly had the authority to perform these functions. Under the revisions, any entity or individual whose legal rights are affected by any decision of the Administrator regarding enforcement of the Mohegan TIP may appeal the decision to the Director of Regulation and Compliance and may subsequently appeal any decision of the Director of Regulation and Compliance to the Mohegan Tribal Court or Mohegan Gaming Disputes Court (''Mohegan Courts''), as appropriate. EPA approved the revision of the Mohegan TIP on September 28, 2009 (74 FR 49327).

IV. Overview of the Mohegan Tribe's July 2022 TIP Revision

The Mohegans submitted a TIP revision to EPA on July 28, 2022, to establish and set forth the criteria and procedures that the MEPD Administrator (as defined in section 5–302–A) will use to administer a preconstruction permitting program for new and modified minor sources and minor modifications at stationary sources. The revised program also includes the addition of a source registration program for new and existing sources and provisions to obtain an area-wide limit for existing sources. The revisions also outline a process by which the Mohegan Tribe can establish permit by rules, and the Tribe has adopted one permit by rule into their body of regulations for gasoline dispensing facilities as part of these revisions. The Tribe's revisions include procedures for public notification and participation regarding permitting activities and provisions to allow for, in limited circumstances, administrative permit revisions. Elements of the Tribe's revised TIP are discussed in greater detail below.

NSR Preconstruction Permitting Program

The Tribe's NSR preconstruction permitting program sets applicability for emissions increases at new and modified existing sources through emissions thresholds at Table 1 to section 5–303–A. Sources with an emissions increase in excess of the thresholds are required to submit a permit application consistent with the procedures of Appendix A of Article XIII–A. The Tribe may issue a permit containing all required elements as described in Appendix B of Article XIII–A, including such items as general requirements, emission limits, monitoring, recordkeeping, and reporting requirements. Public notice of draft permit decisions made by the Tribe are to be noticed for public review in accordance with the Tribe's public participation requirements at section 5–309–A.

Source Registration

Source registration requirements are detailed in section 5–303–A(a)(1) and Appendix D. Due dates to register vary between existing true minor sources, existing synthetic minor source subject to the Mohegan's Area Wide Limitations for NOx Emissions rule, and new true minor sources. Content requirements are detailed for all registration information on forms provided by the MEPD Administrator. The procedure for estimating emissions outlines how registrations should include potential to emit or estimates of the allowable and actual emissions, in tons per year, of each regulated NSR pollutant for each emission unit at the source. After the source has been registered, additional reporting of relocation, change of ownership, and closure are required and detailed in Appendix D.

Area Wide Limits

Procedures for establishing area-wide limits for existing sources (*i.e.,* synthetic minor sources) are detailed in section 5–303–A. Substantive requirements in Appendix C of the Mohegan's minor NSR program contain provisions for the Tribe to establish permits for sources seeking area wide limits that contain adequate testing, monitoring, record-keeping, and reporting requirements to be used to demonstrate and assure compliance with proposed limitations.

Permit by Rule Provisions and Adoption of Gasoline Dispense Permit by Rule

Section 5–303–A(1) outlines the process by which the Tribe approves general permits/permits by rule for the purpose of complying with the preconstruction permitting requirements for specific source categories' emissions of regulated NSR pollutants under this program. This section includes a description of the Tribe's authority and procedure for adopting permit by rules, applicability, permit issuance, determination of permit by rule source categories, permit by rule content, and obtaining coverage under a permit by rule.

Included in the Tribe's program is a permit by rule for new or modified true minor source gasoline dispensing facilities, detailed in Appendix E. Information about this permit by rule includes applicability, eligibility, notification of coverage, termination, and definitions. Permit by rule terms and conditions include general

provisions, which covers construction and operation, locations, liability, severability, compliance, NAAQS/prevention of significant deterioration protection, unavailable defense, property rights, information requirements, inspection and entry, posting of coverage, duty to obtain a source-specific permit, and credible evidence. Emission limitations and standards, monitoring and testing requirements, and record keeping requirements are also stated in the permit by rule. Notification and reporting requirements include notifications on change in ownership or operator, notification of closure, annual reports, deviation reports, and performance test reports, all of which require a signature verifying truth, accuracy and completeness of the report.

Public Notice and Participation Provisions

Section 5–309–A. applies to the issuance of minor source permits, synthetic minor source permits, the initial issuance of permits by rule, and to coverage of a particular source under an established permit by rule. The MEPD Administrator shall provide public notification and participation of tentative determinations regarding permit applications, providing a copy to EPA Region 1 and to all other air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The Tribe's rule also establishes procedures for requesting a public hearing on tentative determinations and notice of final permit decisions.

Provisions for Permit Revisions

The TIP contains provisions for a permit to be revised, reopened, revoked, and reissued, or terminated for cause. The filing of a request by the permittee for a revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance of an individual permit does not stay or affect any condition contained in a permit by rule. Administrative permit revisions are governed by the provisions stated in section 5–314–A.

Interaction With Previously Approved Mohegan TIP

The previously approved Mohegan TIP established an enforceable cap of nitrogen oxide emissions from stationary sources owned by the Mohegan Tribal Gaming Authority and located within the external boundaries of the Mohegan Reservation. The Mohegan Tribe's July 2022 TIP revision addresses all regulated NSR pollutants for all tribal sources, except for NO_X at sources regulated under Article XIII of the existing TIP, by establishing a federally enforceable preconstruction permitting program within the exterior boundaries of the Tribe's reservation. This distinction in applicability is discussed in the introductory paragraph to Article XIII–A of the Tribe's July 2022 submittal.

V. EPA's Evaluation of the Mohegan Tribe's July 2022 TIP Revision

EPA has evaluated the Mohegan Tribe's revised TIP submittal; in the following sections we provide our assessment of the Tribe's program with respect to Clean Air Act requirements. The purpose of the Tribe's minor NSR permitting requirements is to establish a preconstruction permitting program, for new minor sources and minor modifications at stationary sources. The requirements that minor source programs must meet to be approved are outlined in 40 CFR 51.160 through 51.164. These regulations require states to develop ''legally enforceable procedures'' to enable a state ''to determine whether the construction or modification of a [source] will result in (1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard.'' *See* 40 CFR 51.160(a). The program must identify the types and sizes of sources subject to review, and the state's plan must discuss the basis for determining which facilities will be subject to review. *See* 40 CFR 51.160(e).

Although the Act does not require Tribes to develop and seek EPA approval of NSR permit programs, where a Tribe decides to do so, EPA evaluates the program in accordance with applicable statutory and regulatory criteria in a manner similar to the way in which EPA would review a similar state submittal. *See* 40 CFR 49.9(h); 59 FR 43956 at 43965 (August 25, 1994) (proposed TAR preamble); 63 FR 7254 (February 12, 1998) (final TAR preamble).

For the reasons discussed below, we propose to approve the Mohegan minor NSR program in accordance with the TAR and the criteria for approval of minor NSR programs at 40 CFR 51.160 through 51.164. The Tribe's regulation, while structured differently, remains consistent with requirements in EPA's Federal Minor New Source Review Program in Indian Country. *See* 40 CFR 49.151 through 49.164. EPA's analysis of the various elements of the Mohegan's TIP Revision are described in more detail below.

NSR Preconstruction Permitting Program

Section 110(a)(2)(C) of the Act (42 U.S.C. 7410(a)(2)(C)) requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. In this TIP revision, the Mohegan Tribe is establishing a preconstruction permitting program for new minor sources and minor modifications at stationary sources. Parts C and D of the CAA, which pertain to prevention of significant deterioration (PSD) and nonattainment NSR, respectively, address the major NSR programs for major stationary sources, and the permitting program for ''nonmajor'' (or ''minor'') stationary sources is addressed by section 110(a)(2)(C) of the Act. We commonly refer to the latter program as the ''minor NSR'' program. A minor stationary source is a source whose ''potential to emit'', as defined in section 5–302–A(d), is lower than the major source thresholds, also defined within section 5–302–A(d) of the tribe's regulation, of 50 tons per year or more for NO_X or VOC, and 100 tons per year or more for any other regulated NSR pollutant.

The Mohegan's NSR program applies to new true minor NSR sources and modifications at existing sources. Section 5–303–A(b)(1)(i)–(ii) of the Tribe's regulation describes the way in which these sources would calculate whether an emissions increase at a new true minor source or a modification at existing source would need to obtain a permit prior to beginning construction of the new source or modification. If a permit is required, section 5–306–A of the tribe's regulation directs prospective permittees to follow provisions within Appendix A for specific requirements on what information must be in a permit application. Applications for permits must include facility information, a listing of each emissions unit, detailed unit specific information for all affected emissions units, a description and characterization of the total facility emissions, and if required by the MEPD Administrator an air quality impact analysis in accordance with 40 CFR part 51, appendix W.

Appendix B of the Mohegan TIP includes details on permit content, which includes authorities to impose emission limitations, monitoring requirements, reporting requirements and recordkeeping requirements.

EPA finds that the requirements of the Mohegan's minor NSR program follow

the procedures to determine applicability, permit application requirements, and permit requirements in EPA's Federal Minor New Source Review Program in Indian Country at 40 CFR 49.153 through 49.155.

The Mohegan's minor NSR permitting requirements apply to stationary sources that are not major NSR sources and have the potential to emit the following regulated NSR pollutants at or above the following annual ton per year (tpy) thresholds:

(a) Nitrogen oxides (NO_X), 5 tpy
(b) Volatile Organic Compounds, 2 tpy
(c) Carbon monoxide (CO), 10 tpy
(d) Sulfur dioxide (SO_2), 10 tpy
(e) Particulate Matter, 10 tpy
(f) PM_{10}, 5 tpy
(g) $PM_{2.5}$, 3 tpy
(h) Lead, 0.1 tpy
(i) Fluorides, 1 tpy
(j) Sulfuric acid mist, 2 tpy

Source Registration

The Tribe's requirements for existing true minor sources, existing synthetic minor sources for NO_X covered by Article XIII, and new true minor sources and modified sources provide for reasonable and enforceable measures for the Tribe to account for all applicable sources within their jurisdiction. Existing sources must register with the MEPD Administrator within 60 days of the enactment of the TIP, and new sources and modified sources must register with the MEPD Administrator as part of their permit application. EPA finds this source registration program to account for all potentially subject sources with clear guidance in regulation on how to register with the MEPD Administrator.

Area Wide Limits

The Tribe has adopted synthetic minor source permitting provisions that, while structured differently, are substantively identical to EPA's rule at 40 CFR 49.158. The Mohegan's area-wide limit requirements apply to both NSR pollutants and hazardous air pollutants (HAPs) consistent with EPA's Tribal Minor NSR rule in Indian Country. EPA find the requirements within Appendix C of the Mohegan's minor NSR program to adequately establish the necessary testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with proposed limitation.

Permit by Rule Provisions and Adoption of Gasoline Dispense PBR

The Tribe has developed regulatory procedures to adopt permit by rules consistent with EPA's own procedures to adopt permit by rules within 40 CFR 49.156. The Tribe has also adopted a permit by rule for new or modified true minor source gasoline dispensing facilities which is identical to EPA's own air quality permit by rule for new or modified true minor source gasoline dispensing facilities in Indian country at 40 CFR 49.164.

Public Notice and Participation Requirements

The Tribe has adopted public notice and participation requirements that are consistent with EPA's rule at 40 CFR 49.157. The Mohegan Tribe's public participation requirements include at a minimum the following: availability, in the area affected by the air pollution source, of the draft permit and associated public record, for public inspection; public notice, describing the availability of the documents for review and the opportunity to comment; a comment period, no less than thirty (30) days commencing upon the date of publication; a thirty (30) day period for EPA to review commencing upon the date a copy of the required notice is provided to EPA; and if requested by a member of the public, a public hearing relating to tentative approval of the permit shall be held with appropriate notice provided.

B. What procedural requirements did the Mohegan Tribe satisfy?

Section 110(a) of the CAA requires that implementation plans be adopted by a state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

We find that the Mohegan's process for adopting and submitting the TIP satisfies the procedural requirements for adoption and submission of implementation plans under CAA section 110(a) and EPA's implementing regulations.

Specifically, the Mohegan's TIP submittal has fulfilled the following requirements: (1) a formal letter of submittal from the Tribe's Chairman requesting EPA approval of the plan in a letter dated July 28, 2022 from James Gessner, Jr., Chairman, to Patrick Bird, Air Permits, Toxics, and Indoor Programs Branch Manager, EPA New England Region 1 (Cover Letter), (2) evidence that the Tribe has adopted the plan in the Tribal code or body of regulations including the date of adoption or final issuance as well as the effective date of the plan, (3) evidence that the Tribe has the necessary legal authority under tribal law to adopt and implement the plan, (4) a copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, (5) evidence that the Tribe followed all the procedural requirements of the Tribe's laws and constitution in conducting and completing the adoption/issuance of the plan (Exhibit A), (6) evidence that the public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice, (7) certification that public hearings were held in accordance with information provided in the public notice and the Tribe's laws and constitution, and (8) compilation of public comments and the Tribe's responses thereto.

VI. Proposed Action

EPA is proposing to approve the Mohegan Tribe of Indians of Connecticut's Tribal Implementation Plan under the Clean Air Act to regulate air pollution within the exterior boundaries of the Tribe's reservation. The proposed TIP includes minor NSR preconstruction permitting requirements and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds. Specifically, we are proposing to approve Resolution No. 2022–31 which incorporates Article XIII–A. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the Mohegan Tribe's Resolution No. 2022–31, which incorporates Article XIII–A and establishes a minor NSR preconstruction permitting program and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds. The EPA has made, and will continue to make, these documents generally available through *https://*

www.regulations.gov and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a TIP 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 TIP submissions, EPA's role is to approve tribal choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves tribal law as meeting Federal requirements and does not impose additional requirements beyond those imposed by tribal law. For that reason, this proposed action:

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

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: January 9, 2023.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2023–00552 Filed 1–12–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0728; FRL–10255–01–R5]

Air Plan Approval; Michigan; Part 4 Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to Michigan's State Implementation Plan (SIP). On August 17, 2022, The Michigan Department of Environment, Great Lakes, and Energy (EGLE) submitted changes to Michigan's Air Pollution Control Rules, Emissions Limitations and Prohibitions—Sulfur Bearing Compounds. The revision includes administrative changes to existing rules, updates material adopted by reference, and removes a definition.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0728 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: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@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. What did Michigan submit?

On August 17, 2022, Michigan EGLE submitted revisions to Michigan's Air Pollution Control Rules in Part 4. Specifically, the state requested EPA to act on the following revisions to Part 4: R336.1401a (Rule 401a)—''Definitions''; R336.1401 (Rule 401)—''Emission of sulfur dioxide from power plants''; R336.1402 (Rule 402)—''Emission of SO_2 from fuel-burning equipment at a stationary source other than power plants''; and R336.1404 (Rule 404)—''Emission of SO_2 and sulfuric acid mist from sulfuric acid plants''.

Michigan EGLE provided the public an opportunity to comment on Part 4 revisions during a 30-day public comment period beginning on June 15, 2019, and at a public hearing held on July 1, 2019. No comments were received.

II. What is EPA's analysis of Michigan's submission?

In existing rules 401, 402, and 404, there are three citations to the American Society for Testing and Material standards (ASTM) and compliance test methods in 40 CFR part 60, adopted by reference in R336.1802a and R336.2004(1)(l), respectively. To achieve consistency between the SIP and Michigan's rules, Michigan EGLE has consolidated all adoption by reference material in Michigan's Air Pollution Control Rule in Chapter 336, Part 9, R336.1902, ''Adoption of

standards by reference''. Thus, for rules 401, 402, and 404, EGLE revised the location of material adopted by reference to be addressed in R336.1902.

The existing rule 401a currently includes a definition for the term ''used oil'' that was approved by EPA in 2015. (80 FR 21183, April 17, 2015). However, Michigan EGLE later revised Michigan's Air Pollution Control Rule in Chapter 336, Part 1, ''Definitions'' to more appropriately include the definition of used oil in the general air provisions rule at R336.1121(c) to reference ''used oil'' for all the air rules. (84 FR 8809, April 11, 2019). Michigan EGLE eliminated the redundant ''used oil'' definition by removing the definition from Part 4.

Clean Air Act (CAA) Section 110(l) prohibits EPA from approving a SIP revision if it would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other CAA requirement. EPA concurs with Michigan EGLE's 110(l) analysis that the revisions to the Part 4 rules improve its clarity and do not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA. Further, the revision will not increase any emissions to the atmosphere because they do not impact the applicability of any source or emission limits.

EPA finds the revision to Part 4 acceptable and thus, proposes approval into the Michigan SIP.

III. What action is EPA taking?

EPA is proposing to approve the revisions to Michigan's Part 4 rule into the Michigan SIP, as submitted on August 17, 2022. The administrative changes to Part 4 will not increase any emissions to the atmosphere because they do not impact the applicability of any source or any emission limits.

IV. Incorporation by Reference

In this 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 Michigan rules R336.1401a, R336.1401, R336.1402, and R336.1404, effective October 24, 2019, as discussed in Section I 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).

V. Statutory and Executive Order Reviews

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

Dated: January 5, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–00349 Filed 1–12–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2860, 2880 and 2920

[LLHQ3500000.L51020000.ER0000, 22X]

RIN 1004–AE60

Update of the Communications Uses Program, Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way: Reopening of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On November 7, 2022, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule to enhance the communications uses program, update its cost recovery fee schedules, and add provisions governing the development and approval of operations, maintenance, and fire prevention plans and agreements for rights-of-way (ROW) for electric transmission and distribution facilities (powerlines). The BLM has determined that it is appropriate to reopen the docket until January 23, 2023, to allow for additional public comment.

DATES: The comment period for the proposed rule originally published on November 7, 2022, at 87 FR 67306, is reopened. Comments must be submitted on or before January 23, 2023. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed in the **ADDRESSES** section.

ADDRESSES:

Mail, Personal, or Messenger Delivery: U.S. Department of the Interior, Director

(HQ–630), Bureau of Land Management, Room 5646, 1849 C St. NW, Washington, DC 20240, Attention: Regulatory Affairs: 1004–AE60.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE60'' and click the ''Search'' button. Follow the instructions at this website.

FOR FURTHER INFORMATION CONTACT: Erica Pionke, Realty Specialist, via email at *epionke@blm.gov* or via phone at (202) 570–2624 for information on the rule; or Jennifer Noe, Regulatory Analyst, via email at *jnoe@blm.gov* for information related to the general rulemaking process. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM, marked with the number RIN 1004–AE60, by mail, personal or messenger delivery, or through *https://www.regulations.gov* (see the **ADDRESSES** section). Please note that comments on this proposed rule's information collection burdens should be submitted to the OMB as described in the **ADDRESSES** section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES**: Mail, personal, or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m. EST), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The proposed rule was published on November 7, 2022 (87 FR 67306), with a 60-day comment period closing on January 6, 2023. Since publication, the BLM has received a request for extension of the comment period on the proposed rule. The BLM has determined that it is appropriate to reopen the docket until January 23, 2023, to allow for additional public comment.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2023–00620 Filed 1–12–23; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 21–450; FCC 22–87; FR ID 120401]

Affordable Connectivity Program; Emergency Broadband Benefit Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking, the Federal Communications Commission (Commission or FCC) seeks comments on the statutory requirement to revise Affordable Connectivity Program (or ACP) Transparency Data Collection rules, the value of subscriber-level data and methods of obtaining and encouraging subscriber consent, and whether the Commission should also collect additional data.

DATES: Comments are due on or before February 13, 2023 and reply comments are due on or before February 27, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the listed contact as soon as possible.

ADDRESSES: All documents filed with the Commission pursuant to the requirements of this order should refer to WC Docket No. 21–450. Unless otherwise specified, such documents may be filed by any of the following methods:

- *Electronic Filers:* You may file documents electronically by accessing the Commission's Electronic Comment Filing System (ECFS) at *https://www.fcc.gov/ecfs/filings.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Parties that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding the procedures for submission of confidential materials. *See FCC Provides Further Instructions Regarding Submission of Confidential Materials,* Public Notice, DA 20–361, 35 FCC Rcd 2973 (OMD, March 31, 2000), *https://docs.fcc.gov/public/attachments/DA-20-361A1_Rcd.pdf.* 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 Federal Communications Commission, 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 and Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: Eric Wu, Attorney Advisor,

Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–7400 or *eric.wu@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 21–450, FCC 22–87, adopted on November 15, 2022 and released on November 23, 2022. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-22-87A1.pdf.* The Fourth Report and Order that was adopted concurrently with the FNPRM is to be published elsewhere in the **Federal Register**.

I. Discussion

1. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks additional comments on: (1) the statutory requirement to revise ACP Transparency Data Collection rules adopted in the Fourth Report and Order (Order); (2) the value of subscriber-level data and methods of obtaining and encouraging subscriber consent; and (3) whether the Commission should also collect additional data, such as more granular aggregated data, data related to enrollment processes, the digital divide, price, or plan availability or performance.

2. *Data Collection Revisions.* The Commission asked about the statutory requirement to revise the ACP Transparency Data Collection rules to verify the accuracy of the data submitted by providers in the *ACP Data Collection Notice* and received little comment other than from ACA Connects. Although the Infrastructure Act could be interpreted as requiring the Commission to collect and analyze data before revising the Commission rules, it could also be interpreted as not making data collection a prerequisite to doing so. The Commission believes that Congress' directive to revisit the data collection rules can be accomplished by reviewing and beginning to revise the rules of the collection, including for data accuracy verification, within the six-month statutory timeframe. Accordingly, the Commission seeks comment on how the rules in the Order, 87 FR XXXX, month xx, 2022, could be improved, such as by reducing burdens on smaller providers or, as set forth following, collecting subscriber-level data, more granular aggregated data, or data related to the digital divide or plan availability. In particular, the Commission seeks comments on how the rules set forth in the Order could be revised to verify the accuracy of the data to be collected thereunder. How should the Commission track and verify the accuracy of data? How should the Commission protect against inaccuracies in the data? Should rule revisions contemplate adding new collection variables to improve or refine the data collected? How can the Commission structure future rule revisions to minimize the economic impact on small providers? As noted proceeding, the Commission delegates authority to the Bureau to issue a supplemental notice seeking comment on these issues, if necessary to enhance the record. The Commission also seeks comments on whether this approach complies with section 60502(c)(2) of the Infrastructure Act.

3. *Subscriber-Level Data.* Additionally, although the Commission is not requiring providers to collect and submit via NLAD subscriber-level data at this time, the Commission seeks additional comment on the benefits and costs of collecting subscriber-level data. Does the Commission have authority to collect subscriber-level data under the Infrastructure Act or other sources of authority? Would subscriber-level data on price and a unique plan identifier be more useful relative to the aggregated data to be collected under this Order, and, if so, how, why, and to what extent? Would subscriber-level data allow the Commission to better understand and assess service price and plan characteristics? If so, how could the Commission use this better understanding to further the Commission performance objectives for the Affordable Connectivity Program? For example, as noted in the *ACP Data Collection Notice,* a subscriber-level collection can help to ''study how subscriber plan choices and preferences for plan characteristics vary by geographic area'' and could also improve consumer outreach efforts, which could not be targeted based on a high-level aggregate collection. Are there additional benefits of a subscriber-level collection in meeting the performance goals of the program? Would providing additional fields in NLAD, for example, including price and a unique plan identifier, impose significant burdens on providers or subscribers?

4. Collecting subscriber-level data, however, means getting subscriber consent, and the Commission seeks additional comments on how consent could be obtained. Should providers be required to obtain or seek consent upon enrolling new subscribers? What about when transferring-in subscribers who are moving the ACP benefit to another provider? Additionally, the Commission seeks comments on obtaining consent from existing ACP households. Although commenters representing providers asserted this would be burdensome in response to the ACP *Data Collection Notice,* the Commission seeks further comments on ways to seek consent by using existing systems or other required or voluntary contacts with enrolled households. For subscribers already enrolled based on a qualified ACP application in the National Verifier, should USAC obtain or seek consent from these subscribers? Or is the broadband provider better positioned to obtain consent? Should USAC seek or obtain consent upon recertification? Are there other touchpoints between USAC and subscribers that would permit consent? If consent is sought or obtained via USAC in the application or through recertification, how should consent be obtained from ACP subscribers who do not have their eligibility determined via the National Verifier because they qualify via participation in a provider's low-income program or are enrolled in Lifeline and do not have to apply again for the Affordable Connectivity Program? Is the enrolling provider in the best position to obtain consent? Similarly, how could consent be obtained from subscribers who are recertified automatically through the National Verifier or through their Lifeline recertification?

5. The Commission seeks further comments on whether consent should be mandatory or optional for subscribers. If consent is mandatory, what would be the likely effect on ACP enrollment for new subscribers and existing subscribers? If consent is optional for subscribers, how would this affect the quantity and quality of the resulting data? How could the Commission encourage or incentivize subscribers to consent? Should the Commission make consent mandatory, that is, a condition for ACP participation, for new subscribers or those transferring the affordable connectivity benefit, as is the case for the consent required to transmit data such as name and address under 47 CFR 54.1806(d), while leaving consent optional for existing subscribers to whom providers must reach out? Would making consent mandatory for new subscribers upon enrollment improve the data collection? Would making consent mandatory for existing subscribers upon transferring the affordable connectivity benefit improve the data collection? If consent were to be made optional for subscribers but requesting consent mandatory for providers, how could the Commission

ensures that providers timely seek and obtain consent?

6. *Other Levels of Aggregation.* Although the rules in the Order require providers to submit data at the ZIP code level, the Commission also seeks comments on whether aggregated data should be collected or aggregated on a level smaller than ZIP code, such as by county or Census tract, either in addition to or instead of ZIP code. What would be the benefits and costs of collecting data aggregated at these levels? Do providers have the capability to readily aggregate data by county or Census tract? If not, what are the burdens associated with aggregating data at these levels? If data is collected or aggregated on a level other than by ZIP code, should this effect the level at which data is published? How would privacy considerations affect the level at which data gets published?

7. *Enrollment Process Data.* The Commission also seeks comments on whether to collect information about the enrollment process and customer interactions with provider representatives. Such information could relate to the administrative efficacy of the Affordable Connectivity Program. In particular, information about interactions between subscribers and provider representatives and the type of interaction, such as enrollment assistance in-person, over the phone, or via email, could help the Commission combat enrollment misconduct. The Commission thus seeks further comments on whether the Commission should, in the ACP Transparency Data Collection, collect information about the extent to which subscribers enroll in the program using the assistance of provider representatives. Should the Commission collect data on the type of enrollment interaction—in person, telephonically, or via email or other method? Should the Commission collect this information at the subscriber-level or aggregate-level? Should the Commission require providers to upload to NLAD the type of enrollment interaction between subscriber and representative or data relating to which representative was involved? Does the Commission have the authority collect such information as part of the ACP Transparency Data Collection? What burdens on providers or subscribers would be associated with collecting enrollment-related interaction data from providers?

8. *Digital Divide Performance Metrics.* Furthermore, the Commission seeks comments on whether to collect data related to the digital divide. This information could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to the Commission accomplishments of the performance goal of reducing the digital divide. The Commission therefore seeks further comments on whether it should collect information through this collection about the extent to which ACP subscribers are new or existing broadband subscribers, or are subscribers to multiple broadband plans (*e.g.,* fixed and mobile). Should the Commission collect this information at the subscriber-level or aggregate-level? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burdens on providers, particularly small providers, would such a collection entail? If this collection is not the proper venue for such a collection, should the Commission collect the information through statistical sampling, industry or consumer surveys? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital equity and inclusion?

9. *Introductory Pricing and Set-up Fees.* The Commission also seeks comments on whether to make mandatory the submission of information concerning the number of ACP households paying introductory prices or on introductory or time-limited promotional pricing plans and the total number of subscribers who pay set-up fees. In the Order, the Commission made the submission of the total number of subscribers on introductory rates or who pay set-up fees optional, acknowledging the burden that providers face when submitting such granular information. Information on introductory pricing could assist in understanding the growth of the Affordable Connectivity Program, the number of subscribers who may be subject to upcoming price increases, and whether ACP subscribers are predominantly new. Information on set-up fees could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to the accomplishment of the performance goal of reducing the digital divide, given that set-up or installation fees are a barrier to the adoption of broadband internet service. The Commission therefore seeks further comments on whether the Commission should make the collection of these two data points mandatory. Should the Commission collects this information at the subscriber level or aggregate level? Are there other data fields or information related to introductory pricing or set-up or activation fees that the Commission should collect? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burden on providers, particularly small providers, would such a collection entail? Is this collection the proper venue for the collection of this information, and if not, where and how should the Commission collect this information? Would collection of this information help the Commission assess its progress towards digital equity and inclusion?

10. *Quality of Service Metrics.* In the *Broadband Labels Further Notice of Proposed Rulemaking* (*Broadband Labels FNPRM),* FCC 22–86, November 17, 2022, the Commission requests comments on whether and how the Commission should collect connection reliability or other quality of service metrics, such as network availability. This information, if collected as part of Broadband Labels, could assist the Commission in determining the value that ACP households are obtaining from their benefit. The Commission seeks comments on whether, as part of this collection, the Commission shall collect any reliability or other quality of service information that may be collected as part of Broadband Labels.

11. *Plan Characteristics.* The Commission also seeks comments on whether it should make the collection of all plan characteristics included on the broadband labels mandatory for legacy or grandfathered plans. In the Order, the Commission made the submission of information included on the broadband labels relating to introductory rates, one-time fees, typical speeds, and typical latency optional for legacy service plans, given their unique features (*e.g.,* lower subscribership rates, not currently offered, no broadband labels etc.). Collecting this information would allow the Commission to ensure that its data set is more robust and not skewed or biased as a result of the exclusion of certain data fields relating to legacy plans. What are the benefits of collecting this information for legacy service plans? What are the burdens associated with such a collection and how can burdens on providers be minimized? Should the Commission collect this information at the subscriber or aggregate level? If the Commission makes the submission of these characteristics mandatory, what should the timeframe for the collection be? Would collecting this information present an opportunity to collect and assess other useful information, related to digital equity and inclusion, or reducing the digital divide?

12. *All-in Price.* The Commission also seeks comments on whether to require the collection of all-in price, net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than $0. This information would help the Commission determine its progress toward the goal of reducing the digital divide, the efficacy of the Affordable Connectivity Program, and the value that ACP households are obtaining from the federal subsidy. In the Order the Commission made the submission of the all-in price, the net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than $0 optional. The Commission seeks comments on whether to make the collection of these characteristics mandatory. What are the benefits of collecting such information? How would all-in price, net-rate charged, or the number of subscribers whose net-rate charge is $0 be helpful for groups engaging in targeted outreach? Should the Commission make mandatory the collection of any other optional fields? What would the burdens of such a collection impose on providers and in particular, small providers? If the Commission requires the submission of this information, should the Commission collect it at the subscriber or the aggregate levels? What are the benefits and burdens associated with each approach? Would collecting this information present help assess other information, related to digital equity and inclusion, or reducing the digital divide?

13. *Additional Plan Metrics.* The Commission also seeks comments on whether the Commission collects data on additional metrics, including but not limited to low-income plan and connected device offerings. This information could assist the Commission in determining its progress towards the Affordable Connectivity Program goals of reducing the digital divide and ensuring the efficient administration of the program. The Commission seeks comments on whether, as part of this collection, the Commission collects information about the availability of restricted or low-income only service plans, or a provider's connected device offerings. Should the Commission collect information about the availability of low-income plans or connected device such offerings at the subscriber or aggregate level? Would the collection of such information impose a burden on providers, including small providers, or on subscribers? Does the Commission have the authority to collect this information? Are there any privacy concerns raised by the collection of this information? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital equity and inclusion?

II. Procedural Matters

A. Paperwork Reduction Act

14. The FNPRM may contain proposed new or modified information collection requirements. 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 any information collection requirements contained in the FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506©(4), the Commission seeks specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this 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 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 Notice of Proposed Rulemaking provided on the first page of the item. The Commission 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**.

16. *Need For, and Objectives of, the Proposed Rules.* In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (ACP), which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The Affordable Connectivity Program provides funds for an affordable connectivity benefit consisting of a $30.00 per month discount on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a $75.00 per month discount on such prices in Tribal areas. The Commission established rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.

17. Furthermore, the Infrastructure Act directs the Commission to establish an annual mandatory collection of data relating to the price and subscription rates of each internet service offering of ACP participating providers. The Act also requires the Commission to ''revise the rules to verify the accuracy of data submitted pursuant to the rules'' no later than 180 days after the rules are promulgated.

18. By way of background, in the *ACP Data Collection Notice,* the Bureau sought comment on the timing requirement, specifically asking how to interpret section 60502(c)(2)'s revision mandate. In response, the Commission only received one comment from ACA Connects, suggesting that its permitted to revise rules in compliance with 60502(c)(2) before collecting any data. In the FNPRM, the Commission interprets the Infrastructure Act as not requiring it to collect data prior to revising its rules.

19. The FNPRM seeks comment on the Infrastructure Act's rule revision requirement. Specifically, the Commission seeks information on how to improve the data collection rules, including how to track and verify the accuracy of data collected, to protect against inaccuracies, and to reduce burdens. Moreover, the FNPRM seeks comment on whether the timing of this collection, as proposed, satisfies the requirements of the Infrastructure Act to ''revise the accuracy'' of its rules no later than 180 days after establishing final rules.

20. The Commission also seeks comments on the value of subscriber-level data and how, if the Commission decides to collect such information, obtain consent. Specifically, the Commission seeks comments on the value and burdens associated with collecting subscriber level information, and the methods and merit of collecting consent from new and existing ACP subscribers, including whether consent should be mandatory or optional.

21. Additionally, the Commission seeks comment on whether to collect information about the Affordable Connectivity Program enrollment process as part of this collection, specifically whether the Commission authorizes to collect such information, and how to go about collecting it.

22. The Commission seeks comments on whether to collect information to help measure progress towards accomplishing the Affordable Connectivity Program goals of reducing the digital divide and ensuring effective administration of the program. Specifically, the Commission asks whether its authorized to collect such information, collect the information as part of this collection, and what methods to use to collect it.

23. The Commission also seeks comments on whether to make the collection of the total number of subscribers who are paying introductory rates or who pay set-up fees in a data-month mandatory. In the Order the Commission permits, but does not require providers to submit this information. The Commission specifically ask whether to make these optional submissions mandatory, and whether it is authorized to collect such information.

24. Furthermore, the Commission seeks comments on whether to make the collection of all-in price, net-rate charged, and the number of subscribers for whom net-rate charged is $0 mandatory. In the Order the Commission permits, but does not require providers to submit information on the all-in price, the net-rate charged, and the number of subscribers whose net-rate charges is $0 by ZIP-code and plan identifier. The Commission specifically asks whether to make this collection mandatory, and what the benefits and burdens are with such an approach.

25. The Commission also seeks comments on whether to collect additional quality of service metrics as part of this collection, including connection reliability and outages. The Commission specifically seeks comments on the benefits and burdens associated with collecting additional quality of service metrics, and ask whether to collect such information at the subscriber or aggregate level.

26. The Commission finally, seeks comments on whether to make mandatory the collection of latency, one-time fees, introductory rates, typical speed, and typical latency. In the Order, providers are not required to submit these fields for legacy service plans. The Commission specifically seeks comments on what the benefits and burdens of submitting this information for all plans would be, in addition to whether to collect this information at the subscriber or aggregate level.

27. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the ACP efficiently, with minimal burden on eligible households and participating providers. These actions are consistent with the Commission's ongoing efforts to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband internet access service.

28. *Legal Basis.* The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(c).

29. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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 proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

30. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes 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 Small Business Administration's (SBA) 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.

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

32. 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 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

33. *Wired Broadband internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

34. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report,*

the Commission believes that the majority of wireline internet access service providers can be considered small entities.

35. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). 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.

36. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, the Commission believes that the majority of wireless internet access service providers can be considered small entities.

37. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In this FNPRM, the Commission seeks comment on how to structure its revisions to the rules adopted in this Order, as required by the Infrastructure Act, in addition to whether and how to collect information relating to subscriber-level data, subscriber enrollment, digital divide performance metrics, all-in price, one-time set-up fees, quality of service metrics, plan characteristics or additional performance metrics. To the extent the Commission revises the rules promulgated in this Order or decides to collect enrollment information, subscriber level data, digital divide metrics, or other metrics, participating providers of all sizes may be required to maintain and report information concerning plan prices, subscription rates, and plan characteristics. Any recordkeeping or reporting requirements adopted in this proceeding, however, will apply only to those providers that chose to participate in the Affordable Connectivity Program.

38. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the potential rule changes that may be adopted and is not in a position to determine whether the proposals in the FNPRM will require small entities to hire professionals in order to comply. The Commission seeks comments on its proposals and their likely costs and benefits as well as alternative approaches. The Commission expects the comments received will include information on the costs and benefits, service impacts, and other relevant matters that should help identify and evaluate relevant issues for small entities, including compliance costs and other burdens (as well as countervailing benefits), so that the Commission may develop final rules that minimize such costs.

39. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* 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 the following four alternatives (among others): ''(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 and 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.''

40. The FNPRM seeks comments from all interested parties. The Commission is aware that some of the proposed collections under consideration may impact small entities. The FNPRM does seek comment on the impact of its proposed rules on providers, and small entities are encouraged to bring to the Commission's attention any specific concerns that they may have with the proposals outlined in the FNPRM.

41. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and taking actions in this proceeding.

42. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

43. *Ex Parte Rules.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must

be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–28434 Filed 1–12–23; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 88, No. 9
Friday, January 13, 2023

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States adopted three recommendations at its hybrid (virtual and in-person) Seventy-eighth Plenary Session: Precedential Decision Making in Agency Adjudication, Regulatory Enforcement Manuals, and Public Availability of Settlement Agreements in Agency Enforcement Proceedings.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2022–4, Matthew Gluth; and for Recommendations 2022–5 and 2022–6, Alexandra Sybo. For each of these recommendations the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.*

The Assembly of the Conference met during its Seventy-eighth Plenary Session on December 15, 2022, to consider three proposed recommendations and conduct other business. All three recommendations were adopted.

Recommendation 2022–4, *Precedential Decision Making in Agency Adjudication.* This recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that agencies codify their procedures for precedential decision making in their rules of practice.

Recommendation 2022–5, *Regulatory Enforcement Manuals.* This recommendation identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.

Recommendation 2022–6, *Public Availability of Settlement Agreements in Agency Enforcement Proceeding.* This recommendation identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.

The Conference based its recommendations on research reports and prior history that are posted at: *https://www.acus.gov/meetings-and-events/plenary-meeting/78th-plenary-session.*

Authority: 5 U.S.C. 595.

Dated: January 10, 2023.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2022–4

Precedential Decision Making in Agency Adjudication

Adopted December 15, 2022

It is a tenet of our system of justice that like cases be treated alike. Agencies use many different mechanisms to ensure such consistency, predictability, and uniformity when adjudicating cases, including designating some or all of their appellate decisions as precedential.[1] Agencies can also use precedential decision making to communicate how they interpret legal requirements or intend to exercise discretionary authority, as well as to increase efficiency in their adjudicative systems.[2]

An agency's decision is precedential when an agency's adjudicators must follow the decision's holding unless the precedent is distinguishable or until it is overruled. Many agencies use some form of precedential decision making. Some agencies treat all agency appellate decisions as precedential, while others treat only some appellate decisions as precedential. Additionally, some agencies highlight nonprecedential decisions that may be useful to adjudicators by labeling them ''informative,'' ''notable,'' or a similar term.[3] In any of these cases, precedential decisions can come from an agency head or heads, adjudicators exercising the agency's authority to review hearing-level decisions, adjudicators who review hearing-level decisions but whose decisions are subject to (usually discretionary) agency-head review, or adjudicators other than the agency head who have statutory authority to issue final decisions. Rarely do hearing-level adjudicators issue precedential decisions.

[1] Other mechanisms include rulemaking, quality assurance programs, appellate review, aggregate decision making, and declaratory orders. *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication,* 87 FR 1722 (Jan. 12, 2022); Admin. Conf. of the U.S., Recommendation 2020–3, *Agency Appellate Systems,* 86 FR 6618 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2016–2, *Aggregation of Similar Claims in Agency Adjudication,* 81 FR 40260 (June 21, 2016); Admin. Conf. of the U.S., Recommendation 2015–3, *Declaratory Orders,* 80 FR 78161 (Dec. 16, 2015).

[2] *See* Christopher J. Walker, Melissa Wasserman & Matthew Lee Wiener, Precedential Decision Making in Agency Adjudication (Dec. 6, 2022) (report to the Admin. Conf. of the U.S.).

[3] *See id.* at 28, 37 & app. G (discussing the use of ''adopted decisions'' at the U.S. Citizenship and Immigration Services).

This Recommendation provides best practices for agencies in considering whether and how to use precedential decisions in their adjudicative systems. It begins by recommending that agencies determine whether they issue appellate decisions that may lend themselves to use as precedent and, if they do, whether to treat all or some appellate decisions as precedential. For agencies that treat only some decisions as precedential, the Recommendation sets forth criteria for deciding which ones to treat as such, and it identifies procedures for agencies to consider using when designating decisions as precedential, such as the solicitation of public input.

For agencies that use some form of precedential decision making, this Recommendation provides best practices for identifying decisions which are precedential and making information about such decisions available internally and to the public. Some of these practices build on the Freedom of Information Act's requirement that agencies post on their websites all final orders and opinions and its general prohibition against agencies relying on, using, or citing an order or opinion as precedent against a private party if it has not been indexed and posted online.[4]

The Recommendation concludes by urging agencies to address their use of, and procedures for, precedential decision making in procedural rules published in the **Federal Register** and *Code of Federal Regulations.*

Recommendation

Use of Precedential Decision Making

1. Agencies should determine whether, and if so when, to treat their appellate decisions as precedential, meaning that an adjudicator must follow the decision's holding in subsequent cases, unless the facts of the decision are distinguishable or until the holding is overruled. In determining whether to treat all, some, or no appellate decisions as precedential, agencies should consider:

a. The extent to which they issue decisions that would be useful as precedent and are written in a form that lends itself to use as precedent;

b. The extent to which they issue decisions that mainly concern only case-specific factual determinations or the routine application of well-established policies, rules, and interpretations to case-specific facts; and

c. The extent to which they issue such a large volume of decisions that adjudicators cannot reasonably be expected to identify those which should control future decisions.

2. Agencies that treat only some appellate decisions as precedential should consider treating a decision as precedential if it:

a. Addresses an issue of first impression;

b. Clarifies or explains a point of law or policy that has caused confusion among adjudicators or litigants;

c. Emphasizes or calls attention to an especially important point of law or policy that has been overlooked or inconsistently interpreted or applied;

d. Clarifies a point of law or policy by resolving conflicts among, or by harmonizing or integrating, disparate decisions on the same subject;

e. Overrules, modifies, or distinguishes existing precedential decisions;

f. Accounts for changes in law or policy, whether resulting from a new statute, federal court decision, or agency rule;

g. Addresses an issue that the agency must address on remand from a federal court; or

h. May otherwise serve as a necessary, significant, or useful guide for adjudicators or litigants in future cases.

3. Agencies should not prohibit parties from citing nonprecedential decisions in written or oral arguments.

4. Agencies should consider identifying nonprecedential decisions that may be useful to adjudicators by designating them ''informative,'' ''notable,'' or a similar term.

Processes and Procedures for Designating Precedential Decisions

5. Agencies' procedures for designating decisions as precedential should not be unduly time consuming or resource intensive.

6. Prior to designating an appellate decision as precedential, agencies should consider soliciting input from appellate adjudicators not involved in deciding the case.

7. Agencies should consider implementing procedures by which appellate adjudicators can issue precedential decisions to resolve important questions that arise during hearing-level proceedings. Options include procedures by which, on an interlocutory basis or after a hearing-level decision has been issued:

a. Hearing-level adjudicators may certify specific questions in cases or refer entire cases for precedential decision making;

b. Appellate adjudicators on their own motion may review specific questions in cases or entire cases for precedential decision making; and

c. Parties may request that appellate adjudicators review specific questions in cases or entire cases for precedential decision making.

8. Agencies should consider establishing a process by which adjudicators, other agency officials, parties, and the public can request that a specific nonprecedential appellate decision be designated as precedential.

9. Agencies should consider soliciting amicus participation or public comments in cases in which they expect to designate a decision as precedential, particularly in cases of significance or high interest. That could be done, for example, by publishing a notice in the **Federal Register** and on their websites, and by directly notifying those persons likely to be especially interested in the matter. In determining whether amicus participation or public comments would be valuable in a particular case, agencies should consider the extent to which the case addresses broad policy questions whose resolution requires consideration of general or legislative facts as opposed to adjudicative facts particular to the parties.

10. When an agency rejects or disavows the holding of a precedential decision, it should expressly overrule the decision, in whole or in part as the circumstances dictate, and explain why it is doing so.

Availability of Precedential Decisions

11. Agencies that treat only some appellate decisions as precedential should clearly identify precedential decisions as such. Such agencies should also identify those precedential decisions in digests and indexes that agencies make publicly available.

12. Agency websites, as well as any agency digests and indexes of decisions, should clearly indicate when a precedential decision has been overruled or modified.

13. Agencies should ensure that precedential decisions are effectively communicated to their adjudicators.

14. Agencies should update any manuals, bench books, or other explanatory materials to reflect developments in law or policy effected through precedential decisions.

15. Agencies should consider posting on their websites brief summaries of precedential decisions, a digest of precedential decisions, and an index, organized topically, of precedential decisions.

16. Subject to available resources, agencies should consider tracking, on their own or in coordination with commercial databases, and making available to agency officials and the public the subsequent history of precedential decisions, including whether they have been remanded, set aside, modified following remand by a federal court, or superseded by statute or other agency action, such as a rule.

Rules on Precedential Decision Making

17. As part of their rules of practice, published in the **Federal Register** and codified in the *Code of Federal Regulations,* agencies should adopt rules regarding precedential decision making. These rules should:

a. State whether all, some, or none of the agency's appellate decisions are treated as precedential;

b. Describe the criteria and process for designating decisions as precedential, if the agency considers some but not all of its decisions as precedential;

c. Specify who has authority to designate decisions as precedential, if the agency considers some but not all of its decisions as precedential;

d. Explain the legal effect of precedential decisions in subsequent cases;

e. Define any terms the agency uses to identify useful nonprecedential decisions, such as ''informative'' or ''notable,'' and describe the criteria and process for designating these decisions;

f. Explain for what purposes a party may cite a nonprecedential decision, and how the agency will treat it;

g. Describe any opportunities for amicus or other public participation in precedential decision making; and

h. Explain how precedential decisions are clearly identified as precedential, how they are identified when overturned, and how they are made available to the public.

18. Agencies should use clear and consistent terminology in their rules relating to precedential decisions. Agencies that distinguish between ''published'' decisions and ''nonpublished'' or ''unpublished'' decisions (or some other such terminology) should identify in their rules of practice the

[4] *See* 5 U.S.C. 552(a)(2)(A).

relationship between these terms and the terms ''precedential'' and ''nonprecedential.''

19. Agencies should consider soliciting public input when they materially revise existing or adopt new procedural regulations on the subjects addressed above, unless the costs outweigh the benefits of doing so in a particular instance.

Administrative Conference Recommendation 2022–5

Regulatory Enforcement Manuals

Adopted December 15, 2022

Many agencies are responsible for detecting, investigating, and prosecuting potential violations of the laws they administer. Statutes and agency rules govern the exercise of agencies' enforcement authority and direct the activities of enforcement personnel. Agencies' policies: (a) explain and interpret relevant statutes and rules; (b) establish standards, priorities, and procedures for detecting and investigating suspected violations, issuing complaints against suspected violators, and prosecuting cases before an administrative body or a federal court; (c) describe how enforcement staff interact with other agency personnel and persons outside the agency; and (d) set forth processes for soliciting and receiving complaints about alleged violations from members of the public.

Many agencies have developed documents, often called ''enforcement manuals,'' that provide their personnel with a single, comprehensive resource regarding enforcement-related laws and policies. Enforcement manuals provide a way for agencies to effectively communicate such policies, which would otherwise be dispersed within a voluminous body of separate documents, and to ensure that agency enforcement is internally consistent, fair, efficient, effective, and legally sound.[1] Although enforcement manuals do not necessarily bind agencies as a whole, it is also sometimes appropriate for agencies, as an internal agency management matter, to direct enforcement personnel to act in conformity with an enforcement manual.[2]

Enforcement manuals can also be a useful, practical resource for the public. The Freedom of Information Act (FOIA) requires agencies to post on their websites ''administrative staff manuals and instructions to staff that affect a member of the public.'' [3] Although several courts of appeals have held that this provision does not apply to some portions of enforcement manuals,[4] by providing public access to them, agencies can improve awareness of and compliance with relevant policies while promoting transparency more generally.

Enforcement manuals may contain information that agencies should not disclose. Disclosure of some portions of enforcement manuals might, for example, enable persons to circumvent the law by revealing forms of noncompliance that will not lead to investigation or enforcement. Accordingly, FOIA exempts from disclosure records or information that ''would disclose techniques and procedures for law enforcement investigations or prosecutions'' or ''guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.'' [5] FOIA also allows agencies to withhold records that fall within the attorney work-product privilege. This exemption may encompass information provided to enforcement personnel about litigation strategies and legal theories, the disclosure of which could adversely affect the integrity of adversarial proceedings.[6] Agencies cannot rely on these exemptions reflexively, however. Since 2016, agencies may withhold information under FOIA only if they ''reasonably foresee that disclosure would harm an interest protected by'' an exemption or if disclosure is prohibited by law.[7] In other circumstances, agencies should disclose their enforcement manuals, or at least the non-exempt portions of the manual.

This Recommendation offers agencies best practices for developing, managing, and disseminating enforcement manuals. It builds on several recommendations the Administrative Conference has previously adopted regarding the development, management, and dissemination of agency procedural rules and guidance documents.[8] In offering these recommendations, the Conference recognizes that enforcement manuals may not be appropriate for all agencies, given differences in the volume and complexity of documents that govern their enforcement activities, resources available to agencies, and the differing informational needs of persons affected by or interested in agency enforcement activities.

Recommendation

Developing Enforcement Manuals

1. Subject to available resources, agencies responsible for investigating and prosecuting potential violations of the laws that they administer should develop an enforcement manual—that is, a document that provides personnel a single, comprehensive resource for enforcement-related statutes, rules, and policies—if doing so would improve the communication of enforcement-related policies to agency personnel and promote the fair and efficient performance of enforcement functions consistent with established policies.

2. In developing enforcement manuals, agencies should consider, among other things:

a. Identifying the office or individual within the agency under whose name and authority the manual is being issued;

b. Identifying which offices within the agency are directed to act in conformity with the manual;

c. Describing the manual's purpose, scope, and organization;

d. Describing the manual's legal effect, including a disclaimer, if applicable, that the manual does not bind the agency as a whole;

e. Identifying the statutes and rules that govern the agency's enforcement activities;

f. Identifying any ''safe harbors'' (*i.e.,* conduct that does not trigger agency enforcement actions);

g. Describing criteria for selecting among options available to the agency to compel remedial action, procedures for formally initiating agency adjudicative or judicial proceedings, and criteria for making criminal referrals;

h. Identifying the office or individual within the agency that is empowered to receive, and potentially to act on, any complaint that the agency personnel who are conducting an investigation or other enforcement action are engaging in unlawful or inappropriate conduct;

i. Describing procedures for soliciting and receiving information about alleged violations from persons outside the agency;

j. Identifying criteria used to classify the severity of alleged violations, recommend or assess penalties or other remedies, or prioritize investigations or prosecutions;

k. Describing procedures for conducting investigations, inspections, audits, or similar processes;

l. Describing policies governing communications between enforcement personnel and other agency personnel, the subjects of enforcement actions, and other persons outside the agency;

m. Explaining procedures for determining if records or information are legally protected from unauthorized disclosure, and procedures for handling such records or information;

n. Addressing when agency personnel may publicly disclose information about an enforcement proceeding, such as by issuing a press release, and the nature of information that may be disclosed;

o. Identifying guidelines for both informally adjudicating and negotiating settlements with the subjects of enforcement actions; and

p. Explaining how and by whom the manual is developed, periodically reviewed for accuracy, and updated.

3. Agencies should ensure that the contents of enforcement manuals are presented in a clear, logical, and comprehensive fashion, and include a table of contents and an index.

Managing Enforcement Manuals

4. Agencies should periodically review their enforcement manuals and update them

[1] *See* Jordan Perkins, Regulatory Enforcement Manuals 1, 9 (Dec. 9, 2022) (report to the Admin. Conf. of the United States).

[2] *See* Admin. Conf. of the U.S., Recommendation 2017–5, *Agency Guidance Through Policy Statements,* ¶ 3, 82 FR 61734, 61736 (Dec. 29, 2017).

[3] 5 U.S.C. 552(a)(2)(C).

[4] *See, e.g., Smith* v. *NTSB*, 981 F.2d 1326 (D.C. Cir. 1993); *Stokes* v. *Brennan*, 476 F.2d 699 (5th Cir. 1973).

[5] *Id.* § 552(b)(7)(E).

[6] *See* ACLU of *N. Cal.* v. *U.S. DOJ*, 880 F.3d 473, 486–88 (9th Cir. 2018); *Nat'l Ass'n of Crim. Def. Lawyers* v. *U.S. DOJ Exec. Off. for U.S. Attys.*, 844 F.3d 246, 254 (D.C. Cir. 2016).

[7] 5 U.S.C. 552(a)(8)(A).

[8] *See* Admin. Conf. of the U.S., Recommendation 2021–7, *Public Availability of Inoperative Agency Guidance Documents,* 87 FR 1718 (Jan. 12, 2022); Admin. Conf. of the U.S., Recommendation 2019–3, *Public Availability of Agency Guidance Documents,* 84 FR 38931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2019–1, *Agency Guidance Through Interpretive Rules,* 84 FR 38927 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Recommendation 2017–5, *supra* note 2.

as needed to ensure that they accurately reflect current law and policies. When agencies update their enforcement manuals, the manuals should prominently display the date of the update and identify what changes were made.

5. Agencies with enforcement manuals should develop procedures for reviewing and keeping them up to date. These procedures should address:

a. How often the enforcement manual, in whole or in part, is reviewed for accuracy and updated if necessary;

b. Which office or individual within the agency is responsible for periodically reviewing the enforcement manual, in whole or in part; and

c. How and by whom changes to the enforcement manual are drafted, reviewed, approved, and implemented.

6. To ensure that enforcement personnel can easily access current versions of enforcement manuals, agencies should make enforcement manuals available in a searchable, electronic format in an appropriate location on an internal network.

7. Agencies should solicit feedback on their enforcement manuals from their personnel and consider that feedback in reviewing and revising their manuals.

Disseminating Enforcement Manuals to the Public

8. Agencies should make their enforcement manuals, or portions of their manuals, publicly available on their websites when doing so would improve public awareness of relevant policies and compliance with legal requirements or promote transparency more generally, and if they have adequate resources available to ensure publicly available enforcement manuals remain up to date. Agencies should not include information in publicly available versions of enforcement manuals that would reflect litigation strategies or legal theories, the disclosure of which would adversely affect the integrity of adversarial proceedings, or enable persons to circumvent the law.

9. When agencies post publicly available versions of enforcement manuals, they should post the manuals in an easily identified location on their websites, in a user-friendly format, and with an introduction sufficient to ensure that potentially interested persons—including members of historically underserved communities, who may be unfamiliar with the existence, purpose, and legal effect of enforcement manuals—can easily find and use them.

10. When agencies issue or revise publicly available enforcement manuals, they should provide notice to the public of such actions, for example by placing a notice on the agency's website, issuing a press release, making an announcement on social media, or publishing a notice of availability in the **Federal Register**.

11. Agencies that make enforcement manuals publicly available should solicit feedback on them, from persons interested in or affected by agency enforcement proceedings, including possibly in a public forum and through direct outreach.

Administrative Conference Recommendation 2022–6

Public Availability of Settlement Agreements in Agency Enforcement Proceedings

Adopted December 15, 2022

Many statutes grant administrative agencies authority to adjudicate whether persons have violated the law and, for those found to have done so, order them to pay a civil penalty, provide specific relief, or take some other remedial action.[1] Some administrative enforcement proceedings result in a final agency adjudicative decision. But in many, perhaps most, such proceedings, a settlement is reached, either before or after an adjudication is formally initiated.[2]

Settlements can play an important role in administrative enforcement proceedings by allowing parties to resolve disputes more efficiently and effectively. Indeed, both the Administrative Procedure Act and Administrative Dispute Resolution Act (ADRA) recognize the importance of settlements in resolving enforcement proceedings,[3] and the Administrative Conference has similarly recommended that agencies consider using alternative means of dispute resolution.[4]

Unlike final orders and opinions issued in the adjudication of cases, settlement agreements ordinarily do not definitively resolve disputed factual and legal matters, authoritatively decide whether a violation has taken place, or establish binding precedent. Nevertheless, public access to settlement agreements can be desirable for several reasons. First, disclosure of settlement agreements can help regulated entities and the general public understand how the agency interprets the laws and regulations it enforces and exercises its enforcement authority. Second, public access to settlement agreements can help promote accountable and transparent government. The public has an interest in evaluating how agencies enforce the law and use public funds. By disclosing how agencies interact with different regulated entities, public access may also help guard against bias. Third, high-profile settlements, such as those that involve large dollar amounts or require changes in business practices, often attract significant public interest. Fourth, the terms of a settlement agreement may also affect the interests of third parties, such as consumers, employees, or local communities.[5]

However valuable public access to settlement agreements might be, federal law generally does little to mandate their proactive disclosure. Generally applicable statutes such as the Freedom of Information Act (FOIA) and ADRA typically require disclosure only when members of the public specifically request the agreements in which they are interested. They do not generally require proactive disclosure on agency websites, as FOIA does for final adjudicative orders and opinions.[6] Nevertheless, many agencies do post settlement agreements on their websites.[7]

There may, of course, be reasons for agencies not to proactively disclose settlement agreements. Settlement agreements, or information contained within them, may be exempted or protected from disclosure. Confidential commercial information, for example, is exempted from disclosure under FOIA.[8] In addition, the promise of confidentiality may encourage candor, help parties to achieve consensus, and yield more efficient resolution of disputes. And as a practical matter, there may be little public interest in large volumes of factually and legally similar settlement agreements, such that the costs to agencies of proactively disclosing them, especially costs associated with redacting sensitive or protected information, might outweigh the benefits of proactive disclosure to the public.

This Recommendation encourages agencies to develop policies that recognize the benefits of proactively disclosing settlement agreements in administrative enforcement proceedings and account for countervailing interests. It builds on several other recommendations of the Administrative Conference that encourage agencies to proactively disclose other important materials related to the adjudication of cases, including orders and opinions, supporting records, adjudication rules and policies, and litigation materials.[9] In offering the best

[1] This Recommendation addresses only settlements reached in administrative enforcement proceedings, not those reached in federal court cases brought by agencies. For purposes of this Recommendation, ''enforcement proceedings'' is used broadly to include both investigative and trial-like adjudicative proceedings, whether the parties to the proceeding include the agency or instead only non-agency parties. The Administrative Conference addressed settlement agreements reached in court cases in Recommendation 2020–6, *Agency Litigation Webpages,* 86 FR 6624 (Jan. 22, 2021).

[2] Michael Asimow, Greenlighting Administrative Prosecution: Checks and Balances on Charging Decisions 1 (Jan. 21, 2022) (report to the Admin. Conf. of the U.S.).

[3] *See* 5 U.S.C. 554(c)(2), 556(c)(6)–(8), 571–584.

[4] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* ¶¶ 8, 12, 81 FR 94314, 94315 (Dec. 23, 2016); Admin. Conf. of the U.S., Recommendation 88–5, *Agency Use of Settlement Judges,* 53 FR 26030 (July 11, 1988); Admin. Conf. of the U.S., Recommendation 86–8, *Acquiring the Services of ''Neutrals'' for Alternative Means of Dispute Resolution,* 51 FR 46990 (Dec. 30, 1986); Admin. Conf. of the U.S., Recommendation 86–3, *Agencies' Use of Alternative Means of Dispute Resolution,* 51 FR 25643 (July 16, 1986).

[5] *See* Elysa Dishman, Public Availability of Settlement Agreements in Agency Enforcement Proceedings 1, 6–7 (Nov. 30, 2022) (report to the Admin. Conf. of the U.S.).

[6] *See* 5 U.S.C. 552(a)(2).

[7] *See* Dishman, *supra* note 5, at 21.

[8] 5 U.S.C. 552(b)(4); *see also Food Mktg. Inst.* v. *Argus Leader Media,* 588 U.S. __, 139 S. Ct. 2356 (2019); *compare Seife* v. *FDA,* 43 F.4th 231 (2d. Cir. 2022), *with Am. Small Bus. League* v. *U.S. Dep't of Def.,* 411 F. Supp. 3d 824, 836 (N.D. Cal. 2019).

[9] *See* Recommendation 2020–6, *supra* note 1; Admin. Conf. of the U.S., Recommendation 2020–5, *Publication of Policies Governing Agency Adjudicators,* 86 FR 6622 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency Websites,* 82 FR 31039 (July 5, 2017).

practices that follow, the Conference recognizes that settlement agreements vary widely in many respects, including in their terms, their effects on the interests of third parties, and the degree of public interest they attract. It also recognizes that not all agencies can bring the same resources to bear in providing public access to settlement agreements.

Recommendation

1. To inform regulated entities and the general public about administrative enforcement, agencies should develop policies addressing whether and when to post on their websites settlement agreements reached in administrative enforcement proceedings—that is, those proceedings in which a civil penalty or other coercive remedy was originally sought against a person for violating the law. Settlement agreements addressed in these policies should include those reached both before and after adjudicative proceedings are formally initiated.

2. In determining which settlement agreements to post on its website, an agency should consider factors including the extent to which:

a. Disclosure would help regulated entities and the general public understand how the agency interprets the laws and regulations it enforces and exercises its enforcement authority;

b. Disclosure would promote accountability and transparency, such as by allowing the public to evaluate agency administrative enforcement and use of public funds, and help guard against bias;

c. Particular types of settlement agreements are likely to attract public interest;

d. Disclosure might deter regulated entities from reaching settlements and resolving disputes expeditiously;

e. Disclosure, even after redaction or anonymization, would adversely affect sensitive or legally protected interests involving, among other things, national security, law enforcement, confidential business information, personal privacy, or minors; and

f. Disclosure would impose significant administrative costs on the agency or, conversely, whether it would save the agency time or money by reducing the volume of requests for disclosure.

3. An agency that chooses generally not to post individual settlement agreements on its website—for example because certain agreements are required by statute to be confidential or do not vary considerably in terms of their factual contexts or the legal issues they raise—should consider other means to provide information about settlements, including by posting on its website:

a. A form or template commonly used for settlement agreements;

b. A representative sample of settlement agreements;

c. Settlement agreements that entail especially significant legal issues;

d. Settlement agreements that, because of their facts, are likely to attract significant public interest;

e. A summary of each settlement or settlement trends; and

f. A sortable or searchable database that lists information about settlement agreements, such as case types, dates, case numbers, parties, and key terms.

4. When an agency posts settlement agreements or information about settlement agreements on its website, it should redact any information that is sensitive or otherwise protected from disclosure, and redact identifying details to the extent required to prevent an unwarranted invasion of personal privacy.

5. An agency posting settlement agreements on its website should do so in a timely manner.

6. An agency should present settlement agreements or information about settlement agreements on its website in a clear, logical, and readily accessible fashion. In so doing, the agency should consider providing access to the settlement agreements or information about them through:

a. A web page dedicated to agency enforcement activities that is easily accessed from the agency's homepage, site map, and site index;

b. A web page dedicated to an individual enforcement proceeding, such as a docket web page, that also includes any associated materials (*e.g.,* case summaries, press releases, related adjudication materials, links to any related actions); and

c. A search engine that allows users to easily locate settlement agreements and sort, narrow, or filter them by case type, date, case number, party, and keyword.

7. When an agency posts settlement agreements on its website, it should include a statement that settlement agreements are provided only for informational purposes.

[FR Doc. 2023–00628 Filed 1–12–23; 8:45 am]

BILLING CODE 6110–01–P

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 February 13, 2023 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.

Food and Nutrition Service

Title: Produce Safety University Nomination and Course Evaluation.

OMB Control Number: 0584–NEW.

Summary of Collection: The collection of information is necessary for people to attend Produce Safety University (PSU), a training course designed to help child nutrition professionals identify and manage food safety risks associated with fresh produce. The PSU course is designed to be a train-the trainer immersion course, where participants are expected to conduct further training with their peers using the information they obtain during PSU.

Need and Use of the Information: FNS will collect course nomination from child nutrition professionals and State agency staff who wish to attend PSU. State agencies may nominate individuals to attend PSU and receive annual logistic information through a letter from FNS. The letter to States includes a link to theonlinecourse nomination. Toensure that PSU provides the most appropriate training content that is tailored to the audience, it is necessary to know the occupational make-up of each training co-hort. Therefore, job titles and the name of the organization nominees represent will be collected.Collecting this information on the course nomination will ensure that the Office of Food Safety offers this training opportunity equally among each of the States and seven FNS Regions. Contact information is needed from participants to support their learning experience; when PSU training sessions are held virtually, physical course materials are shipped to each participant. These materials include

slides, activities, and supplemental print resources, making address collection necessary.

Program evaluation: The program evaluation instruments are each designed to collect specific information from respondents at specific times.

1. The Welcome Questions are given to confirm PSU participants to assess where the training cohort lies in terms of knowledge and experience, which allows for the training team to make minor changes based on the foundational knowledge a group may have.

2. The Course Evaluation involves questions following each session of PSU to assess if the session achieved its objective, and whether or not the time allotted was sufficient. The Course Evaluation also addresses how effective the training team and resources were in helping PSU participants grasp all information taught in the course. This information is crucial to ensure PSU is satisfying participants' expectations and supporting.

Description of Respondents: State, Local, and Tribal governments. Respondent groups identified include: (1) Child Nutrition program operators and (2) State agency staff.

Number of Respondents: 285.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 138.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–00633 Filed 1–12–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0077]

Notice of Request for Approval of an Information Collection; National Animal Health Monitoring System; Sheep 2024 Study

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 to conduct the National Animal Health Monitoring System's Sheep 2024 Study.

DATES: We will consider all comments that we receive on or before March 14, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Enter APHIS–2022–0077 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–2022–0077, 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 *regulations.gov* or in our reading room, which is located 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 Sheep 2024 Study, contact Ms. Nia Washington-Plaskett, Program Analyst, Center for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Bldg. B, Fort Collins, CO 80524; (866) 907–8190; email: *nia.washington-plaskett@usda.gov* or *vs.sp.ceah.pci@usda.gov.* For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Sheep 2024 Study.

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 Agriculture 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 and for eradicating such diseases from the United States when feasible. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, poultry, and aquaculture disease risk factors.

NAHMS' studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting data on livestock health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to conduct the Sheep 2024 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population. This study will support the following objectives: (1) Describe management and biosecurity practices associated with, and producer-reported occurrence of, common economically important disease in sheep; (2) describe antimicrobial stewardship on sheep operations and estimate the prevalence of enteric pathogens and antimicrobial resistance patterns; (3) describe management practices producers use to control internal parasites and reduce anthelmintic resistance; (4) describe changes in animal health, nutrition, and management practices in the U.S. sheep industry from 1996 to 2024; and (5) provide a serologic bank to meet the future research needs of the sheep industry.

The study will consist of two phases. In phase I, a National Agricultural Statistics Service (NASS) enumerator will contact and conduct interviews with producers with 1 or more ewes in the top 24 sheep producing States. Respondents will be asked to consent to allowing NASS to present their names to APHIS-designated data collectors for further consideration in the study. Phase II (APHIS phase) will consist of completing the producer agreement and on-farm questionnaires. In addition, biologic sampling will be available to selected participants who complete the initial visit questionnaire.

The information collected through the Sheep 2024 Study will be analyzed and organized into descriptive reports and interactive dashboards. Several information sheets will be derived from these reports and disseminated by APHIS to producers, stakeholders, academia, veterinarians, and other interested parties. The collected data will be used to: (1) Establish national and regional production measures for producer, veterinary, and industry references; (2) predict or detect national and regional trends in disease emergence and movement; (3) address emerging issues; (4) examine the economic impact of health management practices; (5) provide estimates of both

outcome (disease or other parameters) and exposure (risks and components) variables that can be used in analytic studies in the future by APHIS; (6) provide input into the design of surveillance systems for specific diseases; and (7) provide parameters for animal disease spread models.

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 0.69 hours per response.

Respondents: Sheep producers with 1 or more ewes in the top 24 sheep-producing States.

Estimated annual number of respondents: 4,970.

Estimated annual number of responses per respondent: 2.4.

Estimated annual number of responses: 12,153.

Estimated total annual burden on respondents: 8,383 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 10th day of January 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–00631 Filed 1–12–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Foreign Agricultural Service (FAS) to request an extension from the Office of Management and Budget (OMB) of a currently approved information collection for the United States Department of Agriculture (USDA) Local and Regional Food Aid Procurement Program.

DATES: Comments on this notice must be received by March 14, 2023.

ADDRESSES: You may send comments, identified by OMB Control Number 0551–0046, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PPDED@usda.gov.* Include OMB Control Number 0551–0046 in the subject line of the message.
- *Mail, Courier, or Hand Delivery:* Shane Danielson, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6648, Mailstop 1034, Washington, DC 20250.

Instructions: All submissions received must include the agency name and OMB Control Number for this notice.

FOR FURTHER INFORMATION CONTACT: Shane Danielson, Senior Director, International Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6648, Mailstop 1034, Washington, DC 20250–1034, telephone: (202) 720–1230, email: *PPDED@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: USDA Local and Regional Food Aid Procurement Program.

OMB Number: 0551–0046.

Expiration Date of Approval: June 30, 2023.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the USDA Local and Regional Food Aid Procurement Program, information will be gathered from applicants desiring to receive grants or enter into cooperative agreements under the program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of grants or cooperative agreements under the program must submit performance and financial reports until funds provided by FAS and commodities purchased with such funds are utilized. Documents are used to develop effective grant or cooperative agreements and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Local and Regional Food Aid Procurement Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the USDA Local and Regional Food Aid Procurement Program is 78 hours per response.

Type of Respondents: Private voluntary organizations, cooperatives, and intergovernmental organizations.

Estimated Number of Respondents: 22 per annum.

Estimated Number of Responses per Respondent: 17 per annum.

Estimated Total Annual Burden of Respondents: 29,172 hours.

Copies of this information collection can be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Request for Comments: Send comments regarding (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 collection of information, including the validity of the assumptions made; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for Office of Management and Budget approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *RARequest@usda.gov.*

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2023–00596 Filed 1–12–23; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice 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 Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a web meeting via Zoom at 12 p.m. AST (11 a.m. ET) on Monday, January 23, 2023, for the purpose of hearing testimony on voting rights and discussing plans for the future briefings.

DATES: The meeting will take place on Monday, January 23, 2023, at 12 p.m. AST (11 a.m. ET).

MEETING LINK (Audio/Visual) https://tinyurl.com/2p8veyau

TELEPHONE (Audio Only): Dial: 1–833–435–1820; Meeting ID: 160 241 2601#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or 1–202–529–8246.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, 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 details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also 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 Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 1–202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination 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, Virgin Islands 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 Coordination Unit at the above email or street address.

Agenda

I. Opening/Welcome Remarks
II. Panelist Presentations
III. Committee Q&A
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 9, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00561 Filed 1–12–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of business 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 South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting on Thursday, February 2, 2023, at 12 p.m. (ET). The purpose of the meeting is to discuss the post-report stage of the Committee's project on Civil Asset Forfeiture in South Carolina.

DATES: The meeting will take place on Thursday, February 2, 2023, at 12 p.m. (ET).

MEETING LINK (Audio/Visual): https://tinyurl.com/yeeuujtz

TELEPHONE (Audio Only): 1–833–435–1820; Meeting ID: 161 230 9345#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or 1–202–529–8246.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, 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 details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also 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 Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 1–202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination 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, South Carolina 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 Coordination Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Discussion: Post-Report Activities
III. Other Business
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: January 9, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00562 Filed 1–12–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 New Mexico Advisory Committee (Committee) will hold a meeting via ZoomGov on January 19, 2023, from 11:00 a.m.–12:00 p.m. Mountain Time, for the purpose of debriefing testimony and planning future panels on education adequacy for Native American students.

DATES: The meeting will take place on:

- Thursday, January 19, from 11:00 a.m.–12:00 p.m. MT

ADDRESSES:

ZOOM LINK: https://www.zoomgov.com/meeting/register/vJItcu-hqTsvHD8fw2yzOHEr6fnuHp_jHzo.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Persons with hearing impairments 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 also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@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 at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: January 9, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00536 Filed 1–12–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision to meeting link & meeting ID.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Tuesday, January 10, 2023, concerning a meeting of the New York Advisory Committee. The meeting link and meeting ID have since been updated.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, *mtrachtenberg@usccr.gov.*

Correction

In the **Federal Register** on Tuesday, January 10, 2023, in FR Document Number 2023–00222, on page 1348, third column, correct the meeting link to: *https://tinyurl.com/ut64pr94;* correct the meeting ID to: 161 108 2054; correct the phone number to: (833) 435–1820.

Dated: January 10, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00609 Filed 1–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Monthly Retail Surveys

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 6, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Monthly Retail Surveys.

OMB Control Number: 0607–0717.

Form Number(s): SM–4417S, SM–4417SE, SM–4417SS, SM–4417B, SM–4417BE, SM–4417BS, SM–7217S, SM–2017I, SM–4417A, SM–4417AE, SM–4417AS, SM–7217A.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 13,000.

Average Hours per Response: 7 minutes.

Burden Hours: 18,200.

Needs and Uses: The U.S. Census Bureau requests an extension of the Monthly Retail Surveys (MRS). The MRS is comprised of two surveys known as the Monthly Retail Trade Survey (MRTS) and the Advance Monthly Retail Trade Survey (MARTS). MRS are administered monthly to a sample of employer firms (*i.e.,* businesses with paid employees) with establishments located in the United States and classified in retail trade and/or food services sectors as defined by the North American Industry Classification System (NAICS).

The MRTS provides estimates of monthly retail sales, end-of-month

merchandise inventories, and quarterly e-commerce sales of retailers in the United States. In addition, the survey also provides an estimate of monthly sales at food service establishments and drinking places.

Sales, inventories, and e-commerce data provide a current statistical picture of the retail portion of consumer activity. The sales and inventories estimate in the MRTS measure current trends of economic activity that occur in the United States. The survey estimates provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The Bureau of Economic Analysis (BEA) uses these data in determining the consumption portion of Gross Domestic Product (GDP).

The MARTS, a subsample of MRTS, began in 1953 as a monthly survey for activity taking place during the previous month. The MARTS was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity in the United States. Retail sales are one of the primary measures of consumer demand for both durable and non-durable goods. The MARTS also provides an estimate of monthly sales at food service establishments and drinking places.

The estimates produced in the MRS are critical to the accurate measurement of total economic activity. The estimates of retail sales represent all operating receipts, including receipts from wholesale sales made at retail locations and services rendered as part of the sale of the goods, by businesses that primarily sell at retail. The sales estimates include sales made on credit as well as on a cash basis but exclude receipts from sales taxes and interest charges from credit sales. Also excluded is non-operating income from such services as investments and real estate.

The estimates of merchandise inventories owned by retailers represent all merchandise located in retail stores, warehouses, offices, or in transit for distribution to retail establishments. The estimates of merchandise inventories exclude fixtures and supplies not held for sale, as well as merchandise held on consignment owned by others. The BEA use inventories data to determine the investment portion of the GDP. We publish retail sales and inventories estimates based on the NAICS.

Retail e-commerce sales are estimated from the same sample used to estimate preliminary and final U.S. retail sales. For coverage of the universe of e-commerce retailers, research was conducted to ensure that retail firms selected in the MRTS sample engaged in e-commerce.

Sales data for select industries are released in the press release ''Advance Monthly Sales for Retail Trade and Food Services,'' approximately 15 days after the close of the reference month, which also includes more detailed estimates for the prior month. Advance inventory estimates for 3 aggregate levels are released in the ''Advance Economic Indicator Report'' approximately 27 days after the close of the reference month and the preliminary estimates for inventories data are released in the ''Manufacturing and Trade Inventories and Sales'' approximately 40 days after the reference month. E-commerce sales estimates are released quarterly as part of the ''Quarterly Retail Ecommerce Sales'' report, approximately 50 days following the reference period.

The U.S. Census Bureau tabulates the collected data to provide, with measured reliability, statistics on United States retail sales. These estimates are especially valued by data users because of their timeliness.

The sales estimates are used by the BEA, Council of Economic Advisers (CEA), Federal Reserve Board (FRB), Bureau of Labor Statistics (BLS), and other government agencies, as well as business users in formulating economic decisions.

BEA is the primary Federal user of data collected in the Monthly Retail Surveys. BEA uses the information in its preparation of the National Income and Products Accounts (NIPA), and its benchmark and annual input-output tables. Data on retail sales are used to prepare monthly estimates of the personal consumption expenditures (PCE) component of gross domestic product for all PCE goods categories, except tobacco, prescription drugs, motor vehicles, and gasoline and other motor fuel. These estimates are also published each month in the Personal Income and Outlays press release. If the survey were not conducted, BEA would lack comprehensive data from the retail sector. This would adversely affect the reliability of the NIPA and GDP. Production of the NIPA figures also require inventory figures in order to publish the monthly inventory to sales ratios. Additionally, they use MRS inventory figures to measure changes in inventories for estimates of gross output in the annual Input-Output Accounts tables, as well as for computing annual and quarterly GDP-by-industry statistics.

The BLS uses the data as input to their Producer Price Indexes and in developing productivity measurements. The data are also used for gauging current economic trends of the economy. BLS uses the estimates to develop consumer price indexes used in inflation and cost of living calculations.

CEA, other government agencies, and businesses use the survey results to formulate and make decisions. CEA reports the retail data, one of the principal federal economic indicators, to the President each month for awareness on the current picture on the ''state of the economy''. In addition, CEA's Macroeconomic Forecaster uses the retail sales data, one of the key monthly data releases each month, to keep track of real economic growth in the current quarter.

Policymakers such as the FRB need to have the timeliest estimates in order to anticipate economic trends and act accordingly.

Private businesses use the retail sales and inventories data to compute business activity indexes. The private sector also uses retail sales as a reliable indicator of consumer activity. In addition, businesses use the estimates to measure how they are performing and predict future demand for their products.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0717.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–00622 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, February 9, 2023. In 2022, U.S. Secretary of Commerce Gina M. Raimondo has appointed a cohort of 33 members to NACIE, and this will be this cohort's third meeting. NACIE will continue to consider the development of a national entrepreneurship strategy, an overview of Federal support for technology innovation and entrepreneurship, and an exploration of critical emerging technologies, and the regional technology and innovation hubs program recently enacted and funded by Congress.

DATES: Thursday, February 9, 2023, 9 a.m.–4 p.m. ET

ADDRESSES: Herbert Clark Hoover Building (HCHB), 1401 Constitution Ave NW, Washington, DC 20230. This meeting with take place in the Commerce Research Library using the HCHB entrance located at the southwest corner of 15th St NW and Pennsylvania Ave NW, and a valid government-issued ID is required to enter the building. Visitors to HCHB must comply with and adhere to the Department of Commerce's COVID–19 policies and protocols in effect at the time of the meeting, which can be found at the Department's COVID–1 Information Hub at *https://www.commerce.gov/covid-19-information-hub.* Please note that pre-clearance is required both to attend the meeting in person and to make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to Eric Smith (see contact information below) no later than 11:59 p.m. ET on Wednesday, February 1, 2023. Teleconference or web conference connection information will be published prior to the meeting along with the agenda on the NACIE website at *https://www.eda.gov/oie/nacie/.*

FOR FURTHER INFORMATION CONTACT: Eric Smith, Office of Innovation and Entrepreneurship, 1401 Constitution Avenue NW, Room 78018, Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001. Please reference ''NACIE February 2023 Meeting'' in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: NACIE, established pursuant to Section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3720(c)), and managed by EDA's Office of Innovation and Entrepreneurship, is a Federal Advisory Committee Act committee that provides advice directly to the Secretary of Commerce.

NACIE will be charged with developing a national entrepreneurship strategy that strengthens America's ability to compete and win as the world's leading startup nation and as the world's leading innovator in critical emerging technologies. NACIE is also charged with identifying and recommending solutions to drive the innovation economy, including growing a skilled STEM workforce and removing barriers for entrepreneurs ushering innovative technologies into the market. The council also facilitates federal dialogue with the innovation, entrepreneurship, and workforce development communities. Throughout its history, NACIE has presented recommendations to the Secretary of Commerce along the research-to-jobs continuum, such as increasing access to capital, growing and connecting entrepreneurial communities, fostering small business-driven research and development, supporting the commercialization of key technologies, and developing the workforce of the future.

The final agenda for the meeting will be posted on the NACIE website at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning NACIE's affairs at any time before or after the meeting. Comments may be submitted to Eric Smith (see contact information above). Those unable to attend the meetings in person but wishing to listen to the proceedings can do so via teleconference or web conference (see above). Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: January 9, 2023.

Eric Smith,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2023–00560 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–3–2023]

Foreign-Trade Zone 29—Louisville, Kentucky; Application for Reorganization (Expansion of Service Area); Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Louisville & Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 9, 2023.

FTZ 29 was approved by the FTZ Board on May 26, 1977 (Board Order 118, 42 FR 29323, June 8, 1977) and reorganized under the ASF on October 25, 2018 (Board Order 2070, 83 FR 54709–54710, October 31, 2018). The zone currently has a service area that includes Anderson, Breckinridge, Bullitt, Butler, Carroll, Crittenden, Daviess, Franklin, Hancock, Henderson, Henry, Hopkins, Jefferson, McLean, Meade, Muhlenberg, Nelson, Ohio, Oldham, Shelby, Spencer, Trimble, Union, Webster, and Woodford Counties, Kentucky.

The applicant is now requesting authority to expand the service area of the zone to include Christian, Todd, Logan, Simpson, Warren, Allen, and Barren Counties, Kentucky, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Nashville, Tennessee Customs and Border Protection Port of Entry.

The applicant is also requesting approval of the following ASF subzones: Proposed Subzone 29T (2.139 acres)—Southern Kentucky Warehousing & Fulfillment, LLC, 16200 Bowling Green

Road, Rockfield, Logan County; and, Subzone 29U (510.8 acres)—Envision AESC Bowling Green LLC, 1397 Production Ave., Bowling Green, Warren County.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 14, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 29, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov.*

Dated: January 10, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–00576 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–12–2023]

Foreign-Trade Zone 18—San Jose, California; Application for Expansion of Subzone 18F; Lam Research Corporation; Stockton, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18F on behalf of Lam Research Corporation, located in Stockton, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 9, 2023.

The applicant is now requesting to expand Subzone 18F to include an additional site: Site 18 (30 acres) is located at 4512 Frontier Way, Stockton, San Joaquin County. The expanded subzone would be subject to the existing activation limit of FTZ 18.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 22, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 9, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov.*

Dated: January 9, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–00565 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2022]

Foreign-Trade Zone (FTZ) 161—Wichita, Kansas; Authorization of Production Activity; Great Plains Manufacturing, Inc. (Agricultural and Construction Equipment); Abilene, Assaria, Ellsworth, Enterprise, Kipp, Lucas, Salina, and Tipton, Kansas

On September 12, 2022, Great Plains Manufacturing, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ 161, in Abilene, Assaria, Ellsworth, Enterprise, Kipp, Lucas, Salina, and Tipton, Kansas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 57865, September 22, 2022). On January 10, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 10, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–00572 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–2–2023]

Foreign-Trade Zone (FTZ) 76—Bridgeport, Connecticut; Notification of Proposed Production Activity; MannKind Corporation; (Pharmaceuticals: Treprostinil) Danbury, Connecticut

MannKind Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Danbury, Connecticut within Subzone 76B. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on January 6, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(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 finished products are inhalable Treprostinil and blister packaged Treprostinil (duty rates are duty-free).

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 February 22, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: January 9, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–00564 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC648]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Partial Coverage Fishery Monitoring Advisory Committee (PCFMAC) will meet January 31, 2023.

DATES: The meeting will be held on Tuesday, January 31, 2023, from 9 a.m. to 5 p.m., PST.

ADDRESSES: The meeting will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fishery Science Center in the Traynor Room (2076), 7600 Sand Point Way, NE, Building 4, Seattle, WA 98115, or join the meeting online through the links at *https://meetings.npfmc.org/Meeting/Details/2973.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; telephone: (907) 271–2809; email: *sara.cleaver@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 31, 2023

The PCFMAC agenda will include: (a) status update on the cost efficiencies analysis; (b) public comment; and (c) other issues and future scheduling. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2973* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2973.*

Public Comment

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/2973.*

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

Dated: January 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00539 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC649]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet February 2, 2023.

DATES: The meeting will be held on Thursday, February 2, 2023, from 9 a.m. to 5 p.m. PST.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2974.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver or Diana Stram, Council staff; phone: (907) 271–2809 and email: *sara.cleaver@noaa.gov* or *diana.stram@noaa.gov.* For technical support please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, February 2, 2023

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Plan Teams will meet to discuss prioritization of stock assessments, including frequency, assessment types, and Stock Assessment and Fishery Evaluation (SAFE) guidelines. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2974* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2974.*

Public Comment

Public comment letters should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2974.*

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

Dated: January 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00541 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC657]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and the NMFS Northwest and Southwest Fisheries Science Centers will convene a virtual pre-assessment workshop to review proposed data and modeling approaches to inform groundfish stock assessments for copper rockfish, canary rockfish, and black rockfish, scheduled for assessment during 2023. The workshop is open to the public.

DATES: The pre-assessment workshop will be held Tuesday, January 31, 2023, from 9 a.m. until 3 p.m. (Pacific Standard Time) or until business for the day has been completed. The workshop will reconvene on Wednesday, February 1, 2023, from 9 a.m. until 12 p.m. or until business for the day has been completed.

ADDRESSES: The pre-assessment workshop will be conducted as an online meeting. Specific meeting information, including the agenda and

directions on how to join the meeting and system requirements, will be provided in the workshop 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.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the pre-assessment workshop is to review proposed data inputs, modeling approaches, and any other pertinent information to inform 2023 stock assessments for copper, canary, and black rockfish. The goal of the pre-assessment workshop is to promote dialogue about and a common understanding between assessment teams and data providers of the best data and analytical and modeling approaches applicable to these assessments. Stock assessment teams will solicit advice from data stewards, stakeholders, and fishery managers knowledgeable about these species.

No management actions will be decided by the workshop participants. The participants' role will be development of recommendations for consideration by the stock assessment teams assigned to conduct these assessments. Assessments for these stocks are tentatively scheduled for peer review during Stock Assessment Review (STAR) panels: copper rockfish (June 5–9, 2023), black rockfish (July 10–14, 2023), and canary rockfish (July 24–28, 2023). The Pacific Council and the Pacific Council's Scientific and Statistical Committee are scheduled to consider these draft assessments for use in informing management decisions at their September 2023 meeting in Spokane, WA.

Although nonemergency issues not contained in the workshops' agendas may be discussed, those issues may not be the subject of formal action during these workshops. Action 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 Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants 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: January 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00542 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC396]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Bluepoint Wind, LLC (BPW) for authorization to take marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0537 and associated export cable route (ECR) area. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 13, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.harlacher@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the

availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 18, 2022, NMFS received a request from BPW for an IHA to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area. Following NMFS' review of the application, the application was deemed adequate and complete on October 25, 2022. BPW's request is for take of small numbers of 15 species (16 stocks) of marine mammals by Level B harassment only. Neither BPW nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

BPW proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area.

The planned marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. At least two survey vessels will operate as part of the proposed surveys with a maximum of two nearshore (<20 meters (m)) vessels and a maximum of two offshore (>20 m) vessels operating concurrently. Underwater sound resulting from BPW's marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.

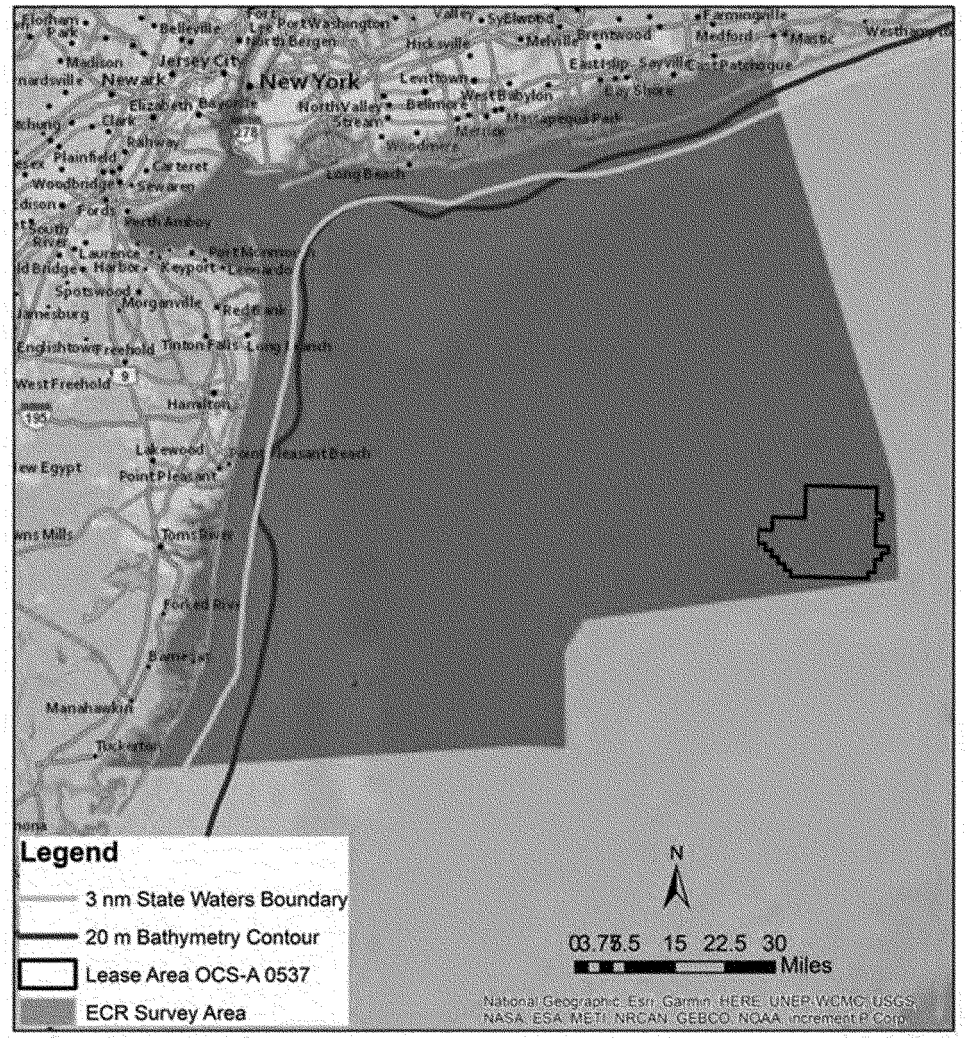
Dates and Duration

The proposed survey is planned to begin no earlier than March 1, 2023 and estimated to require 432 survey days across a maximum of two nearshore and two offshore vessels operating concurrently within a single year. A ''survey day'' is defined as a 24-hour (hr) activity period in which active acoustic sound sources are used. It is expected that each vessel would cover approximately 170 kilometers (km) per day based on the applicant's expectations regarding data acquisition efficiency, and there is up to 23,191 km of track line of survey effort planned. The IHA would be effective for one year from the date of issuance.

Specific Geographic Region

BPW's survey activities would occur in coastal waters off of New York and New Jersey in the New York Bight, specifically within Lease Area OCS–A 0537 and the ECR area (Figure 1). Water depths in the OCS Lease Area are between 50 m and 60 m. Water depths in the ECR area are between 5 m and 60 m.

BILLING CODE 3510–22–P



BILLING CODE 3510–22–C

Figure 1—Proposed Survey Area

Detailed Description of Specified Activity

BPW's marine site characterization surveys include HRG surveys and geotechnical sampling activities within the Lease Area and the ECR area.

The geotechnical sampling activities, including use of vibracores and seabed core penetration tests, would occur during the same period as the HRG survey activities and may entail use of additional survey vessels and/or take place from the same vessels used for HRG survey activities. NMFS does not expect geotechnical sampling activities to present reasonably anticipated risk of causing incidental take of marine mammals, and these activities are not discussed further in this notice.

BPW proposes HRG survey operations to be conducted continuously 24 hours a day. Based on 24-hour operations, the estimated total duration of the activities would be approximately 432 survey days across a maximum of four vessels. Within the Lease Area, the HRG survey would be conducted with primary track lines spaced at minimum 30 m intervals and tie-lines spaced at 500 m intervals. Within the ECR Area, the HRG survey would be conducted with primary track lines spaced at minimum of 30 m intervals in Federal waters and 15 m intervals in State waters with tie-lines spaced at 500 m intervals.

The only acoustic sources planned for use during HRG survey activities proposed by BPW with expected potential to cause incidental take of marine mammals are the sparker and boomer. Sparkers and boomers are medium penetration, impulsive sources used to map deeper subsurface stratigraphy. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz, are typically towed behind the vessel, and may be operated with different numbers of electrode tips to allow tuning of the acoustic waveform for specific applications. The sparker system planned for use is the Dual Geo-Spark 2000X (400 tip/800 J). A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. The boomer system planned for use is the Applied Acoustics S-Boom.

Crocker and Fratantonio (2016) measured the Applied Acoustics Dura-Spark but did not provide data for an energy setting near 800 J (for a 400-tip configuration, Crocker and Fratantonio (2016) provide measurements at 500 and 2,000 J). Therefore, BPW proposes to use this sparker as proxy as it is the closes match to the Dual Geo-Spark 2000X because of the similarities in composition and operation, with both employing up to 400-electrode tips. The Applied Acoustics S-Boom is included in Crocker Frantantonio (2016) and values were included for a dual plate 300 J source setting. NMFS concurs with these selections, which are described in Table 1.

The only acoustic sources planned for use during HRG survey activities proposed by BPW with expected potential to cause incidental take of

marine mammals are the boomer and sparker. Therefore, we will only be discussing further equipment that has the potential to harass marine mammals and is listed below in Table 1. For equipment source level specifications noted in Table 1, a proxy representing the closest match in composition and operation of the Dual Geo-Spark and Applied Acoustics S-Boom was used from Crocker and Fratantonio (2016).

There are two possible options for BPW's surveys in the Lease area using the Dual Geo-Spark 2000X. Under Option One, one Dual Geo-Spark 2000X would be used at a minimum of 30 m line spacing with tieline spacing of 500 m for a total survey distance of 9,923 km in the Lease Area. Under Option Two, up to four Dual Geo-Spark 2000X would be towed to conduct an Ultra High Resolution 3-dimensional (UHR3D) survey. The sparkers would be fired sequentially such that only one is fired at a time with 0.33 seconds between shots. The sparkers would be physically spaced 25 m apart for a total spread of 75 m. The tracklines would be similar to those for the single sparker; however, they would be spaced a minimum of 43.75 m apart with tielines spaced at 500 m for a shorter total survey distance of 6,814 km. Since BPW may use either method, the discussion going forward will be based on the worst-case-scenario between the two methods—Option 1 the single Dual Geo-Spark 2000X—based on maximum total line-km.

In the ECR area, either the boomer or sparker will be used. Regardless of which system is used, BPW proposes to conduct the survey with a minimum of 30 m line spacing and tielines spaced at 500 m intervals in Federal waters through potential cable corridors and at a minimum of 15 m line spacing and tielines spaced at 500 m in State waters (to meet State requirements) for a total of 13,268 km of combined tracklines and tielines.

TABLE 1—REPRESENTATIVE SURVEY EQUIPMENT EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS

Equipment type	Equipment make/model	Operating frequency (kHz)	Source level (RMS dB re 1 uPa @ 1m)	Source level (peak dB re 1 uPa @ 1m)	Sound exposure level (dB re 1 uPa^2*s)	Reference	Pulse duration (ms)	Repetition rate (Hz)	Beam width (degrees)
Medium SBP	Applied Acoustics S-Boom (boomer).	0.01–20	196	205	165	Crocker and Fratantonio 2016	0.8	3	80
Medium SBP	Applied Acoustics Dura-spark (400 tip/500 to 2,000 J) (sparker).	0.3–1.2	203	211	174	Crocker and Fratantonio 2016	1.1	4	180

Operation of the following additional survey equipment types is not reasonably expected to result in take of marine mammals and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric sub-bottom profilers (SBPs) are used for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–115 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater (and cannot be heard by mysticetes). These sources are typically deployed on a pole rather than towed behind the vessel.
- Magnetic intensity measurements (gradiometer) are used for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom. The proposed gradiometer has operating frequencies greater than 180 kHz and is therefore outside the general hearing range of marine mammals.
- Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

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

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the species or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All MMPA managed stocks in this region are assessed in NMFS' U.S. Atlantic and

Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication (2021 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	368 [4] (0; 364; 2019)	0.7	7.7
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic Stock	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia Stock	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal Stock	-/-, N	21,968 (0.31; 17,002; 2016).	170	10.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic Stock	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic Stock	-/-, N	39,215 (0.3; 30,627; 2016).	306	29
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016).	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016).	519	28
		Northern Migratory Coastal	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	Western North Atlantic Stock	-/-, N	172,974 (0.21, 145,216, 2016).	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic Stock	-/-, N	39,921 (0.27; 32,032; 2016).	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Stock	-/-, N	35,215 (0.19; 30,051; 2016).	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy Stock.	-/-, N	95,543 (0.31; 74,034; 2016).	851	164
Order Carnivora—Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic Stock	-/-, N	61,336 (0.08; 57,637; 2018).	1,729	339
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic Stock	-/-, N	27,300 (0.22; 22,785; 2016).	1,389	4,453

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

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined *(e.g.,* commercial fisheries, ship strike).

[4] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[5] NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual mortality and serious injury (M/SI) value given is for the total stock.

As indicated above, all 15 species (16 stocks) in Table 2 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur. While other species have been documented in the area (see application Section—Table 5), the temporal and/or spatial occurrence of these species is such that take is not expected to occur and they are not discussed further beyond the explanation provided here.

North Atlantic Right Whale

North Atlantic right whales (NARW) range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). They are observed year-round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where NARWs congregate seasonally in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), NARWs are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round NARW presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that BPW's surveys would be concentrated offshore in the New York Bight, some NARWs may be present year-round. However, the majority of NARWs in the vicinity of the survey areas are likely to be transient, migrating through the area.

Recent aerial surveys in the New York Bight showed NARW in the proposed survey area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33–1041m) but were observed throughout the survey area (Normandeau Associates and Association of Professional Energy

Managers (APEM), 2020; Zoidis *et al.,* 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook *et al.,* 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the proposed survey area year-round but with lower levels in the summer from July–September.

Since 2010, the NARW population has been in decline (Pace *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new NARW calves were observed. Calf numbers have increased since 2018 with twenty NARW calves documented in 2021 and fifteen in 2022. As described in Table 2, the current SAR population estimate for NARWs is 368; however, NMFS has updated its species web page to recognize the population estimate for NARWs is below 350 animals (*www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 31 of the mortalities or serious injuries thus far. As of October 20, 2022, a total of 91 confirmed cases of mortality, serious injury, or morbidity (sublethal injury or illness) have been documented. The preliminary cause of most of these cases is from rope entanglements or vessel strikes. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event.*

The proposed survey area is within a migratory corridor Biologically Important Area (BIA) for NARWs that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). There is possible migratory behavior that could occur in this area between November and April. Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break.

NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for NARWs in 2008. SMAs were developed to reduce the threat of collisions between ships and NARWs around their migratory route and calving grounds. One SMA, which occurs off the mouth of the New York Bight, is in the proposed survey area and is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 knots (kn) or 5.14 meters-per-second (m/s)) for all vessels greater than 65 ft (19.8 m). Under the proposed mitigation measures for this IHA, BPW survey vessels, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating within this SMA. In addition, BPW proposed that survey vessels, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating in any Dynamic Management Area (DMA) declared by NMFS.

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify BPW if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Humpback Whale

On September 8, 2016, NMFS divided the once single species of humpback whales into 14 distinct population segments (DPS),[1] removed the current species-level listing, and, instead, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Members of the West Indies DPS are part of the Gulf of Maine humpback whale stock designated under the MMPA. Whales occurring in the project area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a; Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic states is their stock identity.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 161 known cases (as of October 26, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-*

[1] Under the Endangered Species Act, in 16 U.S.C. 1532(16), a distinct population segment (or DPS) is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. NOAA Fisheries and the US Fish and Wildlife Service released a joint statement on February 7, 1996 (61 FR 4722) that defines the criteria for identifying a population as a DPS.

humpback-whale-unusual-mortality-event-along-atlantic-coast.

Fin Whale

Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

The western north Atlantic stock of fin whales includes the area from Central Virginia to Newfoundland/Labrador Canada. This region is primarily a feeding ground for this migratory species that tend to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Aerial surveys in the New York Bight observed fin whales year-round throughout the survey area, but they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data from 2018 to 2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Aerial surveys conducted in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data in the survey area detected sei whales throughout the year except January and July with highest detections in March and April (Estabrook *et al.,* 2021).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45°W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Aerial surveys in the New York Bight area found that minke whales were observed throughout the survey area with highest numbers sighting in the spring months (Normandeau Associates and APEM, 2020).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 123 strandings (as of October 26, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017–2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). They are rarely found in waters less than 300 meters deep. The basic social unit of the sperm whale appears to be the mixed school of adult females, their calves, and some juveniles of both sexes, normally numbering 20–40 animals. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area northeast of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whales occurr south of New England on the continental shelf is at its highest level. In winter, sperm whales are concentrated east and northeast of Cape Hatteras, North Carolina.

Aerial studies in the New York Bight observed sperm whales in the highest number in the summer, with a preference for the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic recordings of sperm whale recorded them throughout the year, and again highest during spring and summer (Estabrook *et al.,* 2021).

Risso's Dolphin

The Western North Atlantic stock of Risso's dolphin occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Normandeau Associates and APEM, 2020).

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina to Iceland, Greenland, and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters, the Western North Atlantic stock is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring. In late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Additionally, aerial surveys conducted in the New York Bight noted a preference for deeper water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire) with even lower numbers south of Georges Bank as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Aerial studies confirmed observations in fall and winter in the New York Bight area with preference for deep water at the

shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). The Western North Atlantic stock regularly occur in continental shelf waters south of Cape Hatteras, North Carolina and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014).

Common Dolphin

Common dolphins within the U.S. Atlantic EEZ belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2021). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (CETAP, 1982; Selzer and Payne, 1988; Hamazaki, 2002; Hayes *et al.,* 2021). They are commonly found over the continental shelf between the 100 m and 2,000 m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8 ° Fahrenheit (11° Celsius) (Sergeant *et al.,* 1970, Gowans and Whitehead 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2019). Kraus *et al.* (2016) observed 3,896 individual common dolphins within the RI–MA WEA. Summer surveys included observations of the most individuals followed by fall, winter, then spring.

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the Western North Atlantic: Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and the Western North Atlantic Offshore Stock (offshore stock) (Waring *et al.,* 2016). The coastal stock resides in waters typically less than 20 m deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed south of Long Island, New York into the Gulf of Mexico. Torres *et al.* (2003) found a statistically significant break in the distribution of the ecotypes at 34 km from shore based upon the genetic analysis of tissue samples collected in nearshore and offshore waters from New York to central Florida. The offshore stock was found exclusively seaward of 34 km and in waters deeper than 34 m. This stock is primarily expected in waters north of Long Island, New York (Waring *et al.,* 2017; Hayes *et al.,* 2018). The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. Both stocks of bottlenose dolphins are likely to occur in the proposed survey area. These two stocks are considered geographically separated by the 20 m depth contour with the Coastal Stock found in waters less than 20 m and the Offshore Stock in waters greater than 20 m.

Harbor Porpoise

In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoises may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150-m deep (Waring *et al.,* 2016). During fall (October to December) and spring (April to June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2020). They are seen from the coastline to deep waters (>1,800–m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Pinnipeds (Harbor Seal and Gray Seal)

Gray seals are regularly observed in the survey area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador Sea. This species inhabits temperate and sub-arctic waters and lives on remote, exposed islands, shoals, and sandbars (Jefferson *et al.,* 2008). Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population increase (Waring *et al.,* 2016). Documented haulouts for gray seals exist in the Long Island area, with a possible rookery on Little Gull Island.

Since June 2022, elevated numbers of sick and dead harbor seal and gray seal have been documented along the southern and central coast of Maine. This event has also been declared an UME. Preliminary testing of samples found that some harbor and gray seals were positive for the highly pathogenic avian influenza. NMFS and other partners are working on an ongoing investigation of this UME. From June 1–October 9, 2022 there have been 308 seal strandings. Information on these UME's are available online at: *https://www.fisheries.noaa.gov/2022-pinniped-unusual-mortality-event-along-maine-coast.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the mid-Atlantic region, including the New York Bight (*e.g.,* 87 FR 24103, April 22, 2022; 87 FR 50293, August 16, 2022; 87 FR 51359, August 22, 2022). No significant new information is available, and we incorporate by reference the detailed discussions in those documents rather than repeating the details here. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Summary on Specific Potential Effects of Acoustic Sound Sources

For general information on sound, its interaction with the marine environment, and a description of acoustic terminology, please see, *e.g.,* ANSI (1986, 1995), Au and Hastings (2008), Hastings and Popper (2005), Mitson (1995), NIOSH (1998), Richardson *et al.* (1995), Southall *et al.* (2007), and Urick (1983). Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Animals in the vicinity of BPW's proposed HRG survey activities are unlikely to incur even TTS due to the characteristics of the sound sources, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS because it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and remain very close to the vessel operating these sources in order to receive multiple exposures at relatively high levels as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific

and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for the HRG survey equipment planned for use (Table 2) and the brief period for when an individual mammal would likely be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are normally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots (2.1– 2.6 m/s). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of BPW's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker or boomer. Based on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment

when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

BPW's proposed activities includes the use of impulsive (*i.e.,* boomer and sparker) sources, and therefore, the RMS SPL thresholds of 160 dB re 1 μPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

BPW's proposed activity includes the use of impulsive (*i.e.,* boomer and sparker) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see BPW's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. BPW did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1). The sparker proposed for use by BPW are omnidirectional and, therefore, beamwidth does not factor into those calculations.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment type used during the planned surveys and the source levels associated with those HRG equipment types.

BPW proposed to use the Dual Geo-Spark 2000X (400 tip/800J). For all source configurations (Table 1), the maximum power expected to be discharged from the sparker source is 800 J. However, Crocker and Fratantonio (2016) did not measure the Dual Geo-Spark or a source with an energy of 800 J. A similar alternative system, the Applied Acoustics Dura-spark with a 400 tip, was measured by Crocker and Fratantonio (2016) with an input voltage of 500–2,000J, and these measurements were used as a proxy for the Dual Geo-Spark. Table 1 shows the source parameters associated with this proxy. Using the measured source level of 203 dB RMS of the proxy, results of modeling indicated that the sparker would produce a distance of 141 m to the Level B harassment isopleth. BPW additionally proposed to use the Applied Acoustics S-Boom. Crocker and Fratantonio (2016) did measure the Applied Acoustics S-Boom and values were used for a dual plate 300 J source setting. Using the measured source level of 196 dB RMS of the proxy, results of modeling indicated that the boomer would produce a distance of 41 m to the Level B harassment isopleth.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment proposed for use by BPW that has the potential to result in Level B harassment of marine mammals, the Dual Geo-Spark 2000X would produce the largest distance to the Level B harassment isopleth (141 m).

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the proposed survey area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/*. Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa.

For the exposure analysis, density data from Roberts *et al.,* (2022) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts and Halpin (2022) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the Lease Area and

the ECR Area for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions noted later. Estimated greatest average seasonal densities (animals/km^2) of marine mammal species that may be taken by the planned survey can be found in Tables 7 and 8 of BPW's IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2022) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and the Western North Atlantic Offshore Stock (offshore stock)), however, Roberts and Halpin (2022) do not differentiate by stock. The Coastal Stock is assumed to generally occur in waters less than 20 m and the Offshore Stock in waters deeper than 20 m (65-ft) isobath. The lease area is in waters deeper than 20 m and only the Offshore Stock would occur and could be potentially taken by survey effort in that area. For the ECR survey area both stocks could occur in the area, so BPW calculated separate mean seasonal densities for the portion that is less than 20 m in depth and for the portion that is greater than 20 m in depth to use for estimating take of the Coastal and Offshore Stocks of bottlenose dolphins, respectively. Additionally, different trackline totals were used to calculate take of either the Coastal or Offshore Stocks of bottlenose dolphins (6,945 km trackline of Offshore Stock and 6, 323 km trackline of the Coastal Stock).

Furthermore, the Roberts and Halpin (2022) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates of Roberts *et al.* (2022) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* harbor, gray, hooded, and harp). For this IHA, only the harbor seals and gray seals are reasonably expected to occur in the survey area; densities of seals were split evenly between these two species.

Lastly, the Roberts and Halpin (2022) density model does not differentiate between the pilot whale species. We assume that all pilot whales near the project area would be long-finned pilot whales due to their range overlapping and short-finned pilot whales are not anticipated to occur as far north as the survey area. For this IHA, densities of pilot whales are assumed to be only long-finned pilot whale.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Dual Geo-Spark 2000X and 41 distance associated with the Applied Acoustics S-Boom) to the Level B harassment criterion and the total length of the survey trackline are then used to calculate the total ensonified area, or zone of influence (ZOI) around the survey vessel.

As mentioned above, there are two possible options for BPW's surveys in the Lease area using the Dual Geo-Spark 2000X.

1. One Dual Geo-Spark 2000X would be used at a minimum of 30 m line spacing with tieline spacing of 500 m for a total survey distance of 9,923 km in the Lease Area.

2. Up to four Dual Geo-Spark 2000X would be towed to conduct an Ultra High Resolution 3-dimensional (UHR3D) survey. The sparkers would be fired sequentially such that only one is fired at a time with 0.33 seconds between shots. The sparkers would be physically spaced 25 m apart for a total spread of 75 m. The tracklines would be similar to those for the single sparker; however, they would be spaced a minimum of 43.75 m apart with tielines spaced at 500 m for a shorter total survey distance of 6,814 km.

Since either option may be used, BPW is requesting take based on the worst-case-scenario between the two options which is Option 1 the single Dual Geo-Spark 2000X—based on maximum total line-km.

In the ECR area, either the boomer or sparker will be used. Regardless of which system is used, BPW proposes to conduct the survey with a minimum of 30 m line spacing and tielines spaced at 500 m intervals in Federal waters through potential cable corridors and at a minimum of 15 m line spacing and tielines spaced at 500 m in State waters (to meet State requirements) for a total of 13,268 km of combined tracklines and tielines. Because either method may be used, BPW is requesting take based on the worst-case-scenario between the two methods—the single Dual Geo-Spark 2000X—based on the largest estimated distance to the harassment criterion.

BPW estimates that the proposed surveys will complete a total of 9,923 km survey trackline in the lease area and 13,268 km trackline in the ECR area. Based on the maximum estimated distance to the Level B harassment threshold of 141–m and the total survey length, the total ensonified area is therefore 2,799 km^2 for the lease area and 3,742 km^2 in the ECR area based on the following formula:

$$\text{Mobile Source} \leq \text{ZOI} = (\text{Total survey length} \times 2r) + \pi r^2$$

Where:

total survey length= the total distance of the survey track lines within the lease area; and r = the maximum radial distance from a given sound source to the Level B harassment threshold.

This is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur and assumes the worst case scenario is the scenario chosen for the surveys.

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km^2), incorporating the greatest seasonal estimated marine mammal densities as described above. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting take of marine mammals shown below in Table 5:

$$\text{Estimated Take} = D \times \text{ZOI}$$

Where:

D = greatest average seasonal species density (per km^2); and *ZOI* = maximum daily ensonified area to relevant thresholds.

TABLE 5—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION

Species	Estimated take—lease area	Estimated take—ECR area	Proposed total take authorization	Percent of abundance
North Atlantic right whale	7	7	14	3.8
Humpback whale	21	15	36	2.6
Fin whale	61	25	86	1.3
Sei whale	12	8	20	0.32
Minke whale	96	108	204	0.93
Sperm whale	4	2	6	0.14
Long-finned pilot whale	54	14	68	0.17
Bottlenose dolphin (W.N. Atlantic Offshore)	387	[1] 315	702	1.1
Bottlenose dolphin (Northern Migratory Coastal)	0	[2] 1,659	1,659	25
Common dolphin	3,467	1,267	4,734	2.7
Atlantic white-sided dolphin	299	134	432	0.46
Atlantic spotted dolphin	167	54	221	0.55
Risso's dolphin	37	15	52	0.15
Harbor porpoise	657	655	1,312	1.4
Harbor seal	194	985	1,179	1.9
Gray seal [a]	194	985	1,179	0.26

[a] This abundance estimate is the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for US population is only 27,300.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

NMFS proposes that the following mitigation measures be implemented during BPW's planned marine site characterization surveys. Pursuant to section 7 of the ESA, BPW would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Visual Monitoring and Shutdown Zones

BPW must employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

During survey operations (*e.g.,* any day on which use of the sparker or boomer sources is planned to occur, and whenever the sparker or boomer source is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 minutes prior to ramp-up (described below) and must continue until one hour after use of the sparker or boomer source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker or boomer source (rather than being based around the vessel itself).

Three shutdown zones are defined, depending on the species and context. Here, an extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 meters from the sparker or boomer source (0–500 meters) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 meters (0–100 meters). If the boomer is used, the shutdown zone for all non-listed marine mammals is reduced to 50 meters. Any

observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker and boomer sources when technically feasible. Operators should ramp up sparker and boomer to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 minutes) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up (pre-start clearance). During this 30 minute pre-start clearance period the entire shutdown zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.
- The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the shutdown zone. If a marine mammal is observed within the shutdown zone during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species).
- PSOs must monitor the shutdown zones 30 minutes before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Sparker or boomer activation may only occur at night where operational planning cannot reasonably avoid such circumstances.
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker or boomer source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker or boomer source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is instructed by a PSO, the sparker or boomer source must be immediately deactivated and any dispute resolved only following deactivation.
- The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

Vessel Strike Avoidance

Crew and supply vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an

imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances are detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a NARW, other whale (defined in this context as sperm whales or baleen whales other than NARWs), or other marine mammals.
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- All vessels must reduce speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from NARWs. If a NARW is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must assume that it is a NARW and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is BPW's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the survey area partially overlaps with a portion of a NARW SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active.

TABLE 6—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of BPW's vessel will abide by the described restrictions.		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

More information on Ship Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral

context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

BPW must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than eighteen months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

BPW must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but BPW is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Shutdown Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Shutdown Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Shutdown Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with

thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see Proposed *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances). Members of the PSO team shall consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations.

Proposed Reporting Measures

BPW shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc (ESRI) shapefile format and include the Coordinated Universal Time (UTC) date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov* and *ITP.Harlacher@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
15. Upon visual observation of any marine mammal, the following information must be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

c. PSO who sighted the animal;

d. Time of sighting;

e. Initial detection method;

f. Sightings cue;

g. Vessel location at time of sighting (decimal degrees);

h. Direction of vessel's travel (compass direction);

i. Speed of the vessel(s) from which the observation was made;

j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

k. Species reliability (an indicator of confidence in identification);

l. Estimated distance to the animal and method of estimating distance;

m. Estimated number of animals (high/low/best);

n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

o. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

p. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, BPW must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities, BPW must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;

4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 3, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate subsections below. Specifically, we provide additional discussion related to NARW and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007; Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141-m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the survey area overlaps a migratory corridor BIA for NARWs that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the planned survey activities are temporary (will occur for up to one year) and the spatial extent of sound produced by the survey would be small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km² in size (compared with the worst case scenario of approximately 6,541 km² of total estimated Level B harassment ensonified area associated with both the Lease Area and the ECR area surveys) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during BPW's planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is being proposed for authorization by NMFS as HRG survey operations are required to maintain and implement a 500-m shutdown zone. The 500-m shutdown zone for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate NARWs takes that would result from BPW's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of BPW's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed between 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2021). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the BIA for the NARW migration that any avoidance of the area due to survey activities would not affect migration.In addition, mitigation measures require shutdown at 500-m (almost four times the size of the Level B harassment isopleth of 141-m) to minimize the effects of any Level B harassment take of the species; and
- The proposed mitigation measures, including visual monitoring and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the

monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take by Level B harassment only of 15 marine mammal species with 16 managed stocks. The total amount of takes proposed for authorization relative to the best available population abundance is less than 3 percent for 15 stocks and 25 percent for the remaining stock (Western North Atlantic Migratory Coastal Stock of Bottlenose dolphins) (Table 5). The take numbers proposed for authorization are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources (OPR) is proposing to authorize take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to BPW for conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 10, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–00600 Filed 1–12–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes service(s) to the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* February 12, 2023

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 11/10/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from 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 relevant matter presented, the Committee has determined that the service(s) listed below are no longer 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 additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may 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 service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following service(s) are deleted from the Procurement List:

Service(s)

Service Type: Administrative Services
Mandatory for: Charlie Norwood VA Medical Center, Augusta, GA
Mandatory for: Department of Veterans Affairs, Carl Vinson VA Medical Center,1829 Veterans Blvd., Dublin, GA
Designated Source of Supply: Bobby Dodd Institute, Inc., Atlanta, GA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 247–NETWORK CONTRACT OFFICE 7

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–00616 Filed 1–12–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: February 12, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, 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 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 Services
Mandatory for: Department of Homeland Security, FEMA, Fort Shafter, HI
Designated Source of Supply: Work Now Hawaii, Honolulu, HI
Contracting Activity: FEDERAL EMERGENCY MANAGEMENT AGENCY, REGION 9: EMERGENCY PREPAREDNESS AN

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 6645–01–584–0892—Clock, Mini Desk, Rosewood
Designated Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Custodial Services
Mandatory for: Veterans Affairs Nursing Home Care Unit, Null, Pueblo, CO
Designated Source of Supply: Pueblo Diversified Industries, Inc., Pueblo, CO
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 259–NETWORK CONTRACT OFFICE 19

Service Type: Janitorial/Custodial
Mandatory for: Department of Veterans Affairs, Camp Hill Community Based Outpatient Clinic, 25 N 32nd Street, Camp Hill, PA
Designated Source of Supply: Goodwill Services, Inc., Harrisburg, PA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 595–LEBANON

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–00615 Filed 1–12–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0101, Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on collections of information provided for by Commission regulation Part 48, Registration of Foreign Boards of Trade.

DATES: Comments must be submitted on or before March 14, 2023.

ADDRESSES: You may submit comments, identified by ''Registration of Foreign Boards of Trade,'' and ''OMB Control No. 3038–0101,'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the

instructions for submitting comments through the website.

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746–9792; email: *astamoulis@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* 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 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Registration of Foreign Boards of Trade (OMB Control No. 3038–0101). This is a request for extension of a currently approved information collection.

Abstract: Section 738 of the DoddFrank Act amended section 4(b)(1) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring foreign boards of trade (FBOT) that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Pursuant to this authorization, the CFTC adopted a final rule requiring FBOTs that wish to permit trading by direct access to provide certain information to the Commission in applications for registration and, once registered, to provide certain information to meet quarterly and annual reporting requirements. The rule establishes reporting requirements that are required by Part 48 of the Commission's regulations and are necessary to ensure that FBOTs registered to provide for trading by direct access meet statutory and regulatory requirements on an initial and ongoing basis.

With respect to the collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement—Collection 3038–0101—Registration of Foreign Boards of Trade (17 CFR part 48). The estimate of the burden for this collection for registered FBOTs has been revised. The Commission's estimate of the total number of registered FBOTs that are required to make reports quarterly and annually has increased from 23 to 24. This revision is due to the fact that there are, at present, 24 FBOTs registered with the Commission. The respondent burden for this collection is estimated to range from two to eight hours per response for submission of required reports. These estimates include the time to locate, compile, validate, and verify and disclose and to ensure such information is maintained. The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents: 24.

Estimated average burden hours per respondent: 360 and ⅓ hours.

Estimated total annual burden on respondents: 8,648 hours.

Frequency of collection: When a reportable event occurs and quarterly and annually for required reports.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 10, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–00578 Filed 1–12–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0111]

Submission for OMB Review; Comment Request

AGENCY: The Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 13, 2023.

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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: User Testing of the Financial Readiness website; OMB Control Number 0704–UTFR.

Type of Request: New.

Number of Respondents: 160.

Responses per Respondent: 1.

Annual Responses: 160.

Average Burden per Response: 40 minutes.

Annual Burden Hours: 106.7.

Needs and Uses: The DoD Office of Financial Readiness Information (FINRED) is sponsoring a website usability study to collect opinions, ideas, and concerns from members of the military community on their level of satisfaction with the FINRED website content, layout, and navigation of financial resources. This study will be used only for research purposes and the results and recommendations will be anonymous when shared with government officials. The feedback and insights will be used to drive future improvements to the FINRED website.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 10, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–00632 Filed 1–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0124]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement without change of a previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 13, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Emory Morrison, 202–453–6963.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Educational Opportunity Centers Program (EOC) Annual Performance Report

OMB Control Number: 1840–0830

Type of Review: A reinstatement without change of a previously approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector

Total Estimated Number of Annual Responses: 170

Total Estimated Number of Annual Burden Hours: 1360

Abstract: The Department of Education (ED) collects Annual Performance Reports (APRs) from Educational Opportunity Centers (EOC) grantees under the authority of Title IV, Part A, Subpart 2, Division 1, Sections 402A and 402B of the Higher Education Act of 1965, as amended, the program regulations in 34 CFR 644, and the Education Department General Administrative Regulations (EDGAR), in 34 CFR 74.51, 75.720, and 75.732. The information that grantees submit in their APRs allows ED to annually assess each grantee's progress in meeting their project's approved goals and objectives. The APR data that grantees submit are compared with the projects' approved objectives to determine the projects' accomplishments, to make decisions regarding whether funding should be continued, and to award ''prior experience'' points. The regulations for this program provide for awarding up to 15 points for prior experience (34 CR 644.22). During a competition for new grant awards, the prior experience points are added to the average of the field reader scores to arrive at a total score for each application. Funding recommendations and decisions are primarily based on the rank order of applications on the slate; therefore, assessment of prior experience points, based on data in the annual performance report, is a crucial part of the overall application process.

Further, this performance report form is the main source of data for the Department's response to the requirements of the Government Performance and Results Act (GPRA) for this program. In addition, the Department uses the annual performance reports to produce program level data for annual reporting, budget

submissions to OMB, Congressional hearings and inquiries, and responding to inquiries from higher education interest groups and the general public.

EOC APRs are prepared and submitted by EOC grant projects. For each EOC grant project, the grant project director of record completes, or supervises the completion of the data submission process. The grant project director supervises the administration of an EOC grant. An EOC grant provides counseling and information on college admissions to qualified adults who want to enter or continue a program of postsecondary education. The program also provides services to improve the financial and economic literacy of participants. An important objective of the program is to counsel participants on financial aid options, including basic financial planning skills, and to assist in the application process. The goal of the EOC program is to increase the number of adult participants who enroll in postsecondary education institutions.

Dated: January 10, 2023.

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. 2023–00614 Filed 1–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0010]

Agency Information Collection Activities; Comment Request; Rehabilitation Services Administration (RSA) Payback Information Management System

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 14, 2023.

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–2023–SCC–0010. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave, SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Holliday, 202–245–7318.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Rehabilitation Services Administration (RSA) Payback Information Management System.

OMB Control Number: 1820–0617.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals and Households; Private Sector.

Total Estimated Number of Annual Responses: 12,026.

Total Estimated Number of Annual Burden Hours: 4,917.

Abstract: Public Law 114–95, section 302 (b) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Services Administration (RSA) provides Long-Term Training grants to academic institutions to support scholarship assistance to students. Students who receive scholarships under this program are required to work within the public rehabilitation program, such as with a state vocational rehabilitation agency, or an agency or organization that has a service arrangement with a state vocational rehabilitation agency. The student is expected to work two years in such settings for every year of full-time scholarship support. The program regulations at 34 CFR 386.33 through 386.35 and 386.40 through 386.43 detail the payback provisions and the RSA scholars' requirements to comply with them.

Section 302 (b)(2)(C) of the Act requires tracking of scholars' employment status and location of former scholars supported under the grants in order to ensure that students are meeting the payback requirement. Scholars must provide requested information necessary to meet the exit certification requirements.

In addition to meeting the requirement that all scholars be tracked, the information collected will provide performance data relevant to the rehabilitation fields and degrees pursued by RSA scholars, as well as the funds owed and the rehabilitation work completed by them. These data are used to assess program effectiveness and efficiency, and to meet the reporting requirements of Public Law 103–62 section 4 of the Government Performance and Results Act (GPRA).

In summary, RSA is requesting a revision of the currently approved collection by adding a section titled State Vocational Rehabilitation (VR) Agency: RSA Job Board Posting, where RSA envisions State VR agencies may initiate posting of an open position on the RSA Job Board on a rolling basis as positions become available. This addition to the current collection will be a helpful resource to students who receive RSA support, graduate, and seek qualifying employment to fulfill their required service obligation. This collection package adds the

participation of State VR agencies to the existing approved ICR Job leads will be submitted electronically through the online RSA Payback Information Management System (PIMS). There is minimal estimated burden required to report job information using the PIMS system.

Dated: January 10, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00629 Filed 1–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–OPEPD–0155]

Request for Information Regarding Higher Education Act (HEA) Pooled Evaluation; Correction

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Request for information; correction.

SUMMARY: On December 19, 2022, the Department of Education published in the **Federal Register** a request for information regarding HEA pooled evaluation. We are correcting the docket ID provided in that notice. All other information in the request for information, including the February 17, 2023, deadline for public comments, remains the same.

DATES: We must receive your comments on or before February 17, 2023.

FOR FURTHER INFORMATION CONTACT: John English, U.S. Department of Education, 400 Maryland Avenue SW, Room 6W306, Washington, DC 20202. Telephone: (202) 260–5787. Email: *john.english@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. No. 2022–27474, in the **Federal Register** published on December 19, 2022 (87 FR 77563), we make the following correction:

On Page 77563, in the third column, above the title of the **Federal Register** notice, Request for Information on the Higher Education Act (HEA) Pooled Evaluation, revise the docket ID to read: ED–2022–OPEPD–0155.

Roberto Rodriguez,

Assistant Secretary, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00321 Filed 1–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA is proposing revisions and requesting a three-year extension of the *Coal Markets Reporting System* as required under the Paperwork Reduction Act of 1995. The *Coal Markets Reporting System* (CMRS) consists of 5 surveys including, Form EIA–3 *Quarterly Survey of Non-Electric Sector Coal Data,* Form EIA–7A *Annual Survey of Coal Production and Preparation,* Form EIA–8A *Annual Survey of Coal Stocks and Coal Exports,* Form EIA–6 *Emergency Coal Supply Survey (Standby),* and Form EIA–20 *Emergency Weekly Coal Monitoring Survey for Coal Burning Power Producers (Standby.)* The CMRS collects data on U.S. coal production, quality, consumption, receipts, stocks, and prices. EIA proposes to make changes to instructions to Forms EIA–3, EIA–7A, and EIA–8A and requests an extension to Forms EIA–6 and EIA–20 with no changes. The changes to Forms EIA–3, EIA–7A, and EIA–8A will reduce the burden of this collection while maintaining the utility and integrity of the data.

DATES: EIA must receive all comments on this proposed information collection no later than March 14, 2023. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Send your comments to Rosalyn Berry electronically at *coal2023@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Rosalyn Berry, (202) 586–1026 email: *coal2023@eia.gov.* The forms and instructions are available on EIA's website at *https://www.eia.gov/survey/changes/coal/2023/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB Control Number:* 1905–0167;

(2) *Information Collection Request Title:* Coal Markets Reporting System;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The Coal Markets Reporting System (CMRS) program collects, evaluates, assembles, analyzes, and disseminates information on coal production, sales, technology, reserves, and related economic and statistical information. This information is used to assess the adequacy of coal and other energy resources to meet near and longer-term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

Form EIA–3 collects quarterly data on the use of coal at U.S. manufacturing plants, coal transformation/processing plants, coke plants, and commercial and institutional users of coal. Form EIA–7A collects coal production operations, characteristics of coalbeds mined, recoverable reserves, production capacity, coal sales and revenue, stocks held at mines, and the disposition of the coal mined. For coal preparation, information collected includes operations, locations, production capacity, disposition, and volume of coal prepared. Form EIA–8A collects data on coal stocks by state location, exported coal by origin state, and export revenue of coal sold during the reporting year.

Form EIA–6 *Emergency Coal Supply Survey* and Form EIA–20 *Emergency Weekly Coal Monitoring Survey for Coal Burning Power Producers* are standby surveys used during periods of coal supply and transportation disruptions. In the event of a supply or transportation disruption, these two standby surveys activate and operate

weekly over a ten-week period. Once activated, Form EIA–6 collects weekly coal production and stocks data from U.S. coal mining companies. Data are aggregated and reported at the state level. During disruptive events, Form EIA–20 collects available coal-fired capacity, generation, consumption, and stocks from coal-fired electric power generators.

The CMRS also collects coal market data. The data elements include production, consumption, receipts, stocks, sales, and prices. Information pertaining to the quality of the coal is also collected, including heat content, ash content, sulfur content and contents of mercury. Aggregates of this collection are used to support analysis on the effects of public policy on the coal industry, economic modeling, forecasting, coal supply and demand studies, and in guiding research and development programs. The data are included in EIA publications, such as the *Monthly Energy Review, Quarterly Coal Report, Quarterly Coal Distribution Report, Annual Coal Report,* and *Annual Coal Distribution Report.*

EIA also uses the data in short-term and long-term forecast models such as the Short-Term Integrated Forecasting System (STIFS) and the National Energy Modeling System (NEMS) Coal Market Module. The forecast data also appear in the *Short-Term Energy Outlook* and the *Annual Energy Outlook* publications.

(4a) *Proposed Changes:* EIA will be requesting a three-year extension of approval for all its coal surveys with the following changes:

Form EIA–3: Quarterly Survey of Industrial, Commercial, & Institutional Coal Users

• Revise the instructions to indicate only active users of coal need report. Currently, respondents are required to report if they've consumed more than 1,000 short tons in the past year. Respondents who switch from coal to gas are still required to file the EIA–3 for up to almost a year after they stop consuming coal. The proposed change will make it easier for respondents who permanently stop consuming coal to be removed from the survey frame, thereby reducing the reporting burden of this collection.

Form EIA–7A: Annual Survey of Coal Production and Preparation

• Revise the instructions to indicate all coal mining companies that owned a mining operation which produced 50,000 or more short tons of coal during the reporting year must submit the Form EIA–7A, except for anthracite mines. The current threshold for anthracite mines of 10,000 short tons would remain the same. The proposed change in reporting threshold from 25,000 to 50,000 short tons will reduce the reporting burden of this collection while maintaining the utility and integrity of the data.

• Revise the instructions to remove the notes for Part 3 Question 10 advising respondents how to convert longitude and latitude, referencing an external document on EIA's website. These instructions are outdated and unnecessary.

Form EIA–8A: Annual Survey of Coal Stocks and Coal Exports

• Add an instruction to Part 2, Question 1 and Part 3 Question 1 to exclude stocks and exports already reported on the Form EIA–7A. Some respondents file both Forms EIA–7A and EIA–8A, especially companies with parent companies. The proposed change will avoid duplication of data collection, thereby reducing the reporting burden on Form EIA–8A respondents.

(5) Estimated Number of Survey Respondents: 833.

• Form EIA–3 will consist of 290 respondents;

• Form EIA–7A will consist of 480 respondents;

• Form EIA–8A will consist of 44 respondents;

• Form EIA–6 (standby) will consist of 10 respondents;

• Form EIA–20 (standby) will consist of 9 respondents.

(6) *Annual Estimated Number of Total Responses:* 1,830.

(7) *Annual Estimated Number of Burden Hours:* 3,149.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $262,564 (3,149 burden hours times $83.38 per hour). EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours since the information is maintained during normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on January 10th, 2023.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2023–00611 Filed 1–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: DOE invites public comment on the proposed collection of information, FE–746R ''Natural Gas Imports and Exports'', as required under the Paperwork Reduction Act of 1995. DOE is requesting a three-year extension with changes of Form FE–746R, ''Natural Gas Imports and Exports''. The information collection request supports DOE's Office of Fossil Energy and Carbon Management (FECM) in gathering critical information on the U.S. trade in natural gas, including liquefied natural gas (LNG). The data are used to monitor natural gas trade, assess the adequacy of U.S. energy resources to meet near and longer term domestic demands, and support various market and regulatory analyses done by FECM.

DATES: DOE must receive all comments on this proposed information collection no later than March 14, 2023. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Submit comments electronically to Tu Tran at *tu.tran@hq.doe.gov* or mail comments to U.S. Energy Department (FE–34), Attn: Tu Tran, Office of Fossil Energy and Carbon Management, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: If you need additional information or copies of the information collection instrument, send your request to Tu Tran, (202) 235–5873, *tu.tran@hq.doe.gov.* Copies of the information collection instruments and instructions can also be viewed at: *https://*

www.energy.gov/fecm/articles/changes-fe-746-data-collection.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1901–0294;

(2) *Information Collection Request Title:* ''Natural Gas Imports and Exports;''

(3) Renewal with changes;

(4) *Purpose:* The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. Additionally, FECM is authorized to regulate natural gas imports and exports, including LNG, under 15 U.S.C. 717b. In order to carry out its statutory responsibilities, FECM requires anyone seeking to import or export natural gas to file an application and provide basic information on the scope and nature of the proposed import/export activity. Additionally, once an importer or exporter receives an authorization from FECM, they are required to submit monthly reports of all import and/or export transactions.

Specifically, the Form FE–746R requires the reporting of the following information by every holder of a DOE/FECM import or export authorization: the name of importer/exporter; country of origin/destination; international point of entry/exit; name of supplier; volume; price; transporters; U.S. geographic market(s) served; and duration of supply contract on a monthly basis. This information is used by both EIA and FECM to assess the adequacy of energy resources to meet near and longer term domestic demands, and by FECM in the management of its natural gas regulatory program.

Data collected on Form FE–746R are published in *Natural Gas Imports and Exports, LNG Monthly Report,* and in EIA official statistics on U.S. natural gas supply and disposition. In addition, the data are used to monitor the North American natural gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.

(4a) *Proposed Changes to Information Collection:* FECM will use the exemptions under the Freedom of Information Act (FOIA) to protect prices of LNG exports, but not other natural gas price data. Import and export prices for all forms of natural gas at the transaction level will be considered public information and may be publicly released in company identifiable form, excluding prices for domestically produced LNG exports. The data protection statement for information reported on Form FE–746R will read:

''Information reported on Form FE–746R is considered public information and may be publicly released in company identifiable form, except that the following information will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and the Department of Energy (DOE) regulations, 10 CFR 1004.11, implementing the FOIA:

- LNG export prices;
- Name of the Specific Purchaser/End User for all forms of natural gas imports and exports, including LNG, for all modes of transportation except by pipeline; and
- Heat content for all forms of natural gas imported and exported.''

Published LNG export prices will be aggregated for all LNG cargoes by month at each point of export. Additionally, there may be some statistics that are based on data from fewer than three import or export transactions. In these cases, it may be possible for a knowledgeable person to closely estimate the information reported by a specific respondent.

Data protection methods will not be applied to the aggregate statistical data published from submissions on Form FE–746R.

(5) *Annual Estimated Number of Respondents:* 353.

(6) *Annual Estimated Number of Total Responses:* 4,236.

(7) *Annual Estimated Number of Burden Hours:* 12,708.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $1,133,419. EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b), 42 U.S.C. 7101 *et seq.,* 15 U.S.C. 717b.

Signed in Washington, DC, on January 9, 2023.

Samson A. Adeshiyan,

Director, Office of Statistical Methods & Research, U.S. Energy Information Administration.

[FR Doc. 2023–00591 Filed 1–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–350–000.

Applicants: Gas Transmission Northwest LLC.

Description: Compliance filing: Report of Refunds—Coyote Springs Lateral IT Revenue (Nov. 2021—Oct. 2022) to be effective N/A.

Filed Date: 1/6/23.

Accession Number: 20230106–5106.

Comment Date: 5 p.m. ET 1/18/23.

Docket Numbers: RP23–351–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2023–01–06 Negotiated Rate Agreement and Amendments to be effective 1/6/2023.

Filed Date: 1/6/23.

Accession Number: 20230106–5127.

Comment Date: 5 p.m. ET 1/18/23.

Docket Numbers: RP23–352–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Update to Non-Conforming and Negotiated Rate Agreements to be effective 2/10/2023.

Filed Date: 1/9/23.

Accession Number: 20230109–5039.

Comment Date: 5 p.m. ET 1/23/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00612 Filed 1–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–49–000.

Applicants: Citizens S-Line Transmission LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Citizens S-Line Transmission LLC.

Filed Date: 1/5/23.

Accession Number: 20230105–5184.

Comment Date: 5 p.m. ET 1/26/23.

Docket Numbers: EC23–50–000.

Applicants: Salem Harbor Power Develop.m.ent LP.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Salem Harbor Power Develop.m.ent LP.

Filed Date: 1/6/23.

Accession Number: 20230106–5168.

Comment Date: 5 p.m. ET 1/27/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–56–000.

Applicants: 92JT 8ME, LLC.

Description: 92JT 8ME, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/9/23.

Accession Number: 20230109–5113.

Comment Date: 5 p.m. ET 1/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–012; ER10–2732–020; ER10–2733–020; ER10–2734–020; ER10–2736–020; ER10–2737–020; ER10–2741–020; ER10–2749–021; ER10–2752–020; ER12–2492–016; ER12–2493–016; ER12–2494–016; ER12–2495–016; ER12–2496–016; ER16–2455–010; ER16–2456–010; ER16–2457–010; ER16–2459–010; ER18–1404–006; ER19–2096–003.

Applicants: Emera Energy LNG, LLC, NS Power Energy Marketing Inc., Emera Energy Services Subsidiary No. 15 LLC, Emera Energy Services Subsidiary No. 13 LLC, Emera Energy Services Subsidiary No. 12 LLC, Emera Energy Services Subsidiary No. 11 LLC, Emera Energy Services Subsidiary No. 10 LLC, Emera Energy Services Subsidiary No. 9 LLC, Emera Energy Services Subsidiary No. 8 LLC, Emera Energy Services Subsidiary No. 7 LLC, Emera Energy Services Subsidiary No. 6 LLC, Emera Energy Services Subsidiary No. 5 LLC, Emera Energy Services Subsidiary No. 4 LLC, Emera Energy Services Subsidiary No. 3 LLC, Emera Energy Services Subsidiary No. 2 LLC, Emera Energy Services Subsidiary No. 1 LLC, Emera Energy U.S. Subsidiary No. 2, Inc., Emera Energy U.S. Subsidiary No. 1, Inc., Emera Energy Services, Inc., Tampa Electric Company.

Description: Notice of Change in Status of Tampa Electric Company, et al.

Filed Date: 1/6/23.

Accession Number: 20230106–5179.

Comment Date: 5 p.m. ET 1/27/23.

Docket Numbers: ER19–2901–009; ER15–2582–013; ER20–1980–007; ER20–2049–006; ER22–2518–001; ER21–2118–007; ER10–1851–017; ER21–2293–007; ER10–1852–074; ER10–1930–017; ER10–1931–018; ER15–2101–014; ER19–2389–009; ER12–2226–018; ER12–2225–018; ER14–2138–015; ER10–1966–019; ER14–21–015; ER11–4462–074; ER23–489–001; ER17–838–049; ER10–1951–052; ER21–1880–004; ER20–1985–006; ER20–1988–007; ER19–11–009; ER20–1219–006; ER20–1417–007; ER23–493–001; ER18–2091–011; ER22–1870–002; ER21–2109–004; ER20–2070–006.

Applicants: Wheatridge Wind II, LLC, Wheatridge Solar Energy Center, LLC, Vansycle II Wind, LLC, Titan Solar, LLC, Thunder Wolf Energy Center, LLC, Roundhouse Renewable Energy, LLC, Peetz Table Wind, LLC, Peetz Logan Interconnect, LLC, Northern Colorado Wind Energy Center II, LLC, Northern Colorado Wind Energy Center, LLC, Niyol Wind, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC, Neptune Energy Center, LLC, NEPM II, LLC, Mountain View Solar, LLC, Logan Wind Energy LLC, Limon Wind III, LLC, Limon Wind II, LLC, Limon Wind, LLC, Grazing Yak Solar, LLC, Golden West Power Partners, LLC, FPL Energy Vansycle, L.L.C., FPL Energy Stateline II, Inc., Florida Power & Light Company, Fish Springs Ranch Solar, LLC, ESI Vansycle Partners, L.P., Dodge Flat Solar, LLC, Clearwater Wind I, LLC, Cedar Springs Wind III, LLC, Cedar Springs Wind, LLC, Carousel Wind Farm, LLC, Bronco Plains Wind, LLC.

Description: Triennial Market Power Analysis for Northwest Region of Bronco Plains Winds, LLC, et al.

Filed Date: 1/4/23.

Accession Number: 20230104–5206.

Comment Date: 5 p.m. ET 3/6/23.

Docket Numbers: ER20–1085–004.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: Compliance filing: Virginia Electric and Power Company submits tariff filing per 35: Dominion Amendment to Second Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 1/9/23.

Accession Number: 20230109–5023.

Comment Date: 5 p.m. ET 1/30/23.

Docket Numbers: ER23–68–003.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Request to Defer Action on Amendment to ISA, SA No. 1949; Queue No. NQ16 to be effective 12/31/1998.

Filed Date: 1/9/23.

Accession Number: 20230109–5018.

Comment Date: 5 p.m. ET 1/30/23.

Docket Numbers: ER23–413–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2023–01–09_Amendment to Generation Stability Limits and other limitations to be effective 12/31/9998.

Filed Date: 1/9/23.

Accession Number: 20230109–5052.

Comment Date: 5 p.m. ET 1/30/23.

Docket Numbers: ER23–784–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4225; Queue No. AF2–103 to be effective 1/28/2021.

Filed Date: 1/9/23.

Accession Number: 20230109–5007.

Comment Date: 5 p.m. ET 1/30/23.

Docket Numbers: ER23–785–000.

Applicants: Microgrid Networks LLC.

Description: Microgrid Networks, LLC Requests Limited, Prospective Waiver of Tariff Requirement in Section 25.6.2.3.1 of Attachment S of the New York Independent System Operator Inc.

Filed Date: 1/6/23.

Accession Number: 20230106–5181.

Comment Date: 5 p.m. ET 1/13/23.

Docket Numbers: ER23–786–000.
Applicants: ConnectGen Montgomery County LLC.
Description: ConnectGen Montgomery County LLC Requests Prospective, Limited Tariff Waiver of Requirement in Section 25.6.2.3.1 of Attachment S of the New York Independent System Operator Inc.
Filed Date: 1/6/23.
Accession Number: 20230106–5182.
Comment Date: 5 p.m. ET 1/13/23.
Docket Numbers: ER23–787–000.
Applicants: York Run Solar, LLC.
Description: Request of York Run Solar, LLC for Limited Prospective Waiver Requirement in Section 25.6.2.3.1 of Attachment S of the New York Independent System Operator Inc.
Filed Date: 1/6/23.
Accession Number: 20230106–5183.
Comment Date: 5 p.m. ET 1/13/23.
Docket Numbers: ER23–788–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Service Agreements FERC No. 101 and 202 to be effective 12/31/2022.
Filed Date: 1/9/23.
Accession Number: 20230109–5055.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–789–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Dahlia Solar LGIA Filing to be effective 12/22/2022.
Filed Date: 1/9/23.
Accession Number: 20230109–5059.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–790–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–01–09_SA 3331 Termination of WPSC–ATC E&P (J886) to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5080.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–791–000.
Applicants: Consolidated Edison Energy, Inc.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5090.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–792–000.
Applicants: Consolidated Edison Solutions, Inc.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5091.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–793–000.
Applicants: Alpaugh 50, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5093.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–794–000.
Applicants: Alpaugh North, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5095.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–795–000.
Applicants: CED White River Solar, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5097.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–796–000.
Applicants: Copper Mountain Solar 2, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5098.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–797–000.
Applicants: Mesquite Solar 1, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Updates to be effective 1/10/2023.
Filed Date: 1/9/23.
Accession Number: 20230109–5101.
Comment Date: 5 p.m. ET 1/30/23.
Docket Numbers: ER23–798–000.
Applicants: Boralex Inc.
Description: Boralex, Inc. Requests a One-Time Limited Prospective Waiver of Tariff Requirement in Section 25.6.2.3.1 of Attachment S of the New York Independent System Operator Inc.
Filed Date: 1/9/23.
Accession Number: 20230109–5135.
Comment Date: 5 p.m. ET 1/17/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–25–000.
Applicants: Rockland Electric Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Rockland Electric Company.
Filed Date: 1/6/23.
Accession Number: 20230106–5171.
Comment Date: 5 p.m. ET 1/27/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)* by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00613 Filed 1–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–92–000]

Venture Global Plaquemines LNG, LLC; Notice of Availability of the Environmental Assessment for the Proposed Venture Global Plaquemines LNG Uprate Amendment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Venture Global Plaquemines LNG Uprate Amendment Project, proposed by Venture Global Plaquemines LNG, LLC (Plaquemines LNG) in the above-referenced docket. Plaquemines LNG requests authorization to increase the authorized peak liquefaction capacity of the existing Plaquemines LNG Export Terminal (Terminal) in Plaquemines Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action

significantly affecting the quality of the human environment.

The U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, and U.S. Coast Guard participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

Plaquemines LNG proposes to increase the Export Terminal's authorized peak liquefaction capacity achievable under optimal conditions from 24.0 metric ton per annum (MTPA) to 27.2 MTPA of liquid natural gas.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–92). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on February 6, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–92–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: January 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00547 Filed 1–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–66–001, Docket No. CP17–67–001]

Venture Global Plaquemines LNG, LLC, Gator Express Pipeline, LLC; Notice of Amendment of Authorization and Establishing Intervention Deadline

Take notice that on December 27, 2022, Venture Global Plaquemines LNG, LLC (Plaquemines LNG) and Gator Express Pipeline, LLC (Gator Express), 1001 19th Street North, Suite 1500, Arlington, VA 22209, filed a variance request to increase the peak workforce up to 6,000 personnel per day, increase traffic volumes, and to implement a 24-hours-per-day, 7-days-per-week construction schedule for the Plaquemines LNG Project in compliance with Environmental Condition No. 1 of the Order issued by the Commission on September 30, 2019.[1] In addition, Plaquemines LNG is seeking approval for an additional parking/laydown area referred to as the State Highway 23 Yard.[2] If authorized, Plaquemines LNG's and Gator Express' variance request would modify their original

[1] *Venture Global Plaquemines LNG, LLC* and *Venture Global Gator Express, LLC,* 168 FERC ¶ 61,204 (2019) (Authorization Order).

[2] The Authorization Order approved a new liquefied natural gas (LNG) export terminal and associated facilities along the Mississippi River in Plaquemines Parish, Louisiana under Section 3 of the NGA and a new natural gas pipeline system within Plaquemines Parish under Section 7 of the NGA.

authorization to such an extent that it is appropriate to treat this request as an amendment to the Natural Gas Act (NGA) Section 3 approval granted in the Authorization Order.[3] Plaquemines LNG's and Gator Express' variance request (amendment) is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Fory Musser, Senior Vice President, Development, Venture Global Plaquemines LNG, LLC, 202–759–6738, *fmusser@ventureglobalLng.com* or J. Patrick Nevins, Counsel to Venture Global Plaquemines LNG, LLC and Gator Express Pipeline, LLC, 202–637–3363, *patrick.nevins@lw.com.*

Plaquemines LNG is directed to provide this notice to all affected landowners and towns, communities, and local, state, and federal governments and agencies involved in the project within 10 business days of its publication in the **Federal Register**.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[4] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on January 27, 2023.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 27, 2023.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP17–66–001 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below . Your written comments must reference the Project docket number (CP17–66–001).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[5] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[6] and the regulations under the NGA[7] by the intervention deadline for the project, which is December 20, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://*

[3] Plaquemines LNG's and Gator Express' variance request does not pertain to the pipeline facilities authorized for Gator Express in the Authorization Order so Section 7 of the NGA is not invoked.

[4] 18 CFR (Code of Federal Regulations) 157.9.

[5] 18 CFR 385.102(d).

[6] 18 CFR 385.214.

[7] 18 CFR 157.10.

www.ferc.gov/resources/guides/how-to/intervene.asp.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP17–66–001 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below . Your motion to intervene must reference the Project docket number CP17–66–001.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: J. Patrick Nevins, 1001 19th Street North, Suite 1500, Arlington, VA 22209 or at *patrick.nevins@lw.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [8] motions to intervene are automatically granted by operation of Rule 214(c)(1).[9] Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[10] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on January 27, 2023.

Dated: January 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00548 Filed 1–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–3–000]

Tres Palacios Gas Storage LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Tres Palacios Cavern 4 Expansion Project

On October 12, 2022, Tres Palacios Gas Storage LLC (Tres Palacios) filed an application in Docket No. CP23–3–000 requesting a Certificate of Public Convenience and Necessity and Authorization pursuant to sections 7(c) and 7(b) of the Natural Gas Act to construct, operate, and abandon certain natural gas storage facilities. The proposed project is known as the Tres Palacios Cavern 4 Expansion Project (Project), and would add approximately 6.5 billion cubic feet (Bcf) of new working gas capacity and 3.5 Bcf of base gas capacity at its existing natural gas storage facility in Matagorda County, Texas.

On October 26, 2022, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—April 14, 2023
90-day Federal Authorization Decision Deadline [2]—July 13, 2023

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would consist of the following facilities and activities, all in Matagorda County, Texas:

- conversion of an existing third-party brine production well (Trull 11) into a natural gas storage cavern (Cavern 4);
- development of the Trull 11 well pad site for Cavern 4 (Cavern 4 Well Pad);
- construction of a 0.6-mile-long, 16-inch-diameter pipeline (New Cavern 4 Pipeline) connecting Cavern 4 to the existing certificated facilities at the Storage Facility;
- abandonment in place of a 15,300 horsepower electric-motor driven centrifugal compressor unit;
- installation of a new 5,500 horsepower electric-motor driven reciprocating compressor unit;
- addition of a new 2.5 million British thermal units per hour dehydration unit;

[8] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[9] 18 CFR 385.214(c)(1).

[10] 18 CFR 385.214(b)(3) and (d).

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other Federal agencies, and state agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

• construction of various related facilities, including a new permanent access road for the Cavern 4 Well Pad; and

• non-jurisdictional facilities consisting of a new electric service line to the Cavern 4 Well Pad and a new fiber optic line from the Cavern 4 Well Pad to the Storage Facility.

Background

On November 23, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Tres Palacios Cavern 4 Expansion Project.* The Notice of Scoping was sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the Texas Parks & Wildlife Department. The primary issues raised by the Department concerned impacts of the Project on wildlife and wildlife habitat; bird nesting areas; Federal and state-listed rare, threatened, and endangered species and their habitat; and control of the spread of non-native plant species. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP23–3), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00549 Filed 1–12–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–052]

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 December 30, 2022 10 a.m. EST Through January 9, 2023 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. 20230002, Final Supplement, DOE, AK, Alaska LNG Project, Review Period Ends: 02/13/2023, Contact: Mark Lusk 304–285–4145.

EIS No. 20230003, Final, NRC, NM, Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico, Review Period Ends: 02/13/2023, Contact: Christine Pineda 301–415–6789.

EIS No. 20230004, Final Supplement, BOEM, LA, Gulf of Mexico OCS Oil and Gas Lease Sales 259 and 261: Final Supplemental Environmental Impact Statement, Review Period Ends: 02/13/2023, Contact: Helen Rucker 504–736–2421.

Amended Notice

EIS No. 20220161, Draft, APHIS, NAT, The State University of New York College of Environmental Science and Forestry Petition (19–309–01p) for Determination of Nonregulated Status for Blight-Tolerant Darling 58 American Chestnut (Castanea dentata), Comment Period Ends: 01/26/2023, Contact: Cindy Eck 301–851–3892. Revision to FR Notice Published 11/10/2022; Extending the Comment Period from 12/27/2022 to 01/26/2023.

EIS No. 20220170, Draft Supplement, FHWA, WI, I–94 East–West (16th Street–70th Street) Milwaukee County, WI, Comment Period Ends: 01/31/2023, Contact: Bethaney Bacher-Gresock 608–662–2119. Revision to FR Notice Published 11/18/2022; Extending the Comment Period from 01/17/2023 to 01/31/2023.

EIS No. 20220172, Draft, USACE, OR, Willamette Valley System Operations and Maintenance, Comment Period Ends: 02/23/2023, Contact: Nicklas Knudson 503–808–4739. Revision to FR Notice Published 11/25/2022; Extending the Comment Period from 01/19/2023 to 02/23/2023.

Dated: January 9, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–00589 Filed 1–12–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

[File No. 201 0011]

Mastercard Incorporated; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Mastercard Incorporated; File No. 201 0011'' 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, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex Q), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christina Brown (202–326–2125), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 13, 2023. Write ''Mastercard Incorporated; File No. 201 0011'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Mastercard Incorporated; File No. 201 0011'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex Q), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 13, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission has accepted, subject to final approval, a consent agreement with Mastercard Incorporated (''Mastercard''). Mastercard operates a payment card network over which merchants can route debit transactions. Mastercard also operates as a token service provider that generates payment tokens for Mastercard-branded debit cards, including tokens saved in ewallet applications on mobile devices.

The consent agreement contains a proposed order addressing allegations in the proposed complaint that Mastercard has inhibited merchants' ability to route electronic debit transactions in violation of the Durbin Amendment, 15 U.S.C. 1693o–2(b)(1)(B), and Regulation II, 12 CFR 235.7(b), and therefore also in violation of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* The proposed order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the consent agreement and the comments received and will decide whether it should withdraw from the consent agreement and take appropriate action or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, or to modify their terms in any way.

II. The Complaint

This matter involves allegations that Mastercard's policy with respect to payment tokens saved in ewallets illegally inhibited merchants from being able to route electronic debit transactions to competing payment card networks. The Commission's complaint includes the following allegations.

When a consumer presents a debit card to a merchant to make a purchase, the merchant or the merchant's bank (known as the ''acquirer'') uses a payment card network (the ''network'') to communicate with the bank or credit union that issued the card (the ''issuer''). If the transaction is approved, the network also handles the transfer of funds. The selection of a network to process a transaction is known as ''routing.''

Debit transactions can be ''card-present'' (*e.g.,* where the cardholder presents their debit card to a merchant in person) or ''card-not-present'' (*e.g.,* where the cardholder is not physically present with the merchant, as in ecommerce transactions made online or through an application on a mobile device). The volume of card-not-present ecommerce transactions has grown significantly in recent years, including for debit cards used in ewallets such as Apple Pay, Google Pay, and Samsung Wallet.

When a cardholder loads a debit card into an ewallet, the debit card is ''tokenized,'' meaning the primary account number (''PAN'') printed on the card is replaced with a different number—the ''token''—to protect the PAN during certain stages of a debit transaction. The token service provider

(''TSP'') that generates the token also maintains a ''token vault'' that stores the PAN corresponding to each token. When a cardholder initiates a debit transaction using an ewallet, the merchant receives only the token, and not the PAN. The merchant sends this token to its acquirer, which sends the token to a network for processing. For the transaction to proceed, the TSP must ''detokenize'' the token for the network, which includes converting the token to its associated PAN stored in the token vault.

Mastercard's rules require that a Mastercard-branded debit card that is loaded into an ewallet be tokenized. Mastercard is also the TSP for nearly all Mastercard-branded debit cards used in ewallets. When an ewallet transaction using a Mastercard-branded debit card is routed to Mastercard, Mastercard thus can perform the detokenization and process the transaction. Competing payment card networks, however, do not have access to Mastercard's token vault. To route a Mastercard-branded tokenized transaction to a competing network, a merchant's acquirer or the competing network therefore must ask Mastercard to detokenize the token. Merchants are thus dependent on Mastercard's detokenization to route ewallet transactions using Mastercard-branded debit cards to competing networks.

Mastercard's ewallet token policy leverages tokens to protect its card-not-present ecommerce revenue by inhibiting merchants' ability to route such transactions to competing networks. For card-present debit transactions using an ewallet—which occur when a cardholder makes a purchase in-store by holding their mobile phone with an ewallet application to a merchant's terminal—Mastercard will detokenize so that merchants may route the transactions to competing networks. In this scenario, the merchant's acquirer or competing network will ''call out'' to Mastercard's token vault, which will provide the PAN associated with the token.

In contrast, Mastercard will not detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet. Under Mastercard's policy, there is no process by which a merchant's acquirer or a competing network can call out to Mastercard's token vault and obtain the PAN associated with an ewallet token used in a card-not-present debit transaction, as it can in a card-present transaction. Thus, when a Mastercard-branded card is used in an ewallet for a card-not-present debit transaction, that transaction must be routed over the Mastercard network, and merchants are unable to route transactions to competing networks. Indeed, Mastercard requires, and affirmatively tells merchants that it requires, that merchants route card-not-present ewallet transactions using Mastercard-branded debit cards to the Mastercard network.

II. Legal Analysis

Mastercard's ewallet token policy inhibits merchant routing choice in violation of the Durbin Amendment, 15 U.S.C. 1693o–2(b)(1)(B), and its implementing regulation, Regulation II, 12 CFR 235.7(b). As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress amended the Electronic Funds Transfer Act (''EFTA'') to add Section 920, colloquially known as the Durbin Amendment.[1] The Durbin Amendment instructed the Federal Reserve Board to promulgate implementing regulations, resulting in the publication of Regulation II in July 2011.[2] The Durbin Amendment and Regulation II were adopted to address concerns about the lack of competition in debit card processing and associated high processing fees—and they embody the principle that merchants must have the opportunity to choose between at least two unaffiliated networks to process debit transactions.

The Durbin Amendment and Regulation II contain two sets of prohibitions designed to promote merchant and consumer savings associated with processing debit transactions. First, they prohibit network exclusivity by (a) prohibiting a debit card issuer or payment card network from directly or indirectly restricting the number of networks on which a debit transaction can be processed to less than two unaffiliated networks, (b) requiring that a debit card issuer enable payment card networks that satisfy certain minimum standards, and (c) prohibiting a payment card network from limiting an issuer's ability to contract with any other network.[3] Second, they prohibit an issuer or payment card network from directly or indirectly inhibiting a merchant's ability to choose which of the networks enabled for the debit card is used to process a given transaction.[4]

Violations of EFTA provisions, like the Durbin Amendment, are strict liability offenses.[5] Accordingly, a prospective defendant incurs civil liability merely from its violation of the Durbin Amendment—a showing of scienter, actual harm, or anticompetitive effects is not necessary to establish a violation.[6]

For purposes of the Durbin Amendment and Regulation II, a ''debit card'' includes more than the physical piece of plastic found in a cardholder's wallet. Under both, a debit card is ''any card, *or other payment code* or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether the issuer holds the account.'' [7] Ewallet tokens are payment codes stored inside an ewallet and used through a payment card network to debit a cardholder's account; they are thus debit cards governed by the Durbin Amendment and Regulation II.

Mastercard's ewallet token policy does not allow card-not-present debit transactions using ewallet tokens (*i.e.,* debit cards) to be routed to competing debit networks. A merchant thus has only one option: Mastercard's network. Mastercard's policy thereby inhibits the merchant's ability to direct the routing of card-not-present transactions using ewallet tokens over the available network of its choosing, in violation of the Durbin Amendment and Regulation II.

Even if, for the sake of argument, an ewallet token is characterized not as a debit card but as a means of access to the underlying PAN, Mastercard still unlawfully inhibits merchant routing choice with respect to card-not-present

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 1075 (July 21, 2010) (codified at 15 U.S.C. 1693o–2).

[2] Debit Card Interchange Fees and Routing; Final Rule, 76 FR 43394 (July 20, 2011) (codified at 12 CFR 235.1 *et seq.*).

[3] 15 U.S.C. 1693o–2(b)(1)(A); 12 CFR 235.7(a).

[4] 15 U.S.C. 1693o–2(b)(1)(B); 12 CFR 235.7(b).

[5] *See, e.g., Clemmer* v. *Key Bank Nat'l Ass'n,* 539 F.3d 349, 355 (6th Cir. 2008) (recognizing an EFTA regulation imposes a strict liability standard); *Burns* v. *First Am. Bank,* 2006 WL 3754820, at *6 (N.D. Ill. Dec. 19, 2006) (''EFTA is a strict liability statute.'').

[6] *See Bisbey* v. *D.C. Nat'l Bank,* 793 F.2d 315, 318–19 (D.C. Cir. 1986) (holding EFTA does not require proof of actual injury); *FTC* v. *PayDay Fin. LLC,* 989 F. Supp. 2d 799, 811–13 (D.S.D. 2013) (granting summary judgment to the FTC on violations of EFTA and Regulation E after rejecting justifications not explicitly contemplated by the regulation's language); *Cobb* v. *PayLease LLC,* 34 F. Supp. 3d 976, 984 (D. Minn. 2014) (''[E]ven where a plaintiff did not suffer damages under the plain terms of the Act, civil liability attaches to *all* failures of compliance with respect to *any* provision of the Act.'') (internal quotation marks and citation omitted, emphases in original); *Burns,* 2006 WL 3754820, at *6 (''[A]gain, no necessary scienter . . . Nor must a plaintiff seeking statutory damages prove that he suffered actual damages as a result of a defendant's conduct.'').

[7] 12 CFR 235.2(f)(1) (emphasis added); 15 U.S.C. 1693o–2(c)(2).

ewallet transactions. Mastercard requires that all Mastercard-branded debit cards loaded into ewallets be tokenized. And, in fact, nearly all such cards are tokenized by Mastercard—via decisions in which merchants have no say. Because Mastercard tokenizes these cards and then withholds detokenization, card-not-present ewallet transactions are not routable to competing networks—these networks are unable to process the transactions without the corresponding PANs. Mastercard thereby inhibits merchant routing choice by employing a technology that compels merchants to route transactions over Mastercard's network.

Additionally, Mastercard's agreements with ewallet providers require those providers to inform merchants that, by accepting card-not-present transactions through ewallets, merchants agree that transactions made with Mastercard-branded debit cards will be routed to Mastercard. Mastercard thereby inhibits merchant routing choice by contract.

III. Proposed Order

The proposed order seeks to remedy Mastercard's illegal conduct by requiring Mastercard to provide PANs so that merchants may route tokenized transactions using Mastercard-branded debit cards to the available network of their choosing. Under the proposed order, Mastercard must also refrain from interfering with the ability of other persons to serve as TSPs, and it must not take other actions to inhibit merchant routing choice in violation of Regulation II, 12 CFR 235.7(b).

Section I of the proposed order defines the key terms used in the order.

Section II of the proposed order addresses the core of Mastercard's conduct. Paragraph II.A. requires Mastercard, upon request by an authorized acquirer, authorized network, or other authorized person in receipt of a Mastercard token, to provide the PAN associated with the token for purposes of routing the transaction to any competing network enabled by the issuer. This provision is designed to restore and preserve merchant routing choice so that merchants may accept ewallet tokens without being forced to route all such transactions over Mastercard's network. The order specifically requires that Mastercard provide PANs for ecommerce, card-not-present debit transactions in the ordinary course, including in a manner consistent with the timeliness with which Mastercard provides PANs for card-present transactions and without requiring consideration for making the PANs available.

Paragraph II.B. prevents Mastercard from prohibiting or inhibiting any person's efforts to serve as a TSP or provision payment tokens for Mastercard-branded debit cards. This paragraph prevents Mastercard from taking other actions that would inhibit merchant routing choice in the context of tokenized transactions.

Paragraph II.C. prohibits Mastercard from, directly or indirectly by contract, requirement, condition, penalty, or otherwise, inhibiting the ability of any person that accepts or honors debit cards for payments to choose to route transactions over any network that may process such transactions, in violation of Regulation II, 12 CFR 235.7(b). This paragraph prevents Mastercard from taking other actions, even outside the context of tokenized transactions, that would inhibit merchant routing choice.

The proposed order also contains provisions designed to ensure Mastercard's compliance with the order. Section III requires Mastercard to provide notice to competing networks, acquirers, and issuers via an ad hoc Mastercard bulletin using language found in the proposed order's Appendix A. Section IV requires Mastercard to provide prior notice to the Commission before the commercial launch of any new debit product that requires merchants to route debit transactions to Mastercard's network. Sections V through VII contain provisions regarding compliance reports to be filed by Mastercard, notice of changes in Mastercard, and access to Mastercard documents and personnel.

As stated in Section VIII, the proposed order's purpose is to remedy Mastercard's alleged violation of the Durbin Amendment, EFTA Section 920(b)(1), 15 U.S.C. 1693o–2(b)(1), as set forth by the Commission in its complaint. Section IX provides that the order will terminate 10 years from the date it is issued. However, if the United States or Commission files a complaint in federal court alleging a violation of the proposed order (and the court does not dismiss the complaint or rule that there was no violation), then the order will terminate 10 years from the date such complaint is filed.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–00559 Filed 1–12–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator of the Administration for Community Living the authorities vested in the Secretary of Health and Human Services under the Rehabilitation Act of 1973 as amended in the Workforce Innovation and Opportunity Act (Pub. L. 113–128), to Chair the Interagency Committee on Disability Research for the purposes of promoting the coordination and collaboration of federal disability and rehabilitation research and related activities as stipulated in the ICDR's statutory mission.

This authority may be redelegated to the Director of the National Institute on Disability, Independent Living and Rehabilitation Research. Exercise of this authority shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary. The Secretary retains the authority to submit reports to Congress and promulgate regulations.

This delegation is effective immediately. I hereby affirm and ratify any actions taken by subordinates that involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: January 10, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023–00574 Filed 1–12–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0201]

Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and

Format.'' This guidance is intended to assist applicants in developing the DOSAGE AND ADMINISTRATION section of labeling. The purpose of this guidance is to assist applicants in ensuring that the DOSAGE AND ADMINISTRATION section contains the dosage- and administration-related information needed for safe and effective use of a drug and that the information is clear, concise, and presented in a manner that is pertinent and understandable to health care practitioners. We are withdrawing the guidance for industry entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format'' issued on March 29, 2010, and issuing this draft guidance.

DATES: Submit either electronic or written comments on the draft guidance by March 14, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0201 for ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Eric Brodsky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6485, Silver Spring, MD 20993–0002, 301–796–0855; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' FDA is also withdrawing its previous guidance for industry, issued on March 23, 2010 (75 FR 13766), which was entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.''

The draft guidance, when finalized, is intended to assist applicants in developing the DOSAGE AND ADMINISTRATION section of labeling to ensure that this section contains the dosage- and administration-related information needed for safe and effective use of a drug and that the information is clear, concise, and presented in a manner that is pertinent and understandable to health care practitioners. Applicants should follow the recommendations in this guidance when developing this section for a new drug submitted to FDA under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act or a biologics license application under section 351(a) of the Public Health Service Act, and when revising

existing information in the labeling for a currently approved drug in a supplement to such applications.

This draft guidance provides examples of required and recommended information in the DOSAGE AND ADMINISTRATION section. This guidance provides recommendations on including certain dosage- and administration-related information in the DOSAGE AND ADMINISTRATION section that is particularly critical to the safe and effective use of the drug (*e.g.,* lack of knowledge of the information or nonadherence to a recommendation could have serious consequences for patients).

This draft guidance addresses the dosage and route of administration for each indication in the DOSAGE AND ADMINISTRATION section and information about the dosage range, the starting or loading dose and dosage, titration schedule, the maximum recommended dosage, the maximum recommended duration, monitoring for effectiveness, and concomitant therapy information in the DOSAGE AND ADMINISTRATION section, as appropriate.

This draft guidance also addresses the following information in the DOSAGE AND ADMINISTRATION section:

- Other drugs used before, during, or after drug treatment or administration;
- Dosage modifications for adverse reactions or for drug interactions;
- Dosage in specific populations (*e.g.,* pediatric patients, geriatric patients, patients with renal impairment, patients with hepatic impairment);
- Information about switching to the subject drug from other products or substitution involving the subject drug;
- Recommendations regarding missed dose(s);
- Recommendations in event of vomiting after oral drug administration;
- Recommendations for drug discontinuation or dosage reduction when there are risks of withdrawal; and
- The recommended dosage for fixed-combination drug products and co-packaged products.

Furthermore, this draft guidance addresses when and how to include information in the DOSAGE AND ADMINISTRATION section on the preparation and/or administration of the drug (*e.g.,* parenteral products, a product stored in the refrigerator or freezer, pharmacy bulk packages, imaging bulk packages, solid oral dosage forms with qualified liquids or soft foods, oral dosage forms via enteral feeding tubes, liposome drug products); instructions to avoid harm related to drug handling and administration, radiation dosimetry; and information on drug incompatibilities if the drug is mixed with other drugs. This guidance also provides information on storage instructions for the reconstituted or diluted product.

Finally, this draft guidance describes information that should ordinarily not be included in the DOSAGE AND ADMINISTRATION section.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 314 and 21 CFR 601 have been approved under OMB control number 0910–0001 and 0910–0338. The collections of information in 21 CFR 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics,* or *https://www.regulations.gov.*

Dated: January 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00619 Filed 1–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0945–0008]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before February 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

Type of Collection: Reinstatement with changes.

OMB No.: 0945–0008.

Abstract: This Information Collection Request is for a reinstatement with changes to previously approved collection 0945–0008 that is expired in December 2022, titled: Assurance of Compliance, Form HHS–690, subject to minor modifications. Such an assurance is required by the federal civil rights laws enforced by the Office for Civil Rights, as described herein. One method that the federal government uses to ensure civil rights compliance is to require covered entities to submit written assurances of compliance when applying for federal financial assistance. The assurances alert covered entities of their civil rights obligations and provide the Department with a valuable enforcement tool, as a recipient's written assurance and certification documents can provide an independent

contractual basis for enforcement of nondiscrimination requirements. This is for a 3year request.

Type of Respondent; Affected Public: States, certain health care providers, other persons, or entities receiving/requesting Funding.

Frequency: The Applicant provides this Assurance of Compliance when it applies for or receives new HHS funds.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Avg. burden/response (in hours)	Total burden hours
States, certain health care providers, other persons, and entities.	Form HHS–690.	9595	1	4	38,380
Total					38,380

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–00558 Filed 1–12–23; 8:45 am]

BILLING CODE 4150–01–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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2021–1 Phase II: Rapid, Point of Care Molecular Diagnostics for HCV (Topic 99).

Date: February 6, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, 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 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2021–1 Phase II: Development of Priority Diagnostics for Chagas Disease (Topic 96).

Date: February 7, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, 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 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2023–1 Phase I: Adaptation of CRISPR-based in vitro Diagnostics for Rapid Detection of Select Eukaryotic Pathogens (Topic 119).

Date: February 9, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, 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 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00595 Filed 1–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C Study Section Translational Neural, Brain, and Pain Relief Devices.

Date: February 6–7, 2023.

Time: 10:00 a.m. to 12:00 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: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Bethesda, MD 20892, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; SEP—Translational Neural, Brain and Pain Relief Devices.

Date: February 7, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Bethesda, MD 20892, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN K99 Review Meeting.

Date: February 9, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *lataisia.jones@nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Study Section, NINDS Post-Doc Career Development and Research Training.

Date: February 9–10, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: DeAnna Lynn Adkins, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Bethesda, MD 20892, 301–496–9223, *deanna.adkins@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00571 Filed 1–12–23; 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: Risk, Prevention and Health Behavior Integrated Review Group; Lifestyle Change and Behavioral Health Study Section.

Date: February 9–10, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue NW, Washington, DC 20037.

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 827–6401, *pamela.jeter@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 9–10, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: E. Bryan Crenshaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–7129, *bryan.crenshaw@nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Vascular Inflammation Study Section.

Date: February 9–10, 2023.

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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, *komissar@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: February 9–10, 2023.

Time: 9:00 a.m. to 7:00 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: Paul Hewett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room, Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: February 9–10, 2023.

Time: 9:00 a.m. to 7:00 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: Sung-Wook Jang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812P, Bethesda, MD 20892, (301) 435–1042, *jangs2@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: February 9–10, 2023.

Time: 9:30 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: Jennifer Chien Villa, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–5436, *jennifer.villa@nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: February 9–10, 2023.

Time: 9:30 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: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Cell Biology Study Section.

Date: February 9–10, 2023.

Time: 10:00 a.m. to 8:30 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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney Endocrine and Digestive Disorders Study Section.

Date: February 9–10, 2023.

Time: 10:00 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: Steven M. Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

Date: February 10, 2023.

Time: 11:30 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: Shahrzad Mavandadi, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–4792, *shahrzad.mavandadi@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: January 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00573 Filed 1–12–23; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Physiological Systems in ADRD.

Date: February 10, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–3562, *neuhuber@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00545 Filed 1–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0791]

Area Maritime Security Advisory Committee (AMSC), Eastern Great Lakes, Northeast Ohio Sub-Committee Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of Committee vacancies; solicitation for membership.

SUMMARY: The Coast Guard requests individuals interested in serving on the Area Maritime Security Committee, Eastern Great Lakes, Northeast Ohio Region sub-committee submit their applications for membership to the U.S. Coast Guard Captain of the Port, Buffalo. The Committee assists the Captain of the Port as the Federal Maritime Security Coordinator, Buffalo, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the Captain of the Port, Buffalo, by February 13, 2023.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: Captain of the Port, Buffalo, Attention: LCDR Katherine Peet, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact Mr. Greg Fondran, Northeast Ohio Region Sub-Committee Executive Coordinator, at 216–937–0136 or *Greg.A.Fondran@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Basis and Purpose

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees (ASMC) for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2). The AMSCs shall assist the Federal Maritime Security Coordinator (FMSC) in the development, review, update, and exercising of the Area Maritime Security Plan (AMSP) for their area of responsibility. Such matters may include, but are not limited to, the following:

(1) Identifying critical port infrastructure and operations; Identifying risks (threats, vulnerabilities, and consequences);

(2) Determining mitigation strategies and implementation methods;

(3) Developing strategies to facilitate the recovery of the Maritime Transportation System after a Transportation Security Incident;

(4) Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and

(5) Providing advice to and assisting the Federal Maritime Security Coordinator in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least five years of experience related to maritime or port security operations. The Northeast Ohio Region Sub-Committee of the Eastern Great Lakes AMSC has 31 members. We are seeking to fill two (2) Sub-Committee vacancies with this solicitation, an Executive Board member to serve as Chairperson, and an Executive Board member to serve as Vice-Chairperson; both will serve concurrently as a member of the Eastern Great Lakes AMSC when so convened by the FMSC.

Applicants may be required to pass an appropriate security background check prior to appointment to the committee. Applicants must register with and remain active as a Coast Guard Homeport user if appointed. Member's term of office will be for five years; however, a member is eligible to serve additional terms of office. Members will

not receive any salary or other compensation for their service on an AMSC. In accordance with 33 CFR 103, members may be selected from Federal, Territorial, or Tribal governments; State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies.

The Department of Homeland Security does not discriminate in selection of committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability, and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: December 14, 2022.

Mark I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port & Federal Maritime Security Coordinator, Buffalo.

[FR Doc. 2023–00553 Filed 1–12–23; 8:45 am]

BILLING CODE 9110–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0091]

Great Lakes Pilotage Advisory Committee Meeting; February 2023 Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of cancellation of the Federal Advisory Committee Meeting for the Great Lakes Pilotage Advisory Committee.

SUMMARY: The meeting of the Great Lakes Pilotage Advisory Committee scheduled for February 8, 2023, from 8 a.m. until 5:30 p.m. Central Standard Time (CST) is cancelled.

DATES: This meeting was announced in the **Federal Register** on Thursday, January 5, 2023 (88 FR 878).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Levesque, Alternate Designated Federal Officer of the Great Lakes Pilotage Advisory Committee, telephone, (571)–308–4941, or email *Francis.R.Levesque@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard and the Director of Marine Transportation Systems on matters relating to Great Lakes Pilotage, including review of proposed Great Lakes Pilotage regulations and policies. Notice of cancellation of this meeting is given under the *Federal Advisory Committee Act* (5 U.S.C. 10).

Dated: January 9, 2023.

Michael D. Emerson,

Director, Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2023–00583 Filed 1–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2022–N080; FXES11130800000–234–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before February 13, 2023.

ADDRESSES:

Document availability and comment submission: Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* XXXXXX or PER0001234).

- *Email: permitsR8ES@fws.gov.*
- *U.S. Mail:* Susie Tharratt, Regional Recovery Permit Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Susie Tharratt, via phone at 916–414–6561, or via email at *permitsR8ES@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: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
009018	California Botanic Garden, Claremont, California.	• Franciscan manzanita (*Arctostaphylos franciscana*). • Applegate's milk-vetch (*Astragalus applegatei*). • Vandenberg monkeyflower (*Diplacus vandenbergensis*). • Steamboat buckwheat (*Eriogonum ovalifolium var. williamsiae*). • Tiehm's buckwheat (*Eriogonum tiehmii*). • Gentner's fritillary (*Fritillaria gentneri*).	CA, NV, OR	Remove/reduce to possession from lands under Federal jurisdiction, collect herbarium and genetic samples, carry out establishment and maintenance of a living collection or seed bank, conduct propagation, conduct pollination, and do genetic research.	Renew with changes.
PER0040606 ...	Benjamin Carter, San Jose, California.	• Menzies' wallflower (*Erysimum menziesii*) ..... • Contra Costa wallflower (*Erysimum capitatum* var. *angustatum*).	CA	Remove/reduce to possession from lands under Federal jurisdiction, collect herbarium and genetic samples.	New.
128462	Jonathan Feenstra, Altadena, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Play recorded vocalizations	Renew.
179036	Cullen Wilkerson, Richmond, California.	• San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).	CA	Survey, capture, handle, and release	Renew.
092469	Ingrid Eich, Fullerton, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*)	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
045994	U.S. Geological Survey Western Ecological Research Center, San Diego, California.	• Mountain yellow-legged frog (*Rana muscosa*), Southern California Distinct Population Segment. • Arroyo (=arroyo southwestern) toad (*Anaxyrus californicus*).	CA	Relocate adults, collect tissue	Amend.
20513C	Katherine McLean, Concord, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, release	Renew.
054120	Russell Huddleston, San Francisco, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Aquatic survey, capture, handle, release.	Renew.
072650	Jennifer Michaud-Laird, Sebastopol, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County Distinct Population Segment. • California freshwater shrimp (*Syncaris pacifica*).	CA	Survey, capture, handle, release	Renew.
02481D	Anna Touchstone, San Diego, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Amend.
022183	Los Angeles World Airports, Los Angeles, California.	• El Segundo blue butterfly (*Euphilotes battoides allyni*).	CA	Pursue, conduct habitat monitoring and management activities, and collect seed and cuttings from host plant.	Renew.
PER0121456–0	Tara Collins, Penryn, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	New.
PER0121458 ...	Donald Hardeman Jr., Cedar Hill, Texas.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*).	CA	Survey, capture, handle, release, and collect adult vouchers.	New.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER0121617 ...	Kyle Wear, Arcata, California.	• San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Lotis blue butterfly (*Lycaeides argyrognomon lotis*). • Behren's silverspot butterfly (*Speyeria zerene behrensii*).	CA	Pursue	New.
212445	Robert Schell, San Raphael, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County Distinct Population Segments.	CA	Survey, capture, handle, measure, collect genetic samples, translocate, release, collect adult vouchers, and collect branchiopod cysts.	Renew and amend.
793645	Donald Alley, Brookdale, California.	• Tidewater goby (*Eucyclogobius newberryi*)	CA	Survey, capture, handle, and release	Renew.
86378B	Thomas Gast & Associates Environmental Consultants, Arcata, California.	• Tidewater goby (*Eucyclogobius newberryi*)	CA	Survey, capture, handle, and release	Renew.
54716A	Christine Harvey, San Diego, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Play recorded vocalizations	Renew.
221294	Michael Galloway, San Diego, California.	• Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Survey, pursue, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
PER0211375 ...	Britney Schultz, Palm Desert, California.	• Casey's June Beetle (*Dinacoma caseyi*)	CA	Pursue, handle, and light trap	New.

Public Availability of Comments

Written comments we receive become part of the administrative 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 your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Susan Tharratt,

Acting Regional Ecological Services Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2023–00577 Filed 1–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2022–N058; FX3ES11130300000–234–FF03E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of Five Listed Animal and Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act, for two plant and three animal species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, please send your written information by March 14, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information on specific species, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section or, for general information, contact Laura Ragan, via email at *laura_ragan@fws.gov* or by phone at 612–713–5157. 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: We are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for two plant and three animal species. A 5-year status review is based on the best scientific and commercial data

available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

What species are under review?

This notice announces our active 5-year status reviews of the species in the following table.

Common name	Scientific name	Taxonomic group	Listing status	Where listed	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
Copperbelly water snake.	*Nerodia erythrogaster neglecta.*	Reptile	T	IN (north of 40 degrees north latitude), MI, OH.	62 FR 4183; January 29, 1997.	Jennifer Finfera, *jennifer_finfera@fws.gov,* 614–416–8993, ext. 113.	USFWS, 4625 Morse Road, Suite 104, Columbus, OH 43230.
Rayed bean	*Villosa fabalis*	Clam	E	IN, KY, MI, NY, OH, PA, TN, WV.	77 FR 8632; February 14, 2012.	Angela Boyer, *angela_boyer@fws.gov,* 614–416–8993, ext. 122.	USFWS, 4625 Morse Road, Suite 104, Columbus, OH 43230.
Snuffbox mussel.	*Epioblasma triquetra*	Clam	E	AL, AR, IL, IN, KY, MI, MN, MS, MO, OH, PA, TN, VA, WV, WI.	77 FR 8632; February 14, 2012.	Angela Boyer, *angela_boyer@fws.gov,* 614–416–8993, ext. 122.	USFWS, 4625 Morse Road, Suite 104, Columbus, OH 43230.
Pitcher's thistle	*Cirsium pitcheri*	Plant	T	IL, IN, MI, WI	53 FR 27137; July 18, 1988.	Jillian Farkas, *jillian_farkas@fws.gov,* 517–351–5467.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Michigan monkey-flower.	*Mimulus michiganensis*	Plant	E	MI	55 FR 25596; June 21, 1990.	Kaitlyn Kelly, *kaitlyn_kelly@fws.gov,* 517–351–8315.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts.

Public Availability of Submissions

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.

Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2023–00550 Filed 1–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2023–0009; FF09M30000–223–FXMB12320900000; OMB Control Number 1018–0167]

Agency Information Collection Activities; Eagle Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before March 14, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference Office of Management and Budget

(OMB) Control Number 1018–0167 in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2023–0009.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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 (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: 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 Code of Federal Regulations (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.

All Service permit applications associated with eagles are in the 3–200 and 3–202 series of forms, 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.

The Service proposes to renew this information collection, without change, in order to extend the expiration date for the collection (currently July 31, 2023) while the Service continues to finalize our rulemaking under RIN 1018–BG70, Permits for Incidental Take of Eagles and Eagle Nests. On September 30, 2022, we published the proposed rule (87 FR 59598) to revise the regulations authorizing the issuance of permits for eagle incidental take and eagle nest take to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The comment period for the proposed rule ended on November 29, 2022. On November 28, 2022, we extended the proposed rule's comment period to December 29, 2022 (87 FR 72957).

In addition to continuing to authorize specific permits, the proposed rule, if finalized as written, would create general permits for certain activities under prescribed conditions (qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take). It also would remove the current third-party monitoring requirement for eagle incidental take permits, update current permit fees, and clarify definitions. We anticipate publication of the final rule under RIN 1018–BD70 in late 2023 or early 2024.

The public may request copies of any form contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: Eagle Permits, 50 CFR 22.

OMB Control Number: 1018–0167.

Form Numbers: 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, 3–200–11 through 3–200–16, 3–1552, 3–1591, and 3–2480.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and businesses. We expect that the majority of applicants seeking long-term permits will be in the energy production and electrical distribution business sectors.

Total Estimated Number of Annual Respondents: 4,068.

Total Estimated Number of Annual Responses: 4,318.

Estimated Completion Time per Response: Varies from 15 minutes to 228 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 25,894.

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 Nonhour Burden Cost: $1,369,200 (primarily associated with application processing fees).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–00624 Filed 1–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-35101; 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 December 31, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 30, 2023.

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 December 31, 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.

CONNECTICUT

New London County

Griswold Point Historic District, 5–26–1 Griswold Point, 6–19 Old Shore, and 3–33–1 Osprey Rd., Old Lyme, SG100008625

NEW YORK

Onondaga County

Syracuse Bread Company Factory, (Industrial Resources in the City of Syracuse, Onondaga County, NY MPS), 200 Maple St., Syracuse, MP100008620

Buildings at 500 and 506 Erie Boulevard East, 500 and 506 Erie Blvd. East, Syracuse, SG100008621

SOUTH DAKOTA

Brookings County

Volga Hospital, 203 Samara Ave., Volga, SG100008617

Custer County

Galena Creek Schoolhouse, (Schools in South Dakota MPS), 25151 Badger Clark Rd., Custer vicinity, MP100008618

Lawrence County

Homestake Mining Company Hydroelectric Plant No. 2, US 14A, Spearfish vicinity, SG100008619

Authority: Section 60.13 of 36 CFR part 60

Dated: January 5, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–00608 Filed 1–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0007]

Gulf of Mexico OCS Oil and Gas Lease Sales 259 and 261: Final Supplemental Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a final environmental impact statement.

SUMMARY: BOEM announces the availability of a final supplemental environmental impact statement, *Gulf of Mexico OCS Oil and Gas Lease Sales 259 and 261: Final Supplemental Environmental Impact Statement* (GOM Lease Sales 259 and 261 SEIS). The GOM Lease Sales 259 and 261 SEIS provides an analysis of potential environmental impacts of the proposed action and four alternatives and identifies BOEM's preferred alternative.

DATES: BOEM will issue a final record of decision no sooner than February 13, 2023.

ADDRESSES: The GOM Lease Sales 259 and 261 SEIS with appendices is available for review on BOEM's website at *https://www.boem.gov/GoM-Sales-259-and-261-SEIS.*

FOR FURTHER INFORMATION CONTACT: Helen Rucker, Chief, Environmental Assessment Section, Office of Environment, 1201 Elmwood Park Blvd. (MS GM 623E), New Orleans, LA 70123–2394, or by telephone at 504–736–2421.

SUPPLEMENTARY INFORMATION: The GOM Lease Sales 259 and 261 SEIS will inform both lease sales, which the Inflation Reduction Act of 2022 (IRA) (Pub. L. 117–169, enacted August 16, 2022) directs BOEM to hold by the end of March 2023 and September 2023, respectively. While section 50264(a)(3)–(4) of the IRA requires BOEM to hold these lease sales, the IRA does not impact the bulk of BOEM's normal leasing process, including the resolution of particular questions going to the scope of the sales and the terms of the resulting leases. BOEM has prepared the GOM Lease Sales 259 and 261 SEIS to inform its leasing decisions.

On October 7, 2022, the notice of availability for the draft SEIS was published in the **Federal Register** (87 FR 61014), beginning a 45-day public comment period that ended November 21, 2022. During that time, BOEM also held two public hearings. BOEM received a total of 75,918 public comments through the Federal e-Rulemaking Portal (*http://www.regulations.gov*, Docket No. BOEM–2022–0144) and 14 comments during the public hearings. Following the close of the public comment period, BOEM considered all comments received in preparing the Lease Sales 259 and 261 SEIS as appropriate. Detailed responses to the comments are provided in appendix C of the GOM Lease Sales 259 and 261 SEIS. The GOM Lease Sales 259 and 261 SEIS analyzes the potential environmental impacts that could result from an individual Gulf of Mexico oil and gas lease sale. Additionally, it identifies BOEM's preferred alternative as Alternative D combined with Alternative A. Alternative D combined with Alternative A would offer for lease available unleased blocks within all three of BOEM's Gulf of Mexico (GOM) planning areas in the lease sale area that are not under Presidential withdrawal, not adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap, and not within the boundary of the Flower Garden Banks National Marine Sanctuary as of the July 2008 ''Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf From Leasing Disposition.'' BOEM may also exclude from leasing any available unleased whole or partial blocks subject to one or more of the following stipulations: (1) Topographic Features Stipulation; (2) Live Bottom Stipulation; and (3) Blocks South of Baldwin County, Alabama, Stipulation. BOEM will announce more information concerning GOM Lease Sales 259 and 261 in its final notice of sale and record of decision for each sale.

Authority: The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and 43 CFR 46.415.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–00485 Filed 1–12–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Fifth Review)]

Cased Pencils From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 46998, August 1, 2022) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on January 31, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 8, 2023 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 8, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted on behalf of Dixon Ticonderoga Company, Musgrave Pencil Company, Inc., and LaRose Industries LLC dba Cra-Z-Art, domestic producers of cased pencils, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 6, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00587 Filed 1–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1580, 1582 and 1583 (Final)]

Steel Nails From India, Thailand, and Turkey; Supplemental Schedule for the Final Phase of Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective June 7, 2022, the Commission established a general schedule for the conduct of the final phase of its antidumping and countervailing duty investigations on steel nails from India, Oman, Sri Lanka, Thailand, and Turkey (87 FR 36882, June 21, 2022), following preliminary determinations by the U.S. Department of Commerce (''Commerce'') that that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India, Oman, Sri Lanka, and Turkey of steel nails. Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 21, 2022 (87 FR 36882). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through video conference on August 17, 2022. All persons who requested the opportunity were permitted to participate.

Commerce issued final affirmative countervailing duty determinations with respect to steel nails from India, Oman, Sri Lanka, and Turkey (87 FR 51333, 87 FR 51335, 87 FR 51337, and 87 FR 51339, August 22, 2022) and a final negative countervailing duty determination with respect to steel nails from Thailand (87 FR 51343, August 22, 2022). The Commission issued a notice of termination for the countervailing investigation of steel nails from Thailand (87 FR 55036, September 8, 2022). The Commission subsequently issued its final determinations that an industry in the United States was not materially injured or threatened with material injury by reason of imports of steel nails from India, Oman, and Turkey, provided for in subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be subsidized by the governments of India, Oman, and Turkey. The Commission further found that imports of steel nails from Sri Lanka that Commerce has determined are subsidized by the government of Sri Lanka are negligible and terminated that investigation (87 FR 61631, October 12, 2022).

Commerce issued final affirmative antidumping duty determinations with respect to imports of steel nails from India, Thailand, and Turkey (87 FR 78937, 87 FR 78929, and 87 FR 78935, December 23, 2022). Commerce issued a final negative antidumping duty determination with respect to imports of steel nails from Sri Lanka (87 FR 78933, December 23, 2022). The Commission has issued a notice of termination for the antidumping duty investigation of steel nails from Sri Lanka (publication pending). Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigations on imports of steel nails from India, Thailand, and Turkey.

This supplemental schedule is as follows: the deadline for filing supplemental party comments on Commerce's final antidumping duty determinations is January 10, 2023. Supplemental party comments may address only Commerce's final antidumping duty determinations regarding imports of steel nails from India, Thailand, and Turkey. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of the current investigations will be placed in the nonpublic record on January 18, 2023, and a public version will be issued thereafter.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 5, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00588 Filed 1–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1186–1187 (Second Review)]

Stilbenic Optical Brightening Agents From China and Taiwan; Termination of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

The Commission instituted the subject five-year reviews on October 3, 2022 (87 FR 59827) to determine whether revocation of the antidumping duty orders on stilbenic optical brightening agents from China and Taiwan would be likely to lead to continuation or recurrence of material injury. On December 29, 2022, the Department of Commerce published notice that it was revoking the orders effective November 27, 2022, because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline (87 FR 80162). Accordingly, the subject reviews are terminated.

DATES: November 27, 2022 (effective date of revocation of the orders).

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 4, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00206 Filed 1–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–410 (Fifth Review)]

Light-Walled Rectangular Pipe and Tube From Taiwan; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on light-walled rectangular pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 39562, July 1, 2022) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on January 19, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 26, 2023 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 26, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response submitted on behalf of Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Maruichi American Corporation, Nucor Tubular Products Inc., and Searing Industries, Inc., domestic producers of light-walled rectangular pipe and tube, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 9, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00554 Filed 1–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1322]

Certain Rotating 3–D LiDAR Devices, Components Thereof, and Sensing Systems Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 10) of the presiding administrative law judge (''ALJ''), terminating the investigation in its entirety based on withdrawal of the complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 22, 2022. 87 FR 43895 (July 22, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rotating 3–D LiDAR devices, components thereof, and sensing systems containing the same by reason of infringement of certain claims of U.S. Patent No. 7,969,558 and U.S. Patent No. 9,983,297. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents Ouster, Inc. of San Francisco, CA and Benchmark Electronics, Inc. of Tempe, AZ. *Id.* at 43896. The complainant is Velodyne Lidar USA, Inc. of San Jose, CA (''Velodyne''). *Id.* The Office of Unfair Import Investigations is participating in the investigation. *Id.*

On December 8, 2022, the ALJ issued the subject ID, which granted Velodyne's unopposed motion to terminate this investigation in its entirety based on its withdrawal of the complaint. The ALJ found that Velodyne's motion complied with the requirements of Commission Rule 210.21(a)(1) and that no extraordinary circumstances warranted denying the motion. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on January 9, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 10, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00584 Filed 1–12–23; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Committee to Explore Options for LSC Office Space (Office Space Committee) of the Legal Services Corporation Board of Directors will meet virtually on Tuesday, January 17, 2023. The meeting will commence at 3:00 p.m. EST, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings.*

LSC will conduct the January 17, 2023 meeting via Zoom.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of Agenda
2. Consider and Act on Recommendation for Future LSC Office Space
3. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov*.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: January 10, 2023.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2023–00674 Filed 1–11–23; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington DC 20506; *travisd@arts.gov,* or call 202/682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

Jazz Masters Fellowships (review of applications): This meeting will be closed.

Date and time: February 2, 2023; 2:00 p.m. to 3:00 p.m.

Jazz Masters Fellowships (review of applications): This meeting will be closed.

Date and time: February 2, 2023; 3:00 p.m. to 4:00 p.m.

Poetry Out Loud National Finals (review of applications): This meeting will be closed.

Date and time: February 9, 2023; 1:00 p.m. to 3:00 p.m.

Dated: January 9, 2023.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2023–00537 Filed 1–12–23; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2019–0026]

United Nuclear Corporation; Church Rock Uranium Mill Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental impact statement and programmatic agreement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final Environmental Impact Statement (EIS), NUREG–2243, ''Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico,'' for United Nuclear Corporation's (UNC) request for a license amendment to allow the disposition of about 1 million cubic yards of mine waste from the Northeast Church Rock (NECR) Mine Site at UNC's uranium mill site in McKinley County, New Mexico. The NRC is also issuing a final Programmatic Agreement (PA) under section 106 of the National Historic Preservation Act (NHPA) that provides requirements for the NRC, U.S. Environmental Protection Agency (EPA), and UNC to follow to ensure that cultural resources are protected during project activities.

DATES: The EIS and PA referenced in this document are available on January 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2019–0026 when contacting the NRC about the availability of information regarding these documents. You may obtain publicly available information related to these documents using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0026. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *Project Website:* Information related to the Church Rock project can be accessed on the NRC's public website at *https://www.nrc.gov/info-finder/decommissioning/uranium/united-nuclear-corporation.html.*
- *Public Libraries:* A copy of the final EIS will be made available at each of the following public libraries:

Octavia Fellin Public Library, 115 W Hill Ave., Gallup, NM 87301

Gallup Zollinger Library at the University of New Mexico, 705 Gurley Avenue, Gallup, NM 87301

FOR FURTHER INFORMATION CONTACT: Christine Pineda, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6789, email: *Christine.Pineda@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is issuing two documents, a final EIS and a final PA. These documents are described in the following subsections.

I. Environmental Impact Statement

Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Final environmental impact statement—notice of availability,'' the NRC is making available NUREG–2243, the NRC's final EIS for a proposed license amendment that would allow UNC to place uranium mine waste into a repository at UNC's NRC-licensed uranium mill site and to make certain improvements at the site. Notices of availability of the draft EIS were published in the **Federal Register** (FR) on November 13, 2020, by the NRC (85 FR 72706) and the U.S. Environmental Protection Agency (85 FR 72649). After granting two extensions, the NRC closed the public comment period for the draft EIS on May 27, 2021. On June 17, 2021, in response to a request from the President of the Navajo Nation, the NRC re-opened the public comment period until November 1, 2021 (86 FR 32285). Appendix B of the final EIS contains summaries of and responses to the comments received. A separate report containing the as-received comments is available in the ''Availability of Documents'' section. This report follows the organization of EIS Appendix B.

Discussion

The NRC is issuing the final EIS for an application from UNC requesting an amendment to license SUA–1475 for the UNC mill tailings disposal site in McKinley County, New Mexico. The proposed license amendment would allow UNC to transfer and dispose of uranium mine waste from the nearby NECR Mine Site, located across New Mexico Highway 566 from the UNC Mill Site. Approximately 1 million cubic yards of mine-impacted soil and debris present at the NECR Mine Site (on primarily tribal trust lands) would be removed and placed in a repository to be constructed at the UNC Mill Site. The

proposed license amendment would also authorize certain improvements to the existing tailings impoundment. The proposed NRC action would facilitate an action by the EPA under the Comprehensive Environmental Response, Compensation, and Liability Act to remove the mine waste from the Northeast Church Rock Mine Site, as documented in a 2013 EPA Record of Decision (EPA 2013).

The final EIS is being issued as part of the NRC's process to decide whether to approve the requested license amendment. In this final EIS, the NRC staff has assessed the potential environmental impacts of the proposed action, two secondary alternatives (options for implementing certain aspects of the proposed action), and the no action alternative on land use, transportation, geology and soils, water resources, ecological resources, air quality, noise, historic and cultural resources, visual and scenic resources, socioeconomics, environmental justice, public and occupational health, and waste management. The NRC staff determined that the potential impacts from the proposed action and two secondary alternatives would range from ''small'' to ''small to moderate'' for the analyzed environmental resource areas. The NRC staff also concludes that local Navajo Nation communities, namely the Red Water Pond Road, Pipeline Road, and Pinedale communities, are closer than any other community to the proposed project area, and these communities have experienced a range of significant impacts because of historical uranium mining and milling activities over many decades. The staff concludes that the activities of the proposed action, which would occur primarily within a three to four year period, would likewise affect these communities disproportionately with regard to traffic and transportation, air quality, noise levels, and visual disturbances.

The NRC staff also considered the no-action alternative, under which the NRC would not approve UNC's license amendment request. A key distinction between the proposed action (including secondary alternatives) and the no-action alternative is the timing of impacts associated with the cleanup of the Northeast Church Rock Mine Site. If the NRC does not approve the license amendment request, the mine waste would not be transferred to the UNC mill site and the EPA would need to evaluate or reevaluate other options for disposing of the mine waste.

During the comment period on the draft EIS, the NRC received 100 comment submittals resulting in 1,300 unique comments. Comments were submitted by individuals, organizations, and government agencies, including Navajo Nation government agencies. Because the proposed project would be conducted on and near Navajo Nation land and communities, Sections 1.4.2 and B.2.1.1 of the EIS provide descriptions of the topics and concerns raised by Navajo individuals and the Navajo government about the proposal and past uranium mining and milling activities.

After evaluating the impacts of the proposed action and two secondary alternatives, and comparing them to the no-action alternative, the NRC staff, in accordance with 10 CFR part 51, sets forth its National Environmental Policy Act recommendation. The potential adverse environmental impacts of the proposed action and the two secondary alternatives do not preclude issuing a license amendment. This recommendation is based on (i) the license application, which includes the environmental report and supplemental documents and the licensee's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local agencies and input from other stakeholders, including all comments received on the draft EIS; and (iii) independent NRC staff review as set forth in this EIS. The NRC staff concludes that removal of mine wastes from the former Northeast Church Rock Mine Site and consolidation of the mine materials over existing mill tailings on private property would minimize the footprint of waste disposal facilities and make the land available again for unrestricted use by the Navajo Nation.

II. NHPA Section 106 Programmatic Agreement

Background

The NRC is issuing a final PA to ensure compliance with Section 106 of the NHPA (54 U.S.C. 306108) and its implementing regulations (36 CFR 800). The NRC published a notice of availability of the draft PA on December 6, 2021 (86 FR 69103) and closed the comment period on January 20, 2022. The NRC staff received and addressed two substantive comments on the draft PA.

Discussion

The PA describes the measures that UNC would follow to mitigate or eliminate the potential for adverse impacts to cultural resources during the implementation of the proposed action, if approved. The NRC, EPA, the Department of the Interior's Bureau of Indian Affairs, the New Mexico State Historic Preservation Officer, the Navajo Nation President, Navajo Nation Tribal Historic Preservation Officer, and UNC are signatories to the PA. The EPA is the lead agency for implementing the PA, which was executed on the date of the last signature, June 13, 2022. Sections 3.9 and 4.9 of the EIS contain information about the PA and cultural resources in the project area.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./web link
Final EIS: ''NUREG–2243, Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico''.	ML22356A145, *https://www.nrc.gov/docs/ML2235/ML22356A145.pdf.*
Report of Comments on the Draft EIS: ''Public Comments on the Draft Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico''.	ML22110A106, *https://www.nrc.gov/docs/ML2211/ML22110A106.pdf.*
Draft EIS: ''NUREG–2243, Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico''.	ML20289A621, *https://www.nrc.gov/docs/ML2028/ML20289A621.pdf.*
Programmatic Agreement for UNC Church Rock Mill Site License Amendment and Northeast Church Rock Mine Site Cleanup.	ML22074A047, *https://www.nrc.gov/docs/ML2207/ML22074A047.pdf.*
EPA Record of Decision: ''United Nuclear Corporation Site, McKinley County, New Mexico. USEPA ID NMD030443303; Operable Unit: OU 02, Surface Soil Operable Unit,'' dated March 2013.	ML13095A352, *https://www.nrc.gov/docs/ML1309/ML13095A352.pdf.*

Dated: January 5, 2022.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–00273 Filed 1–12–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0225]

Availability of Revised NRC Form 3, ''Notice to Employees''

AGENCY: Nuclear Regulatory Commission.

ACTION: Generic communications; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of the latest version of NRC Form 3, ''Notice to Employees.'' The NRC Form 3 describes certain responsibilities and rights of employers and employees who engage in NRC-regulated activities, including how employees can report violations or other safety concerns directly to the NRC. Licensees are required by law to post the form at prominent locations at the workplace to permit workers to view it easily.

DATES: The revised form is available as of December 20, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0225 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID N NRC–2022–0225. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* NRC Form 3, ''Notice to Employees,'' and Form 3A, a Spanish version of the same form are available in ADAMS under Accession Nos. ML13083A002 and ML17292A077, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lisamarie L. Jarriel, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9006, email: *Lisamarie.Jarriel@NRC.gov.*

SUPPLEMENTARY INFORMATION: Section 19.11(e)(1) of title 10 of the *Code of Federal Regulations* (10 CFR), states that licensees shall prominently post the most recent version of NRC Form 3, ''Notice to Employees'' within 30 days of receiving the revised NRC Form 3 from the Commission. In a 1997 rulemaking, 10 CFR 19.11 (62 FR 48165) was amended to incorporate a reference to the latest version of NRC Form 3. This eliminated the need to revise the CFR whenever NRC Form 3 is changed, which had been the previous practice. The final rule published on September 15, 1997 (62 FR 48165) indicated that the NRC would inform licensees of future changes to NRC Form 3 by an administrative letter and, in addition, the availability of any new versions would be noticed in the **Federal Register**. Administrative letters were a type of generic communication issued to inform addressees of specific regulatory or administrative information but were discontinued in September 1999. As such, in lieu of an administrative letter, this revision and future revisions will be publicized through an alternative electronic means (*e.g.,* website notice, social networking service, etc.) to alert all licensees of the new revisions, as well as in the **Federal Register**.

A new version of NRC Form 3 was issued in November 2022, to make a correction to Region I's mailing address and add an email address for submitting concerns. To view the current version of NRC Form 3 (11–2022), please go to *https://www.nrc.gov/reading-rm/doc-collections/forms/index.html.* A Spanish language version of the form (NRC Form 3A) can also be found on the same site.

Dated: January 10, 2023.

For the Nuclear Regulatory Commission.

David L. Pelton,

Director, Office of Enforcement.

[FR Doc. 2023–00570 Filed 1–12–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 16, 23, 30, February 6, 13, 20, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 16, 2023

There are no meetings scheduled for the week of January 16, 2023.

Week of January 23, 2023—Tentative

Tuesday, January 24, 2023

9:00 a.m. Overview of Accident Tolerant Fuel Activities (Public Meeting); (Contact: Samantha Lav: 301–415–3487).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, January 26, 2023

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting); (Contacts: Annie Ramirez: 301–415–6780; Candace Spore: 301–415–8537).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of January 30, 2023—Tentative

There are no meetings scheduled for the week of January 30, 2023.

Week of February 6, 2023—Tentative

Thursday, February 9, 2023

9:00 a.m. Advanced Reactor Licensing Under 10 CFR parts 50 and 52 (Public Meeting); (Contact: Omid Tabatabai: 301–415–6616).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of February 13, 2023—Tentative

There are no meetings scheduled for the week of February 13, 2023.

Week of February 20, 2023—Tentative

There are no meetings scheduled for the week of February 20, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 11, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–00738 Filed 1–11–23; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Performance Review Board Members

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) announces the appointment of members of the PBGC Performance Review Board.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), made applicable by PBGC's Senior Level Performance Management System, PBGC announces the appointment of those individuals who have been selected to serve as members of PBGC's Performance Review Board. The Performance Review Board is responsible for making recommendations on each senior level (SL) professional's annual summary rating, performance-based adjustment, and performance award to the appointing authority.

The following individuals have been designated as members of PBGC's 2022 Performance Review Board:

1. Gordon Hartogensis, Director
2. Kristin Chapman, Chief of Staff
3. David Foley, Chief of Benefits Administration
4. Patricia Kelly, Chief Financial Officer
5. Alice Maroni, Chief Management Officer

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–00563 Filed 1–12–23; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96611; File No. SR–IEX–2022–10]

Self-Regulatory Organizations; Investors Exchange LLC; Order Granting Approval of a Proposed Rule Change To Modify IEX Rule 11.190(b)(7) To Adopt an Optional Cancel or Re-Price Functionality for D-Limit Orders

January 9, 2023.

I. Introduction

On November 4, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow Users [3] of Discretionary Limit orders (''D-Limit orders'') to opt for their D-Limit orders to either automatically cancel or re-price—under certain conditions—after after an initial price adjustment. The proposed rule change was published for comment in the **Federal Register** on November 25, 2022.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange seeks to amend IEX Rule 11.190(b)(7) to allow a User to attach an optional instruction to a D-Limit order so that the order will either re-price or cancel following an initial price adjustment during a period of quote instability [5] under certain circumstances. Specifically, the D-Limit order would either reprice or cancel if, after the most recent quote instability determination [6] that resulted in the D-Limit order being price adjusted, ten (10) milliseconds have passed and the order is resting at a price that is less aggressive than the NBB [7] for buy orders or less aggressive than the NBO [8] for sell orders.

Current D-Limit Functionality

D-Limit orders are limit orders that may be either displayed or non-displayed and are initially priced and ranked in the Exchange's Order Book at the order's limit price.[9]

When a D-Limit order is resting on the Exchange's Order Book, it will reprice automatically when the Exchange's Crumbling Quote Indicator (''CQI'') is triggered (*i.e.,* during a period of relative quote instability).[10] The CQI that applies to D-Limit orders is governed by IEX Rule 11.190(g)(1), under which the Exchange utilizes quoting activity of eight away exchanges' Protected Quotations [11] and a mathematical calculation to assess the probability of an imminent change to the current Protected NBB [12] to a lower price or imminent change to the current Protected NBO [13] to a higher price for a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* IEX Rule 1.160(qq) (defining ''User''). Users include both Members and Sponsored Participants. *See* IEX Rule 1.160(ll) (defining ''Sponsored Participant'').

[4] *See* Securities Exchange Act Release No. 96352 (November 18, 2022), 87 FR 72523 (''Notice'').

[5] *See infra* notes 10–14 and accompanying text.

[6] *Id.*

[7] *See* IEX Rule 1.160(u).

[8] *See* IEX Rule 1.160(u).

[9] *See* IEX Rule 1.160(p).

[10] *See* IEX Rule 11.190(g) (describing crumbling quotes and quote instability).

[11] *See* IEX Rule 1.160(bb) (defining ''Protected Quotation'' as an automated quotation that is calculated by IEX to be the best bid or best offer of an exchange).

[12] *See* IEX Rule 1.160(cc).

[13] *See id.*

particular security. When the quoting activity meets predetermined criteria, the System treats the quote as not stable (''quote instability'' or a ''crumbling quote'') and the CQI is then ''on'' at that price level for two milliseconds. During all other times, the quote is considered stable and the CQI is ''off''. The System independently assesses the stability of the Protected NBB and Protected NBO for each security.[14]

After the CQI is triggered, all D-Limit orders—both resting and those being entered at the time of quote instability—are adjusted to a less-aggressive price and will subsequently rest on the Exchange's Order Book at that new price. Specifically, if the System receives a D-Limit buy (sell) order during a period of quote instability, and the D-Limit order has a limit price equal to or higher (lower) than the quote instability determination price level (''CQI Price''), the price of the order will be automatically adjusted by the System to one (1) minimum price variation (''MPV'')[15] lower (higher) than the CQI Price.[16] Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if the CQI turns on and such shares are ranked (and displayed in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted to a price one MPV lower (higher) than the quote instability price level.[17]

A D-Limit order that has been subject to an automatic price adjustment will not revert to the price at which it was previously ranked (and, if applicable, displayed). Further, whenever the price of a D-Limit order is adjusted, the order will receive a new time priority, and the User that entered the order will receive an order restatement message from the Exchange.[18]

Proposal

The Exchange proposes to provide Users with an option to either reprice or cancel a price-adjusted D-Limit order under certain circumstances by attaching an instruction to their D-Limit orders pursuant to new IEX Rule 11.190(b)(7)(E).[19] If a D-Limit order that is entered with this optional instruction is then subject to an automatic price adjustment pursuant to IEX Rule 11.190(b)(7) and is resting at a price that is less aggressive than the NBBO ten (10) milliseconds after the most recent quote instability determination that resulted in the order being price adjusted, the order will either be canceled (if the User selected the cancel instruction) or re-priced to the less aggressive of the order's limit price or the NBB (for a buy order) or NBO (for a sell order) (if the User selected the re-price instruction).[20]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5)[22] and 6(b)(8)[23] of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In its proposal, IEX represents that some Users of D-Limit orders have informed IEX that they ''cannot readily configure their trading systems to receive, process, and respond to the restatement messages IEX transmits to [Users] after each price adjustment.''[24] IEX states that these Users ''are unable to track whether their D-Limit orders have been re-priced, and if so, the price at which they are currently resting.''[25] As such, ''[w]ithout this information, IEX understands that such [Users] are hindered in their ability to timely cancel or adjust the prices of their resting D-Limit orders to meet their trading objectives.''[26] IEX says that to address this issue, some Users have requested that IEX provide optional order type functionality to allow a D-Limit order that has been subject to an automatic price adjustment to be automatically either canceled or re-priced.[27]

IEX asserts that the proposed 10 millisecond delay after which a re-priced D-Limit order could either cancel or re-price to a more aggressive price, as described above, will not provide any speed advantages to Users that elect to use the order type's new optional cancel or re-price functionality when compared to Users who cancel or re-price a price-adjusted D-Limit themselves.[28] Specifically, IEX notes that all orders are subject to the Exchange's existing latency for all orders, which are 37 and 350 microseconds for outbound and inbound messages, respectively.[29] The Exchange explains that this aggregate 387 microseconds of latency for a ''round trip'' that would be required for a User to respond to a D-Limit price adjustment is more than 9 milliseconds less than the proposed 10 millisecond time after which the proposed order type's new instruction will result in the System canceling or re-pricing a D-Limit

[14] After this proposal was filed and published for comment, the Commission approved IEX Rule 11.190(g)(2), which provides a new alternative calculation for determining when there is quote instability and therefore, when the CQI is triggered. *See* Securities Exchange Act Release No. 96416 (December 1, 2022), 87 FR 75099 (December 7, 2022). However, the alternative calculation under Rule 11.190(g)(2) may not be applied to D-Limit orders, so D-Limit orders only price adjust when there is quote instability pursuant to IEX Rule 11.190(g)(1). Thus, these recent changes to Rule 11.190(g) do not affect the present proposal.

[15] *See* IEX Rule 11.210.

[16] *See* IEX Rule 11.190(b)(7)(A) and (B).

[17] *See* IEX Rule 11.190(b)(7)(C) and (D).

[18] If multiple D-Limit orders are adjusted at the same time, their relative time priority is maintained.

[19] The Exchange also proposes to reorganize IEX Rule 11.190(b) so that the text in current IEX Rule 11.190(b)(7)(E) will become Rule 11.190(7)(F). Additionally, the Exchange proposes to add a reference to new IEX Rule 11.190(b)(7)(E) into paragraph (F).

[20] Additionally, displayed D-Limit orders that re-price to the NBB (for a buy order) or the NBO (for a sell order) will be subject to IEX's Display-Price Sliding rule (IEX Rule 11.190(b)(h)(1)) and will be displayed at the ''most aggressive permissible price'' without locking or crossing a Protected Quotation (IEX Rule 1.160(bb) of an away market, which means they will be priced one MPV less aggressive than the locking (IEX Rule 11.190(b)(h)(3)(A)(ii)) or crossing (IEX Rule 11.190(b)(h)(3)(B)(ii)) price. Non-displayed D-Limit orders that re-price to the NBB (for a buy order) or the NBO (or a sell order) will be subject to IEX's Non-Displayed Price Sliding rule, which means they will be able to post at the locking or crossing price. *See* IEX Rule 11.190(b)(h)(2). In the Notice, the Exchange provides examples to demonstrate how the new cancel or re-price instruction would operate. *See* Notice, *supra* note 4, at 72525.

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] Notice, *supra* note 4, at 72524. IEX also states that these Users note that their trading systems are not currently configured to ingest the D-Limit restatement messages (and, in some cases, other restatement messages), and they would have to devote significant resources to build the logic in order to ingest, and respond to, the messages for this one order type. *See id.*

[25] *Id.*

[26] *Id.*

[27] *See id.*

[28] *See* Notice, *supra* note 4, at 72524.

[29] *See id.*

order that was automatically adjusted.[30] IEX represents that this ''timing differential is designed to ensure that orders canceled or re-priced by IEX have no advantage over orders canceled or repriced by a User that processed the restatement message'' because ''the Exchange would cancel or re-price orders more slowly than orders canceled or re-priced by a User.'' [31]

The Commission previously found that the D-Limit order type is a ''narrowly tailored tool that balances the ability of long-term investors to access displayed liquidity in the ordinary course against the current structural advantages enjoyed by short-term latency arbitrage trading strategies that rely on superior access to the fastest data and connectivity, while also encouraging liquidity providers to post more displayed liquidity.'' [32] The key feature of the D-Limit order type is that, when IEX's CQI is triggered, the order (if its limit price is equal to or higher (for a buy order; or lower for a sell order) than the CQI Price) will automatically adjust to a price one MPV lower (higher) than the CQI Price and the price will not revert to the prior, more aggressive price.

IEX now seeks to offer Users the ability to attach an optional instruction on a D-Limit order to either cancel or reprice the order if, after 10 milliseconds since the D-Limit was price adjusted, the D-Limit order is resting at a price that is less aggressive than the NBB for buy orders or less aggressive than the NBO for sell orders. Accordingly, the optional cancellation or re-pricing feature would occur after a D-Limit order is initially adjusted to a less aggressive price. It neither affects when nor how a D-Limit order is initially price adjusted during a period of quote instability, and therefore, the Commission believes that this proposal does not alter the core attributes of the D-Limit order type.

The Commission further believes that the triggering of the proposed cancellation or re-pricing functionality is approporiately delayed to an extent that would not be expected to confer a special advantage to the User over other Users that elect to retain for themselves the responsibility for canceling or updating their resting D-Limit orders. To the extent some Users do not presently have the ability or capacity to build the IEX-specific capability to track and respond when their D-Limit orders have been price adjusted during periods of quote instability, the proposal would allow those Users to utilize D-Limit orders and manage those orders like Users that do have such ability. As the Exchange notes in its filing, the 10 millisecond delay is significantly longer than the aggregate sub-millisecond ''round trip'' latency that a User would encounter when manually re-pricing or canceling a price-adjusted D-Limit order. The Commission accordingly finds that the proposal does not permit unfair discrimination between cutomers, issuers, brokers, or dealers in offering the option for Users to instruct IEX to cancel or reprice its D-Limit order as described above after 10 milliseconds have passed and the order remains priced less aggressive than the national best quote. Given the 10 millisecond delay, that functionlality should not provide a special advantage to Users when compared to Users that have the technology and ability to track and directly respond to D-Limit price adjustments more quickly by themselves.

Finally, the Commission finds that the proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest in that it is designed to cancel an adjusted D-Limit order only after 10 milliseconds have passed and only where the order remains priced less aggressive than the national best quote where it is less likely to receive an execution. Alternatively, if the User selects the re-price option, the D-Limit order will only re-price to a price more aggressive than that at which it was resting and will not reprice to a less aggressive price. As such, the new D-Limit functionality will re-price the D-Limit order to join the NBB (for a buy order) or NBO (for a sell order), if allowable given the order's limit price. In doing so, the proposal will increase the liquidity available on IEX to all investors at the national best quote.

For the reasons discussed above, the Commission finds that the proposal is narrowly tailored to not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, and is reasonably designed to among other things, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. Accordingly, the Commission finds the proposed rule change to be consistent with the Exchange Act, including the requirements of Section 6(b)(5) and Section 6(b)(8) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[33] that the proposed rule change (SR–IEX–2022–10), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00555 Filed 1–12–23; 8:45 am]

BILLING CODE 8011–01–P

[30] *See id.*

[31] *Id.*

[32] Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438, 54443 (September 1, 2020) (SR–IEX–2019–15) (''D-Limit Approval Order'').

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17751 and #17752; GEORGIA Disaster Number GA–00150]

Administrative Declaration of a Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 01/09/2023.

Incident: Flooding.

Incident Period: 09/03/2022 through 09/04/2022.

DATES: Issued on 01/09/2023.

Physical Loan Application Deadline Date: 03/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/09/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chattooga.

Contiguous Counties:

Georgia: Floyd, Walker.

Alabama: Cherokee, De Kalb.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17751 6 and for economic injury is 17752 0.

The States which received an EIDL Declaration # are Alabama, Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–00566 Filed 1–12–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 11930]

60-Day Notice of Proposed Information Collection: Disclosure of Violations of the Arms Export Control Act

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to March 14, 2023.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0047'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DDTCPublicComments@state.gov.*
- *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Department of State; 2401 E St. NW, Suite H1205, Washington DC 20522.

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, Directorate of Defense Trade Controls, Department of State, who may be reached at *battistaAL@state.gov* or 202–992–0973.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Disclosure of Violations of the Arms Export Control Act
- *OMB Control Number:* 1405–0179
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* T/PM/DDTC
- *Form Number:* DS–7787
- *Respondents:* Individuals and companies engaged in the business of exporting, temporarily importing, or brokering, defense articles or defense services who have committed an ITAR violation.
- *Estimated Number of Respondents:* 12,500
- *Estimated Number of Responses:* 600
- *Average Time per Response:* 10 hours
- *Total Estimated Burden Time:* 6,000 hours
- *Frequency:* On occasion
- *Obligation to Respond:* Voluntary

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Directorate of Defense Trade Controls (DDTC), located in the Political-Military Affairs Bureau of the Department of State, encourages voluntary disclosures of violations of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*), its implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR 120–130), and any regulation, order, license, or other authorization issued thereunder. The information disclosed is analyzed by DDTC to ultimately determine whether to take administrative action concerning any violation that may have occurred. Voluntary disclosures may be considered a mitigating factor in determining the administrative penalties, if any, that may be imposed. Failure to report a violation may result in circumstances detrimental to the U.S. national security and foreign policy interests and will be an adverse factor in determining the appropriate disposition of such violations. Also, the activity in question might merit referral to the Department of Justice for consideration of whether criminal prosecution is warranted. In such cases, DDTC will notify the Department of Justice of the voluntary nature of the disclosure, but the Department of Justice is not required to give that fact any weight.

ITAR § 127.12 describes the information which should accompany a voluntary disclosure. Historically, respondents to this information collection submitted their disclosures to DDTC in writing via hard copy documentation. However, as part of an IT modernization project designed to streamline the collection and use of information by DDTC, a discrete form has been developed for the submission of voluntary disclosures. This will allow both DDTC and respondents submitting a disclosure to more easily track submissions.

Methodology

This information will be collected by electronic submission.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023–00607 Filed 1–12–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 11966]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Tim Walker: Wonderful Things'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Tim Walker: Wonderful Things'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: 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. 2023–00601 Filed 1–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11964]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Black Founders: The Forten Family of Philadelphia'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Black Founders: The Forten Family of Philadelphia'' at the Museum of the American Revolution, Philadelphia, Pennsylvania, 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. 2023–00598 Filed 1–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11965]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Chryssa & New York'' Exhibition

SUMMARY: On November 7, 2022, notice was published on page 67111 of the **Federal Register** (volume 87, number 214) of determinations pertaining to certain objects to be included in an exhibition entitled ''Chryssa & New York.'' Notice is hereby given of the following determinations: I hereby determine that certain additional objects being imported from abroad pursuant to agreement with their foreign owner or custodian for temporary display in the aforesaid exhibition at the Dia Center for the Arts at Dia Chelsea, New York, New York; the Menil Collection, Houston, Texas; Wrightwood 659, Chicago, Illinois, by Alphawood Foundation, through its subsidiary Alphawood Exhibitions LLC; 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. 2023–00599 Filed 1–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations at Morgantown Municipal Airport, Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release and dispose of airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the application for a release and disposal of approximately 0.31 acres of federally obligated airport property at Morgantown Municipal Airport, Morgantown, WV, from Grant Assurance obligations. This acreage is composed of two parcels of land that was acquired by the City of Morgantown

on October 30, 1972 by conveyance from Joseph and Phyllis Marshall through FAA Project #8–54–0015–02. The release will allow the West Virginia Division of Highways to widen West Run Road (County Route 67/1). The land requested for release is not required for aviation use and development and will not interfere with the airport or its operation.

DATES: Comments must be received on or before February 20, 2023.

FOR FURTHER INFORMATION CONTACT: Comments on this application may be submitted to Michael Adkins, Federal Aviation Administration, Beckley Airports Field Office via phone at (304) 252–5931 or at the email address *michael.s.adkins@faa.gov.* Comments on this application may also be mailed or delivered to the FAA at the following address: Matthew Di Giulian, Manager, Federal Aviation Administration, Beckley Airports Field Office, Federal Register Comment, 176 Airport Circle Room 101, Beaver, West Virginia 25813.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by grant agreements. The following is a brief overview of the request.The City of Morganton requested a release from grant assurance obligations to allow for the release and disposal of approximately 0.31 acres of airport property at Morgantown Municipal Airport. The airport will receive fair market value for the property. The proposed use of the property will not interfere with the airport or its operation; and will thereby, serve the interests of civil aviation.

Issued in Beaver, West Virginia, on January 10, 2023.

Matthew Di Giulian,

Manager, Beckley Airports Field Office.

[FR Doc. 2023–00581 Filed 1–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Non-Rule Making Action at Northeast Alabama Regional Airport (GAD) Located in Gadsden, Alabama

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Northeast Alabama Regional Airport Authority to waive the requirement that a 1.00± acre parcel of airport property, located at Northeast Alabama Regional Airport (GAD) in Gadsden, Alabama, be used for aeronautical purposes.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: The public may send comments using the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 601–664–9901.
- *Mail:* Brian Hendry, Community Planner, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208–2307.
- *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Northeast Alabama Airport Authority Attn: Mr. Lee Roberts at the Northeast Alabama Airport 185 Ira Gray Drive, Gadsden, Alabama 35904.

FOR FURTHER INFORMATION CONTACT: Brian Hendry, Community Planner, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9897. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Northeast Alabama Regional Airport Authority to release approximately 1.00± acres of airport property at Northeast Alabama Regional Airport (GAD) under the provisions of title 49, U.S.C. 47153(c). The FAA determined that the request to release property at Northeast Alabama Regional Airport (GAD) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice. The property will be purchased by Prince Metal Stamping that also owns the adjacent site directly west. The property is located on the northern most parcel of airport property adjacent and south of Airport Industrial Drive. The airport will receive fair market value for the property, and the net proceeds from the sale of this property will be used for maintenance and improvements at the Northeast Alabama Regional Airport (GAD).

The proposed use of this property is compatible with airport operations. Copies of the Property Appraisal, Boundary Survey, Legal Description are available for examination by appointment. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Northeast Alabama Regional Airport 185 Ira Gray Drive, Gadsden, AL 35904.

Issued in Jackson, Mississippi, on January 6, 2023.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2023–00546 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13,

1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 9, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
11440–M	Altivia Specialty Chemicals LLC.	172.203(a), 172.301(c), 173.227(c)	To modify the special permit to authorize additional hazardous materials.
11536–M	The Boeing Company	172.101(j)	To modify the special permit to authorize an additional material and to authorize certain materials to exceed the quantity limitations in Column (9B) of the 172.101 Table.
14193–M	Honeywell International Inc	172.101(h)	To modify the special permit to authorize additional portable tanks.
14492–M	Tankbouw Rootselaar B.v	178.274(b), 178.276(a)(2), 178.276(b)(1).	To modify the special permit to explicitly authorize the transportation in commerce of ammonia.
15689–M	Cummins Inc	172.200, 172.301(c), 177.834(h)	To modify the special permit to authorize an additional hazardous material.
20274–M	Bollore Logistics USA Inc	172.101(j), 172.300, 172.400, 173.301, 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to reference an additional French approval.
20529–M	Texas Instruments Incorporated.	173.187	To modify the special permit to authorize a larger UN 4H2 packaging.
20932–M	Jingjiang Asian-pacific Logistics Equipment Co., Ltd.	178.274(b)(1), 178.276(a)(2)(ii)(B), 178.276(b)(1).	To modify the special permit to authorize alternative pressure relief devices.
21300–N	Distributor Operations, Inc	172.200, 172.300, 172.400, 173.159(e), 173.185(b)(1).	To authorize the transportation in commerce of batteries containing acid or alkali, battery acid fluid, non-spillable wet batteries, and lithium ion batteries on the same vehicle, without being subject to certain requirements of the Hazardous Materials Regulations.
21326–N	Channel Medsystems, Inc	173.304(f)(3)	To authorize the transportation in commerce of nitrous oxide, via air, within an outer packaging that has not passed the Thermal Resistance Test.
21413–N	Western International Gas & Cylinders, Inc.	171.12, 173.303(a), 180.205	To authorize the manufacture, mark, sale, and use of Tansport Canada (TC) or Canadian Transport Commission (CTC) cylinders not authorized for transport within the United States, for the transportation in commerce of materials authorized by this special permit.
21416–N	Paradoxical Holdings, LLC	171.2(k), 172.200, 172.300, 172.400, 172.500, 172.600, 172.700(a).	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication.
21437–N	Linde Gas & Equipment Inc	173.181(d)(1), 173.181(d)(1)(ii)	To authorize the transportation in commerce of UN3394, organometallic substance, liquid, pyrophoric, water-reactive in alternative packaging.
21438–N	Samsung SDI Co., Ltd	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft.
21475–N	Kavok Eir, Tov	172.101(j), 172.204(c)(3), 173.27, 175.30(a)(1).	To authorize the transportation of forbidden explosives on aircraft.
21485–N	Walmart Inc	172.200, 172.300, 172.400, 172.500, 173.1.	To authorize the transportation in commerce of hazardous materials to local charity organizations.
21494–N	National Air Cargo Group, Inc.	172.101(j)(1), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1 explosives that are forbidden for transportation aboard cargo-only aircraft.
Special Permits Data—Denied			
21270–N	S. C. Johnson & Son, Inc	178.33–7	To authorize the transportation in commerce of aerosol cans whose walls do not meet minimum thickness requirements.
21331–N	Jaco, Inc	172.200, 172.700(a)	To authorize the transportation in commerce of lithium ion batteries and lithium ion batteries contained in equipment, shipped by customers back to the manufacturer, without requiring shipping papers, emergency response information or hazmat training.
21365–N	Borgwarner Akasol Ag	172.101(j)	To authorize the transportation in commerce of lithium batteries that exceed 35 kg net weight via cargo-only aircraft.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Withdrawn			
21238–N	Target Stores, Inc	172.315(a)(2)	To authorize the transportation in commerce of limited quantities of hazardous materials that are marked with a limited quantity marking having dimensions of 25 mm by 25 mm.

[FR Doc. 2023–00605 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 9, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
9998–M	Accumulators, Inc.	173.302(a)	To modify the special permit to authorize additional accumulators. (modes 1, 2, 3, 4).
11771–M	Phillips 66 Pipeline LLC	172.302(c), 173.31(d)(1)(ii), 173.31(d)(1)(iv), 173.31(d)(1)(vi), 174.67(b), 174.67(c).	To modify the special permit to authorize DOT 117R rail cars. (mode 2).
16572–M	Samsung Austin Semiconductor, L.L.C..	173.158(f)	To modify the special permit to authorize a Division 5.1 subsidiary hazard for the hazardous material. (mode 1).
20493–M	Tesla, Inc.	172.101(j)	To modify the special permit to authorize additional lithium ion batteries. (mode 4).
20851–M	Call2Recycle, Inc.	172.600, 172.200, 172.700(a)	To modify the special permit to authorize transportation other than that for recycling. (modes 1,2).
21163–M	United Initiators, Inc.	178.345–10(b)(1)	To modify the special permit to authorize additional hazardous materials. (mode 1).

[FR Doc. 2023–00604 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety

Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 9, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21487–N	Ford Motor Company	172.101(j)	To authorize the transportation in commerce of lithium batteries greater than 35 kg net weight aboard cargo-only aircraft. (mode 4)
21488–N	American Labelmark Company Inc.	173.13(a), 173.13(b), 173.13(b)(3), 173.13(c)(1)(ii), 173.13(c)(1)(iv), 173.13(c)(2)(iii), 173.27(d).	To authorize the manufacture, mark, sale, and use of the specially designed combination packagings for transportation in commerce of the materials listed in paragraph 6 without hazard labels or placards. (modes 1, 2, 4, 5)
21489–N	Stericycle, Inc		To authorize the transportation in commerce of certain materials authorized to be disposed of under 21 CFR Part 1317, Subpart B. (modes 1, 3, 4)
21490–N	Rite, Inc	173.28(b)(2), 178.509(b)(7), 178.601(h).	To authorize the manufacture, mark, sale, and use of jerricans manufactured to a specification not meeting all the requirements for UN 3H1 specification jerricans. (modes 1, 2)
21491–N	Hanwha Cimarron LLC	173.302(a)	To authorize the manufacture, mark, sale, and use of a non-DOT specification fully wrapped carbon fiber reinforced composite cylinder with a non-load sharing plastic liner for the purpose of transporting certain non-liquefied compressed gases in commerce. This cylinder meets all of the requirements of the ISO 11515 Standard. (modes 1, 2, 3)
21493–N	K&M Transportation Services, LLC.	173.196(a), 173.199(a)	To authorize the transportation in commerce of certain infectious substances in alternative packagings (freezers). (mode 1)
21497–N	Promega Corporation	178.602(b)	To authorize the transportation in commerce of certain hazardous materials in UN specification packages where the inner receptacle are not filled to 98% during the stack and drop tests. (modes 1, 2, 3, 4, 5)

[FR Doc. 2023–00603 Filed 1–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0041]

DNV's Petition for Phast Version 8.4 as an Alternative Model for Calculating the Vapor-Gas Dispersion Exclusion Zone

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice, a draft letter of decision, and a draft environmental assessment (DEA) to solicit public comment on a petition to authorize the use of an alternate flammable vapor-gas dispersion model. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the petition.

DATES: Submit any comments regarding the petition by February 13, 2023.

ADDRESSES: Comments should reference the docket number for the petition request and may be submitted in one of the following ways:

- *E-Gov Web: www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail:* Docket Management System: U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.
- *Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail,

please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *www.regulations.gov.*

- *Note:* There is a privacy statement published, go to *www.regulations.gov,* scroll down to the bottom left to click ''Privacy & Security Notice'' to review the statement. Comments, including any personal information provided are posted without changes or edits to *www.regulations.gov.*
- *Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to Title 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential;'' (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Ms. Kay McIver, 1200 New Jersey Avenue SE, DOT: PHMSA—PHP–80, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.
- *Privacy Act:* DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*
- *Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.* Technical: Mr. Thach Nguyen by telephone at 909–262–4464, or by email at *thach.d.nguyen@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA is evaluating a petition from DNV GL Digital Solutions (DNV) requesting approval, pursuant to 49 CFR 190.9, authorizing use of its Process Hazard Analysis Software Tool version 8.4 (Phast v8.4) as an alternate model for calculating, pursuant to § 193.2059, the flammable vapor-gas dispersion exclusion zones for part 193-regulated LNG facilities.

PHMSA's safety standards for the siting of LNG facilities are found in subpart B of part 193. Section 193.2059 in particular requires that each LNG container and LNG transfer system must have a flammable vapor-gas dispersion exclusion zone, defined as the area surrounding an LNG facility in which an operator or government agency legally controls all activities. The exclusion zone is intended to protect the public from the flammable vapor gas and unsafe levels of thermal radiation in the event of a release or ignition, respectively. In accordance with § 193.2059(a), an LNG operator must calculate vapor-gas dispersion exclusion zones using either the Dense Gas Dispersion model or FEM3A model. Section 193.2059 also states that the Administrator (or his delegate) may, pursuant to the procedures set forth in § 190.9, approve the use of alternative vapor-gas dispersion models that take into account the same physical factors and have been validated by experimental test data.

On May 18, 2020, DNV petitioned PHMSA for approval of its Phast version 8.23 as an alternate model for calculating the LNG flammable vapor-gas dispersion exclusion zones. PHMSA had previously approved DNV's Phast versions 6.6 and 6.7 as alternate models for LNG flammable vapor-gas dispersion on October 7, 2011. On September 4, 2020, DNV submitted an updated petition requesting approval of Phast v8.4, instead of version 8.23.

The petition request, draft letter of decision, and DEA for Phast v8.4 are available for review and public comment in Docket No. PHMSA–2021–0041. We invite interested persons to review and submit comments on the draft letter of decision and the DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if Phast v8.4 is approved. Comments may also include relevant data.

Before issuing a final decision on DNV's petition, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our final decision to grant or deny this request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2023–00621 Filed 1–12–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995(PRA). The IRS is soliciting comments concerning Form 1099–H, Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before March 14, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6528, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference the information collection's ''OMB number 1545–1813'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–5744, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: Form 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time. However, the estimated number of responses is being decreased as a result of updated filing estimates. Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 2,200.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 660.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 2023.

Sara L. Covington,

IRS, Tax Analyst.

[FR Doc. 2023–00606 Filed 1–12–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Information Reporting for Hedging Transactions, and Third-Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information reporting for hedging transactions, and third-party network transactions.

DATES: Written comments should be received on or before March 14, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB control number 1545–1480 or comments concerning information reporting for hedging transactions.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1480.

Regulation Project Number: T.D. 8985.

Abstract: TD 8985 contains final regulations relating to the character of gain or loss from hedging transactions. The regulations reflect changes to the law made by the Ticket to Work and Work Incentives Improvement Act of 1999. The regulations affect businesses entering in to hedging transactions.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 167,100.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 171,050 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–00568 Filed 1–12–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0849]

Agency Information Collection Activity Under OMB Review: Alternate Signer Certification

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the

Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0849.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0849'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 112–154 Section 502, 38 U.S.C. 5101.

Title: Alternate Signer Certification (VA Form 21–0972).

OMB Control Number: 2900–0849.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0972 is used to collect the alternate signer information necessary for VA to accept benefit application forms signed by individuals on behalf of Veterans and claimants. The information collected is used to contact the alternate signer for verification purposes. Without this information, VA would be unable to verify information related to the alternate signer who has been appointed to represent the claimant in the prosecution of VA claims, the extent of such representation, and access to appropriate records.

No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at XX FR XXX on XXXXX XX, 202X, pages XXXX and XXXX.

Affected Public: Individuals and households.

Estimated Annual Burden: 4,644 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 18,575.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–00585 Filed 1–12–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0826]

Agency Information Collection Activity Under OMB Review: Intent To File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0826.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0826'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5102, 38 CFR 3.155.

Title: Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC (VA Form 21–0966).

OMB Control Number: 2900–0826.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–0966 is used to gather the necessary information to determine an effective date for an award granted in association with a complete claim filed within one year of such form. VA also uses it as a request for application and responds by mailing the claimant a letter of receipt, along with the appropriate VA form or application for VA benefits.

No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at XX FR XXX on XXXXX XX, 202X, pages XXXX and XXXX.

Affected Public: Individuals and households.

Estimated Annual Burden: 102,348 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 409,394.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–00590 Filed 1–12–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0721]

Agency Information Collection Activity Under OMB Review: Examination for Housebound Status or Permanent Need for Regular Aid and Attendance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of

information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0721.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0721'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1114, 1521(d) and (e), 1115(1)(E), 1311(d), 1541(d) and (e), 38 CFR 3.351, 3.351(d), 3.351 (d)(2), 3.351(c)(2), 4.16, and 3.326(a).

Title: Examination for Housebound Status or Permanent Need for Regular Aid and Attendance (VA Form 21–2680).

OMB Control Number: 2900–0721.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–2680 is used to determine eligibility for the aid and attendance and/or housebound benefit. This form is maintained in the Veteran's claims folder. The purpose of this examination is to record manifestations and findings pertinent to the question of whether the claimant is housebound (confined to the home or immediate premises) or in need of the regular aid and attendance of another person. Without this information, entitlement to these benefits cannot be determined.

No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at XX FR XXX on XXXXX XX, 202X, pages XXXX and XXXX.

Affected Public: Private Sector.

Estimated Annual Burden: 51,958 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 103,915.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–00592 Filed 1–12–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Friday,

No. 9 January 13, 2023

Part II

Department of Education

2 CFR Part 3474

34 CFR Parts 75 And 76

Department of Homeland Security

6 CFR Part 19

Department of Agriculture

7 CFR Part 16

Agency for International Development

22 CFR Part 205

Department of Housing and Urban Development

24 CFR Part 5

Department of Justice

28 CFR Part 38

Department of Labor

29 CFR Part 2

Department of Veterans Affairs

38 CFR Parts 50, 61 and 62

Department of Health and Human Services

45 CFR Part 87

Partnerships With Faith-Based and Neighborhood Organizations; Proposed Rule

DEPARTMENT OF EDUCATION

2 CFR Part 3474

34 CFR Parts 75 and 76

RIN 1840–AD467

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 19

RIN 1601–AB02

DEPARTMENT OF AGRICULTURE

7 CFR Part 16

RIN 0510–AA008

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 205

RIN 0412–AB10

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

RIN 2501–AD91

DEPARTMENT OF JUSTICE

28 CFR Part 38

[A.G. Order No. 5563–2022]

RIN 1105–AB64

DEPARTMENT OF LABOR

29 CFR Part 2

RIN 1290–AA45

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 50, 61 and 62

RIN 2900–AR23

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 87

RIN 0991–AC13

Partnerships With Faith-Based and Neighborhood Organizations

AGENCY: Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, and Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The agencies listed above (the ''Agencies'') propose to amend their regulations to clarify protections for beneficiaries and potential beneficiaries receiving federally funded social services and the rights and obligations of organizations providing such services. In accordance with the Executive order of February 14, 2021 (Establishment of the White House Office of Faith-Based and Neighborhood Partnerships), this clarification should promote maximum participation by beneficiaries and providers in the Agencies' covered programs and activities and ensure consistency in the implementation of those programs and activities.

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 p.m. Eastern Time on March 14, 2023.

ADDRESSES: Comments may be submitted as indicated below:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''
- *Postal Mail or Commercial Delivery:* If you do not have internet access or electronic submission is not possible, you may mail written comments to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.
- Comments submitted by email or fax will not be accepted.

Privacy Note: The Agencies' policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information regarding each Agency's proposed regulations, the contact information for that Agency follows. If you use a telecommunications device for the deaf (''TDD'') or a text telephone (''TTY''), call the Telecommunications Relay Service at 7–1–1.

Department of Education: Maggie Siddiqi, Director, Center for Faith-Based and Neighborhood Partnerships, 202–453–7443, *EDpartners@ed.gov*.

Department of Homeland Security: Peter Mina, Senior Official Performing the Duties of the Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, 202–401–1474 (phone), 202–401–0470 (TTY).

Department of Agriculture: Lisa Ramirez, Director of the Office of Partnerships and Public Engagement, *Lisa.Ramirez@usda.gov*.

Agency for International Development: Adam Phillips, Director, Center for Faith-Based and Neighborhood Partnerships, 202–615–9528, *aphillips@usaid.gov*.

Department of Housing and Urban Development: Dr. Derrick Harkins, Director of the Office of Faith-Based and Neighborhood Partnerships, Office of the Secretary, 451 7th Street SW, Washington, DC 20410, Phone: 202–708–2404.

Department of Justice: Michael L. Alston, Director, Office for Civil Rights, Office of Justice Programs, 202–307–0690, *askOCR@ojp.usdoj.gov*.

Department of Labor: Elena S. Goldstein, Deputy Solicitor of Labor, Office of the Solicitor of Labor, 202–878–9471, *goldstein.elena@dol.gov*.

Department of Veterans Affairs: Conrad Washington, Director, Center for Faith-Based and Neighborhood Partnerships, Office of Public and Intergovernmental Affairs, 202–461–7865.

Department of Health and Human Services: Que English, Director, Center for Faith-Based and Neighborhood Partnerships, 202–260–6501, *partnerships@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2002, President George W. Bush signed Executive Order 13279, 67 FR 77141 (Dec. 16, 2002) (Equal Protection of the Laws for Faith-Based and Community Organizations). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies for the delivery of social services with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to

implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Executive order.

Several Agencies proceeded to promulgate regulations to implement Executive Order 13279:

- In 2004, the Department of Veterans Affairs (''VA'') promulgated regulations at 38 CFR part 61 consistent with Executive Order 13279. *See* VA Homeless Providers Grant and Per Diem Program; Religious Organizations, 69 FR 31883 (June 8, 2004).
- The Department of Education (''ED'') similarly promulgated regulations at 34 CFR parts 74, 75, 76, and 80. *See* Participation in Education Department Programs by Religious Organizations; Providing for Equal Treatment of All Education Program Participants, 69 FR 31708 (June 4, 2004).
- In 2003 and 2004, the Department of Housing and Urban Development (''HUD'') promulgated three final rules to implement Executive Order 13279. *See* Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants, 69 FR 62164 (Oct. 22, 2004); Equal Participation of Faith-Based Organizations, 69 FR 41712 (July 9, 2004); Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants, 68 FR 56396 (Sept. 30, 2003).
- In 2004, the Department of Justice (''DOJ''), Department of Agriculture (''USDA''), Department of Labor (''DOL''), Department of Health and Human Services (''HHS''), and Agency for International Development (''USAID'') issued regulations through notice-and-comment rulemaking implementing Executive Order 13279. *See* Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 FR 2832 (Jan. 21, 2004); Equal Opportunity for Religious Organizations, 69 FR 41375 (July 9, 2004); Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries, 69 FR 41882 (July 12, 2004); Participation in Department of Health and Human Services Programs by Religious Organizations; Providing for Equal Treatment of All Department of Health and Human Services Program Participants, 69 FR 42586 (July 16, 2004); Participation by Religious Organizations in USAID Programs, 69 FR 61716 (Oct. 20, 2004).
- The Department of Homeland Security (''DHS'') issued a notice of proposed rulemaking (''NPRM'' or ''proposed rule'') in 2008, *see* Nondiscrimination in Matters Pertaining to Faith-Based Organizations, 73 FR 2187 (Jan. 14, 2008); however, DHS did not issue a final rule related to the participation of faith-based organizations in its programs prior to 2016.

Shortly after taking office, President Barack Obama signed Executive Order 13498, 74 FR 6533 (Feb. 9, 2009) (Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships). Executive Order 13498 changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created the President's Advisory Council on Faith-Based and Neighborhood Partnerships, which subsequently submitted recommendations regarding the work of that White House office.

On November 17, 2010, President Obama signed Executive Order 13559, 75 FR 71319 (Nov. 22, 2010) (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations). Based on recommendations made by the Advisory Council, Executive Order 13559 made various changes to Executive Order 13279, which included:

- Requiring agencies that administer or award Federal financial assistance for social service programs to implement additional protections for the beneficiaries and prospective beneficiaries of those programs, including (i) providing referrals to alternative providers when beneficiaries objected to the religious character of the organizations providing services, and (ii) providing written notice to beneficiaries of that referral requirement and other protections before they enrolled in or received services from the program;
- Stating that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religious affiliation, or lack of affiliation, of recipient organizations;
- Stating that the Federal Government has an obligation to monitor and enforce all standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- Providing further clarifications concerning certain requirements, including under Executive Order 13279, that organizations engaging in explicitly religious activity must (i) perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance, (ii) separate these activities in time or location from programs supported with direct Federal financial assistance, and (iii) ensure that participation in any such activities must be voluntary for the beneficiaries of the social service program supported with Federal financial assistance;
- Emphasizing again that religious providers should be eligible to compete for social service funding from the Government and to participate fully in social service programs supported with Federal financial assistance, and that such organizations may do so while maintaining their religious identities;
- Requiring agencies that provide Federal financial assistance for social service programs to post online regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations, and to post online a list of entities receiving such assistance; and
- Clarifying that the principles set forth apply to subawards as well as prime awards.

An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279, as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect assistance.

These efforts eventually resulted in DHS's promulgating regulations and the other Agencies' promulgating amendments to their regulations. In April 2016, following notice and comment, the Agencies published a joint final rule to ensure consistency with Executive Order 13279, as amended by Executive Order 13559. *See* Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, 81 FR 19355 (Apr. 4, 2016). These revised regulations—referred to hereinafter as the ''2016 Rule''—incorporated the principles from Executive Order 13559 detailed above.

On May 3, 2018, President Donald J. Trump signed Executive Order 13831, 83 FR 20715 (May 8, 2018) (Establishment of a White House Faith and Opportunity Initiative), amending Executive Order 13279, as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the White House Office of Faith-Based and Neighborhood Partnerships, established in Executive Order 13498, to the White House Faith and Opportunity Initiative; changed the way that the initiative was to operate; directed departments and agencies with Centers for Faith-Based and Community Initiatives to change the names of those centers to Centers for Faith and Opportunity Initiatives; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a Liaison for Faith and Opportunity Initiatives. Executive Order 13831 also eliminated the requirements to refer beneficiaries to alternative providers upon request and to notify beneficiaries of the protections in Executive Order 13559 described above.

Consistent with Executive Order 13831, in December 2020 the Agencies promulgated a final rule following notice and comment that amended the 2016 Rule. *See* Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 FR 82037 (Dec. 17, 2020). This joint final rule—referred to hereinafter as the ''2020 Rule''—made changes to the 2016 Rule, including the following:

- Eliminating a requirement that faith-based providers receiving direct Federal financial assistance provide notice to beneficiaries and prospective beneficiaries of certain protections, including protection from discrimination on the basis of religion;
- Eliminating requirements that, if a beneficiary objected to the religious character of a faith-based provider, the provider would undertake reasonable efforts to identify and refer the beneficiary to an alternative provider, and that providers inform beneficiaries of this alternative provider requirement in the notice to them;
- Eliminating a requirement that beneficiaries of indirect Federal financial assistance (such as vouchers, certificates, or other Government-funded means that the beneficiaries might be able to use to obtain services at providers of their choosing) must have at least one adequate secular option for the use of the indirect assistance;
- Adding a provision allowing providers receiving indirect Federal aid to require beneficiaries to attend ''all activities that are fundamental to the program'';
- Adding a definition of the term ''religious exercise'';
- Adding a requirement that notices or announcements of award opportunities and notices of awards or contracts include language regarding certain protections for faith-based organizations' independence from Government and providers' obligations not to use direct financial assistance for any explicitly religious activities and not to discriminate against prospective or current program beneficiaries on the basis of religion;
- Adding a provision stating that, if an awarding agency program required an applicant to show nonprofit status and the applicant holds a sincerely held religious belief that it cannot apply for a determination as an entity that it is tax-exempt under section 501(c)(3) of the Internal Revenue Code, the applicant could submit evidence sufficient to establish that it otherwise qualified as a nonprofit organization;
- Adding a provision stating that neither the awarding agency nor any State or local government or other pass-through entity receiving funds under any Federal awarding agency program or service shall construe provisions ''in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects''; and
- Adding language to preexisting requirements regarding the Government's obligation to accommodate religion and regarding the religious exemption from the Federal prohibition on employment discrimination on the basis of religion.

II. Overview of the Proposed Rule

On February 14, 2021, President Joseph R. Biden, Jr., signed Executive Order 14015. 86 FR 10007 (Feb. 18, 2021) (Establishment of the White House Office of Faith-Based and Neighborhood Partnerships). Executive Order 14015 sought to ''organiz[e] more effective efforts to serve people in need across the country and around the world, in partnership with civil society, including faith-based and secular organizations.'' *Id.* at 10007. The Executive order further emphasized the importance of strengthening the ability of such organizations to deliver services in partnership with Federal, State, and local governments and with other private organizations, while adhering to all governing law. *Id.*

Executive Order 14015 revoked Executive Order 13831, *see id.* at 10008, which had formed the basis for the 2020 Rule. With the revocation of Executive Order 13831, the Agencies are proposing to amend the 2020 Rule so as to ensure full access to and comprehensive delivery of federally funded social services, in keeping with governing law and with the policies articulated in Executive Order 14015. The Agencies also seek to advance the policies set out in Executive Order 13985, 86 FR 7009 (Jan. 25, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), and Executive Order 14058, 86 FR 71357 (Dec. 16, 2021) (Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government).

The Agencies achieve their missions in part through the administration of Federal financial assistance. Funds are distributed through a wide range of social service programs, including the following:

- *Workforce Innovation and Opportunity Act (''WIOA'') Adult and Dislocated Worker Programs:* DOL's Employment and Training Administration provides job search assistance and training to adult and dislocated workers through State formula grants authorized under WIOA. This funding area includes individualized training accounts through which program participants can choose from a statewide list of providers to access training.
- *Homeless Veterans Reintegration Program:* This grant program, administered by DOL's Veterans' Employment and Training Service, provides services that assist in reintegrating homeless veterans into meaningful employment within the labor force and supports development of delivery systems that address the complex problems facing homeless veterans.
- *Healthy Marriage and Responsible Fatherhood Programs:* HHS's Office of Family Assistance competitively awards Healthy Marriage and Responsible Fatherhood grants to States, local governments, tribal entities, and community-based organizations (both for profit and not-for-profit, including faith-based) that help participants build and sustain healthy relationships and marriages, and strengthen positive father-child interaction.
- *Nita M. Lowey 21st Century Community Learning Centers:* This program, administered by ED's Office of Elementary and Secondary Education,

supports the creation of community learning centers that provide academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools. The program helps students meet State and local student standards in core academic subjects, such as reading and math; offers students a broad array of enrichment activities that can complement their regular academic programs; and offers literacy and other educational services to the families of participating children.

- *Gaining Early Awareness and Readiness for Undergraduate Programs (''GEAR UP''):* Under this program, ED's Office of Postsecondary Education awards discretionary grants to (1) States and (2) partnerships of local educational agencies and institutions of higher education, which may also include community organizations or entities as additional partners, to provide services at high-poverty middle and high schools to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.
- *Citizenship and Integration Grant Program:* Administered by DHS's U.S. Citizenship and Immigration Services (''USCIS''), the Citizenship and Integration Grant Program has helped more than 290,000 lawful permanent residents (''LPRs'') prepare for U.S. citizenship. The program assists non-profit organizations in providing citizenship instruction and application assistance to LPRs.
- *VA Homeless Providers Grant and Per Diem Program:* VA's Homeless Programs Office administers this program, which awards funds to community organizations providing services to veterans experiencing homelessness to ensure the availability of supportive housing and services, with the goal of helping homeless veterans achieve residential stability.
- *Supportive Services for Veteran Families:* This program, administered by VA's Homeless Programs Office, awards grants to selected private non-profit organizations and consumer cooperatives to assist very low-income veteran families residing in or transitioning to permanent housing. Grantees provide a range of supportive services to eligible veteran families that are designed to promote housing stability.

Under these and other social services programs, Federal funds are not distributed directly to individuals but, rather, are distributed to recipients—for example, State and local governments, school districts, nonprofit organizations, institutions of higher education, and other entities—that use the Federal funds to provide services to the programs' intended beneficiaries. This proposed rule generally refers to these recipients as ''providers'' or ''grantees,'' and to those whom they serve, either directly or through sub-recipients, as ''beneficiaries.'' In administering these programs, the providers must comply both with applicable Federal law and with the terms and conditions under which they receive Federal funding from the Agencies. For example, applicants for Federal funds through the Office of Justice Programs at DOJ must certify that in administering any Federal award they will comply with all relevant Federal civil rights and nondiscrimination laws.

Consistent with Executive Order 14015, the Agencies propose to amend the 2020 Rule for several reasons. First, it is central to the Agencies' missions that federally funded services and programs, such as those listed above, reach the widest possible eligible population, including historically marginalized communities. Second, the Agencies seek to address and correct inconsistencies and confusion raised by the 2020 Rule. To meet these objectives, the Agencies propose to amend the 2020 Rule as described in this preamble and as set forth in each agency's proposed revisions to its relevant regulatory texts.

A. Beneficiary Protections

Executive Order 14015 recognizes that ''[i]t is important that the Federal Government strengthen the ability of'' faith-based and other community organizations ''to deliver services effectively in partnership with Federal, State, and local governments and with other private organizations, while preserving our fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and forbidding the establishment of religion.'' 86 FR 10007. The Agencies are committed to ensuring that all beneficiaries and potential beneficiaries have access to federally funded services and programs without unnecessary barriers and free from discrimination. To that end, and consistent with prior iterations of these rules, both the 2016 Rule and the 2020 Rule contained provisions prohibiting providers from discriminating against a program beneficiary or prospective beneficiary ''on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.'' Those prohibitions against religious discrimination apply in direct and indirect aid programs alike,[1] and they reflect one of the fundamental principles set forth in section 2(d) of Executive Order 13279, as amended by section 1(b) of Executive Order 13559. 75 FR 71320. The Agencies are retaining those regulatory provisions. The 2020 Rule added a requirement for all Agencies except USAID that notices or announcements of award opportunities and notices of awards or contracts include language regarding providers' obligations not to discriminate against prospective or current program beneficiaries on the basis of religion.[2] The Agencies are also retaining that requirement.

The 2016 Rule required that, in programs supported by direct Federal financial assistance, beneficiaries and potential beneficiaries also be made aware of these prohibitions on discrimination, but the 2020 Rule removed this notice requirement.[3] Because the purpose of making providers aware of nondiscrimination requirements is to ensure that beneficiaries can access services free from discrimination, the Agencies believe that beneficiaries should also be made aware of rights and protections that are due to them. All Agencies except USAID therefore propose to reinstate the requirement that organizations providing social services

[1] *See, e.g.,* 34 CFR 75.52(e), 76.52(e) (ED); 2 CFR 3474.15(f) (ED); 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 22 CFR 205.1(e) (USAID); 24 CFR 5.109(g) (HUD); 28 CFR 38.5(c) (DOJ); 29 CFR 2.33(a) (DOL); 38 CFR 50.2(d) (VA); 45 CFR 87.3(d) (HHS). While certain VA program-specific regulations limit the applicability of the nondiscrimination requirement to the provision of ''direct program assistance,'' 38 CFR 61.64(e), 62.62(e), that just reflects that direct assistance is the only type of assistance that those programs administer.

[2] USAID adopted a slightly different requirement, providing that its notices or announcements of funding opportunities indicate that faith-based organizations are eligible on the same basis as any other organization subject to the protections and requirements of Federal law. 85 FR 82135 (revising 22 CFR 205.1(a)(4)). USAID proposes to retain that requirement.

[3] Due to the unique characteristics of USAID-funded programs implemented abroad in foreign countries, USAID declined to adopt written notification or referral requirements in the 2016 Rule and, accordingly, did not have to amend its regulations in 2020 to remove or otherwise alter such requirements. Because the notification and referral requirements proposed by the rest of the Agencies here continue to remain unworkable and impractical in the international context, USAID does not propose to amend its regulatory text to adopt the beneficiary notification requirement. In addition, USAID did not amend its regulations in 2020 to state that providers at which beneficiaries choose to expend indirect aid may require attendance at all activities that are fundamental to the program, as discussed below. There is therefore no need for USAID to remove such language from its regulations, as the other Agencies are proposing to do. For these reasons, USAID does not join in this section (Part II.A) of the preamble.

under Agencies' direct Federal financial assistance programs give written notice to beneficiaries and prospective beneficiaries of certain nondiscrimination protections, and to apply this requirement to all such providers, whether they are faith-based or secular. The Agencies may, as appropriate, require providers to include this notice as part of a broader and more general notice of nondiscrimination on additional grounds.

The 2016 Rule also required the notification to beneficiaries to inform them that, if they were to object to the religious nature of a given provider, the provider would be required to make reasonable efforts to refer them to an alternative provider. The 2020 Rule eliminated that requirement. The Agencies believe, however, that providing assistance to beneficiaries seeking alternative providers would help advance the overarching goal of facilitating access to federally funded programs and services. Without such assistance, it may be challenging for beneficiaries or prospective beneficiaries unfamiliar with Federal grant programs to identify other federally funded providers.

To inform the path forward, the Agencies have reviewed the implementation of the referral requirement under the 2016 Rule and determined that its utility and feasibility varied significantly by agency and by program. For one thing, although a provider might be in the best position to identify other similar service providers within a certain proximity, the provider might not be aware which other providers receive Federal funds. Further, for certain programs—for example, programs that fund one service provider per region, or programs that allow for many different types of services using Federal funds—the program design itself might preclude a meaningful referral option. Therefore, with the exception of USAID, the Agencies are proposing a modified version of the 2016 Rule's referral procedure that would encourage Agencies, when appropriate and feasible, or State agencies and other entities that might be administering a federally funded social service program, to provide notice to beneficiaries or prospective beneficiaries about how to obtain information about other available federally funded service providers.

Finally, with the exception of USAID, the Agencies are proposing to remove language added by the 2020 Rule stating that providers at which beneficiaries choose to expend indirect aid ''may require attendance at all activities that are fundamental to the program.'' *E.g.,* 85 FR 82139 (revising 28 CFR 38.5(c)) (DOJ). This additional language, which was not added by USAID in the 2020 Rule, created a confusing tension with the first sentence of the same provision and with the language of the Executive order on which it is based, which provides that organizations that receive Federal financial assistance under social service programs ''should not be allowed to discriminate against current or prospective program beneficiaries on the basis of . . . a refusal to attend or participate in a religious practice.'' E.O. 13279, section 2(d), as amended by E.O. 13559, section 1(b), 75 FR 71320.

B. Indirect Federal Financial Assistance

With the exception of USAID, the Agencies are proposing two changes to the definition of ''indirect Federal financial assistance,'' both designed to clarify the operation of the rule.[4] When the Agencies first promulgated the regulation here—indicating that faith-based organizations were eligible to participate in grant or contract programs administered by the Agencies on the same basis as any other outside organization—they attached certain conditions to the acceptance of ''direct financial assistance.'' *E.g.,* 69 FR 2832, 2838–41 (Jan. 21, 2004) (DOJ). These conditions included the requirements not to use the direct assistance for ''inherently religious activities'' and to separate, by time or location, any such activities carried out by the program provider at its own expense. *E.g., id.* at 2838–40 (adding 28 CFR 38.1(b)(1), 38.2(b)(1)) (DOJ). DOJ's 2004 rule did not specifically define the terms ''direct'' or ''indirect,'' and most of its express references to either type of assistance concerned the conditions attached to direct assistance, which by negative implication did not attach to indirect assistance.

The 2004 rules for several Agencies did, however, include separate provisions stating that the restrictions on inherently religious activities did not apply when a religious organization received Department funds ''as a result of a genuine and independent private choice of a beneficiary.'' *E.g., id.* at 2839–41 (adding 28 CFR 38.1(i), 38.2(i)) (DOJ). This language echoed the Supreme Court's declaration in *Zelman* v. *Simmons-Harris* that when program beneficiaries direct the use of government aid to religious schools ''wholly as a result of [the beneficiaries'] own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause,'' even when the religious schools in question include religious instruction in the funded program. 536 U.S. 639, 652 (2002). DOJ's 2004 rule further clarified that a beneficiary is considered to exercise this ''genuine and independent private choice'' when, for example, the beneficiary ''redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.'' *E.g.,* 69 FR 2839, 2841 (adding 28 CFR 38.1(i), 38.2(i)) (DOJ).

In 2016, the Agencies amended their regulations to define the terms ''direct'' and ''indirect'' Federal financial assistance. *E.g.,* 81 FR 19419 (revising 28 CFR 38.3(a), (b)) (DOJ). The common formulation was that '' '[d]irect Federal financial assistance' or 'Federal financial assistance provided directly' refers to situations where the Government or an intermediary . . . selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via a grant or cooperative agreement).'' *E.g., id.* (revising 28 CFR 38.3(a)(1)) (DOJ). In contrast, the Agencies explained, ''[i]ndirect Federal financial assistance'' or ''Federal financial assistance provided indirectly'' referred to situations where the choice of the service provider was placed in the hands of the beneficiary, and the cost of that service was paid through a voucher, certificate, or other similar means of Government-funded payment. *See, e.g., id.* (revising 28 CFR 38.3(b)) (DOJ). Federal financial assistance provided to an organization is considered ''indirect,'' the 2016 Rule said, when (1) the Government ''program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion''; (2) the organization ''receives the assistance as a result of a decision of the beneficiary, not a decision of the Government''; and (3) the ''beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.'' *See, e.g., id.* The joint preamble to the 2016 Rule explained that this definition

[4] USAID does not fund programs involving indirect Federal financial assistance as that term is used within this proposed rule and has never defined indirect Federal financial assistance in its rule. USAID is not proposing to amend its regulatory text to add a definition of indirect Federal financial assistance at this time. Accordingly, USAID does not join in this section (Part II.B) of the preamble.

was designed to ''align[ ] with the constitutional principles'' articulated in *Zelman* and noted that ''the voucher scheme at issue in *Zelman,* which was described by the Court as a program of 'true private choice,' was neutral toward religion and offered beneficiaries adequate secular options.'' *Id.* at 19361–62. The 2016 Rule continued to attach the same conditions to ''direct'' aid: *e.g.,* no Federal funds for what were now called ''explicitly religious activities''; and keeping those activities, when funded by the program provider, separate in time or location. *E.g., id.* at 19419 (revising 28 CFR 38.2(a), 38.5(a)) (DOJ).

In 2020, the Agencies revised the definition of ''indirect Federal financial assistance,'' collapsing the second and third parts of the three-part test in the 2016 Rule into a second part requiring that ''[t]he service provider receive[ ] the assistance as a result of an independent choice of the beneficiary, not a choice of the Government.'' *E.g.,* 85 FR 82138 (revising 28 CFR 38.3(b)) (DOJ). The Agencies explained that this revision was designed to ''align more closely with'' *Zelman* ''by removing the requirement that beneficiaries have at least one secular option.'' *Id.* at 82040 (citation omitted). They identified two primary concerns motivating the change. First, they did not read *Zelman* to ''say that secular options must be available in a given geographic area in order for an indirect-aid program to satisfy the Establishment Clause,'' pointing to the Supreme Court's observations that the distribution of religious and nonreligious schools in Ohio '' 'did not arise as a result of the [school-choice] program' '' and that allowing the geographic distribution of providers to determine the constitutionality of an indirect-aid program could '' 'lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio . . . but not in' others.'' *Id.* at 82073 (quoting *Zelman,* 536 U.S. at 656–57). Second, they expressed concern that the alternative-provider requirement created ''some level of distinction between secular and religious providers based solely on religious character,'' *id.* at 82074, which might bring the rule into conflict with the Supreme Court's interpretation of the Free Exercise Clause in cases subsequent to the 2016 Rule, primarily *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017), and *Espinoza* v. *Mont. Dep't of Revenue,* 140 S. Ct. 2246 (2020). ''When a secular provider option was not present,'' the preamble explained, ''this requirement precluded 'otherwise eligible recipients'— the beneficiaries and the providers—from accessing a public benefit 'solely because of' the provider's 'religious character.' '' 85 FR 82074.

The Agencies remain mindful of the concerns expressed in the 2020 Rule preamble but are concerned that the changes to the regulatory language in 2020 have engendered confusion. For one thing, the potential availability to beneficiaries of a practical option to use indirect aid for services that do not involve explicitly religious activities is a significant factor in determining whether beneficiaries choose to expend indirect aid with religious providers ''wholly as a result of their own genuine and independent private choice''—the Establishment Clause standard the Supreme Court articulated in *Zelman.* 536 U.S. at 652. ''The Establishment Clause question,'' the Court wrote in the context of the school voucher program at issue there, ''must be answered by evaluating *all* options Ohio provides Cleveland schoolchildren, only one of which is to obtain a program scholarship and then choose a religious school.'' *Id.* at 655–56. The Court repeatedly drew attention to the presence of secular schools as an option for parents and children in upholding Ohio's voucher program,[5] as did Justice O'Connor in her concurring opinion.[6] And lower courts applying *Zelman* have accordingly viewed the availability of adequate secular alternatives as a significant factor in determining whether a program affords ''true private choice,'' in which case the government is not responsible for the religious uses of the aid.[7] The Agencies do not read *Zelman* or subsequent cases to suggest that the availability of adequate secular alternatives is immaterial to the question of whether the Establishment Clause imposes any limits on the provision of services in programs funded through indirect aid.

The 2020 Rule preamble also raised a possible misunderstanding about the implications of a finding that some beneficiaries lack genuine and independent private choice in an indirect aid program. That preamble assumed that in such a situation, the religious organizations in question would be precluded from participating in the program, potentially raising Free Exercise Clause concerns under *Trinity Lutheran* and *Espinoza.* If, however, an Agency determines that ''genuine and independent private choice'' is absent for particular beneficiaries, including because providers that offer secular programs are as a practical matter unavailable, *Zelman* would not require the Agency to terminate the indirect aid program or disallow beneficiaries from redeeming their vouchers or certificates at religious providers. The Agency would instead need to take other appropriate steps to remedy the problem, such as expanding the universe of reasonably available providers to include secular options or requiring existing providers to observe the same conditions that the rule

[5] *See, e.g., Zelman,* 536 U.S. at 653 (''The program permits the participation of *all* schools within the district, religious or nonreligious.''); *id.* at 655 (''Cleveland schoolchildren enjoy a range of educational choices: They may remain in public school as before, remain in public school with publicly funded tutoring aid, obtain a scholarship and choose a religious school, obtain a scholarship and choose a nonreligious private school, enroll in a community school, or enroll in a magnet school.''); *id.* at 657 (''[B]y all accounts the program has captured a remarkable cross-section of private schools, religious and nonreligious.''); *id.* at 659 (noting ''(1) the more than 1,900 Cleveland children enrolled in alternative community schools, (2) the more than 13,000 children enrolled in alternative magnet schools, and (3) the more than 1,400 children enrolled in traditional public schools with tutorial assistance''); *id.* at 662 (concluding that the Ohio program permitted families ''to exercise genuine choice among options public and private, secular and religious'').

[6] *See, e.g., id.* at 663 (''I think it is worth elaborating on the Court's conclusion that this inquiry should consider all reasonable educational alternatives to religious schools that are available to parents.''); *id.* at 670–71 (''The District Court record demonstrates that nonreligious schools were able to compete effectively with Catholic and other religious schools in the Cleveland voucher program.'').

[7] *See, e.g., Ams. United for Separation of Church & State* v. *Prison Fellowship Ministries, Inc.,* 509 F.3d 406, 425 (8th Cir. 2007) (''In this case, there was no genuine and independent private choice. The inmate could direct the aid only to InnerChange. The legislative appropriation could not be directed to a secular program, or to general prison programs.''); *Am. Jewish Cong.* v. *Corp. for Nat'l & Cmty. Serv.,* 399 F.3d 351, 358 (D.C. Cir. 2005) (''When enough non-religious options exist, those participants who choose to teach in religious schools do so only as a result of their own genuine and private choice.''); *Rainey* v. *Samuels,* 130 F. App'x 808, 811 (7th Cir. 2005) (''Nor does Rainey contend that religious entities are the only providers of 'parental training' under contract with the state, so that he lacks an opportunity for choice.''); *Eulitt* v. *Me. Dep't of Educ.,* 386 F.3d 344, 348 (1st Cir. 2004) (''The *Zelman* Court announced that indirect public aid to sectarian education is constitutionally permissible when the financial assistance program has a valid secular purpose, provides benefits to a broad spectrum of individuals who can exercise genuine private choice among religious and secular options, and is neutral toward religion.''); *Freedom from Religion Found., Inc.* v. *McCallum,* 324 F.3d 880, 881–82 (7th Cir. 2003) (''Parole officers who recommend Faith Works are required to offer the offender a secular halfway house as an alternative.''); *see also Winn* v. *Ariz. Christian Sch. Tuition Org.,* 562 F.3d 1002, 1017 (9th Cir. 2009) (true private choice lacking because ''[t]he vast majority of the scholarship money under the program—over 85 percent as of the time of plaintiffs' complaint—is available only for use at religious schools''), *rev'd on other grounds,* 563 U.S. 125 (2011).

attaches to direct aid.[8] These remedies would ensure that beneficiaries are not effectively required to participate in religious activities in order to receive the benefits of the federally funded program and that the Government is not responsible for the use of the aid to support explicitly religious activities.

In this proposed rule, the Agencies are continuing to define ''indirect Federal financial assistance,'' but that definition would now reflect not only the form of aid—the fact that the choice of service provider is placed in the hands of beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment—but also the constitutional prerequisites *Zelman* identified as necessary to avoid Establishment Clause concerns. Accordingly, and for the reasons stated above, the Agencies are proposing two changes to the second part of the definition. First, the Agencies are proposing to revise the language to track that of *Zelman* more closely and thus make even clearer that the regulations incorporate the understanding of ''indirect'' aid in that decision. For Federal financial assistance to qualify as ''indirect'' under *Zelman,* a service provider must receive the assistance ''wholly as a result of'' a ''genuine and independent private choice'' of the beneficiary, not a choice of the Government. 536 U.S. at 652. The proposed rule thus would add the words ''wholly,'' ''genuinely,'' and ''private'' to the definition of ''indirect Federal financial assistance,'' to emphasize the private and voluntary nature of any decision to allocate indirect aid to a service provider that uses the aid for explicitly religious activities.

Second, the Agencies are proposing to add a sentence to the second part of the definition of ''indirect Federal financial assistance,'' stating that the availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice. This sentence is designed to eliminate any confusion about the continuing relevance of alternative secular providers in determining whether a particular aid program is indirect. Again, if an Agency is responsible for selecting service providers in an indirect aid program, and if an Agency determines, based upon available information, that certain beneficiaries are as a practical matter unable to exercise genuinely independent and private choice and might as a result effectively have no alternative but to expend the aid at a service provider that includes explicitly religious activities in its program, the Agency will not disqualify that provider. Rather, it will take steps outlined above, which may include finding ways to give beneficiaries the choice of other providers that do not include explicitly religious activities or requirements in their programs or requiring that all providers reasonably available to the beneficiaries observe the conditions that apply to direct aid. The Agencies would make such a determination on a case-specific basis, considering all the circumstances of which the Agency is reasonably aware.

With this understanding of the remedial approach to circumstances in which a beneficiary lacks ''genuinely independent and private choice,'' the proposed clarifications to the definition of indirect Federal financial assistance avoid any conflict with the nondiscrimination principle in *Trinity Lutheran* and *Espinoza,* which the 2020 Rule cited as a motivating concern for its changes to the definition. Under those cases, ''disqualifying otherwise eligible recipients from a public benefit 'solely because of their religious character' imposes 'a penalty on the free exercise of religion that triggers the most exacting scrutiny.' '' *Espinoza,* 140 S. Ct. at 2255 (quoting *Trinity Lutheran,* 137 S. Ct. at 2021). Under this proposed rule, in contrast, a determination that ''genuine and independent private choice'' is lacking in a particular geographic area will not result in disqualifying religious providers or in any other kind of religious discrimination.

C. Eligibility of Faith-Based Organizations

Consistent with the First Amendment and other Federal protections for religious liberty, it has long been Federal policy that faith-based organizations are eligible to participate in Agencies' grant-making programs on the same basis as any other organizations, that the Agencies will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law. The 2020 Rule did not substantively alter these policies but instead sought to clarify them. In so doing, though, the 2020 Rule introduced confusion regarding the protections the law affords to faith-based organizations and others.

The 2020 Rule indicated that the Agencies would not discriminate in their selection of service providers on the basis of religious exercise, but effectively defined that term twice. The 2020 Rule did so first with reference to the statutory definition of the term ''religious exercise'' contained in the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc *et seq. E.g.,* 85 FR 82138 (revising 28 CFR 38.3(g)) (DOJ). It did so second with reference to three specific bases of possible discrimination: (1) because of conduct that would not be considered grounds to disfavor a secular organization; (2) because of conduct that must or could be granted an appropriate accommodation in a manner consistent with the Religious Freedom Restoration Act (''RFRA''), 42 U.S.C. 2000bb *et seq.,* or the Religion Clauses of the First Amendment to the Constitution; or (3) because of the actual or suspected religious motivation of the organization's religious exercise. *E.g.,* 85 FR 82138 (revising 28 CFR 38.4(a)) (DOJ). This second definition introduced confusion by tying the Agencies' longstanding nondiscrimination policies in selecting service providers to accommodation determinations that Agencies generally do not make until after an organization

[8] The Supreme Court's recent decision in *Carson* v. *Makin,* 142 S. Ct. 1987 (June 21, 2022), does not call into question these longstanding conditions on the use of direct aid. *Carson* suggested that ''use-based discrimination'' was no ''less offensive to the Free Exercise Clause'' than discrimination on the basis of an aid recipient's religious character, *id.* at 2001, but it did so in the context of a ''neutral benefit program in which public funds flow[ed] to religious organizations through the independent choices of private benefit recipients,'' *id.* at 1997—*i.e.,* an indirect aid program. *See* Me. Stat. tit. 20–A, sec. 5204(4) (providing that the State of Maine would ''pay the tuition . . . at the public school or the approved private school *of the parent's choice* at which the student is accepted'' (emphasis added)). Nothing in *Carson,* moreover, affects the longstanding doctrine that the Establishment Clause generally prohibits the use of aid received directly from the government for ''specifically'' or ''inherently'' religious activities, *see, e.g., Bowen* v. *Kendrick,* 487 U.S. 589, 621–22 (1988); *Mitchell* v. *Helms,* 530 U.S. 793, 840–41 (2000) (O'Connor, J., concurring in the judgment); nor did the Court in *Carson* suggest that statutory and regulatory restrictions on such religious uses of direct aid violate the Free Exercise Clause.

The Court in *Carson* also determined that Maine's requirement that any school receiving tuition payments from the State be ''a nonsectarian school,'' Me. Stat. tit. 20–A, sec. 2951(2), was a form of impermissible discrimination because certain schools were ''disqualified from this generally available benefit 'solely because of their religious character,''' 142 S. Ct. at 1997 (quoting *Trinity Lutheran,* 137 S. Ct. at 2021). Here, in contrast, were the Agencies to determine that conditions of ''genuine and independent private choice'' were lacking for particular beneficiaries, the Agencies would not disqualify the religious providers from receiving vouchers or certificates as a result of beneficiaries' genuine and independent private choices. At most, the Agencies would merely require the religious providers to observe the same rules as all other providers for the use of direct aid.

has been selected. Injecting the language about accommodations into the nondiscrimination provision was designed to assure prospective providers that an Agency would not refuse to consider their applications merely because it was possible they would seek an accommodation from program requirements, but it created the misimpression that the Agencies would be bound to make such accommodations even when the accommodation would be permissive rather than required by Federal law.

The proposed rule seeks to clarify the nature of the protections for faith-based organizations by decoupling its religious nondiscrimination protections from the question of accommodations. First, the proposed rule would state more directly that the Agencies will not, in their selection of service providers, discriminate on the basis of an organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization such as one that has the same capacity to effectively provide services. For example, the 2020 Rule bars discrimination on the basis of an organization's ''religious motivation,'' but only indirectly, through its definition of discrimination on the basis of religious exercise. *E.g.,* 85 FR 82138 (revising 28 CFR 38.4(a)(3)) (DOJ). The proposed rule maintains the same prohibition but states it more plainly, barring the Agencies from discriminating on the basis of religious motives. The proposed language would thus maintain the Agencies' longstanding policies in this area and would further guarantee that the Agencies will not discriminate against providers on grounds that would violate the First Amendment.

With regard to possible accommodations from program requirements, the proposed rule would make clear that the Agencies will continue to consider requests for accommodations, on a case-by-case basis, in accordance with the Constitution and Federal statutes. To ensure that faith-based and other organizations are not dissuaded from participating in the Agencies' programs at the selection phase, the proposed rule would state that the Agencies will not disqualify any organization from participating in a program simply because that organization has indicated it may request an accommodation. Only if the organization makes clear at the time of application that it will not participate in the program if the accommodation is not granted, and the Agency determines that it will not grant the accommodation, would the Agency be permitted to deny the application on that basis. In such a case, the Agency would not be ''disqualifying otherwise eligible recipients from a public benefit 'solely because of their religious character,' '' *Espinoza,* 140 S. Ct. at 2255 (quoting *Trinity Lutheran,* 137 S. Ct. at 2021), but instead because the potential recipient had already represented that it could not abide by certain terms or conditions of the program. That organization would be treated the same as any other organization that decided for nonreligious reasons that it could not or would not comply with the terms and conditions of the program. If the accommodation is required by law, the Agency would not deny an application for that reason but would proceed to assess whether the organization entitled to the accommodation is qualified to receive the funds and participate in the social service program.

D. Title VII

Before 2020, most of the Agencies' regulations generally provided that a religious organization's limited exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (''Title VII''), 42 U.S.C. 2000e–1(a), is not forfeited just because the organization receives direct or indirect financial assistance from an awarding agency. In the 2020 Rule, VA joined the other Agencies by adding explicit language stating that the section 702 exemption continues to apply when a religious organization receives Federal financial assistance. Also in the 2020 Rule, ED, HHS, DOL, USAID, and VA added text indicating that the Title VII religious exemption allows hiring of persons on the basis of their ''acceptance of or adherence to religious tenets of the organization.'' *E.g.,* 85 FR 82128 (revising 34 CFR 75.52(g)) (ED); 85 FR 82141 (revising 29 CFR 2.37) (DOL).

Title VII states in relevant part that it shall not apply to ''a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.'' 42 U.S.C. 2000e–1(a). The applicability of Title VII's religious exemption is governed by the text of that statute, any other applicable laws (*e.g.,* nondiscrimination laws and program statutes that prohibit discrimination on the basis of religion when hiring), and the caselaw interpreting these authorities.

The Title VII religious exemption generally allows qualifying religious organizations to hire only people of a particular religion in the absence of any inconsistent statutes, but as numerous courts have held, the Title VII religious exemption does not permit such organizations to discriminate against workers on the basis of another protected classification, even when an employer takes such action for sincere reasons related to its religious tenets (such as those that might amount to discrimination on the basis of employees' sex).[9] The 2020 Rule added text that could mistakenly suggest that Title VII permits religious organizations that qualify for the Title VII religious exemption to insist upon tenets-based employment conditions that would otherwise violate Title VII or the particular underlying funding statute in question. Those Agencies that added the text on religious tenets in the 2020 Rule therefore propose to remove that language because it is unnecessary and potentially misleading.

Title VII itself, the case law interpreting the statute, and the terms of program-specific statutes provide the controlling standards for when and to what extent Title VII's religious exemption should apply. Constitutional doctrines might also be implicated in some cases. For example, antidiscrimination laws, including Title VII, are subject to constitutional limitations as applied to certain decisions by some religious organizations concerning their

[9] *See, e.g., Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 192 (4th Cir. 2011) (The Title VII religious exemption ''does not exempt religious organizations from Title VII's provisions barring discrimination on the basis of race, gender, or national origin.''); *Cline* v. *Catholic Diocese of Toledo,* 206 F.3d 651, 658 (6th Cir. 2000) (The Title VII religious exemption does not exempt religious organizations ''with respect to all discrimination. Title VII still applies to a religious institution charged with sex discrimination.'' (quotation marks and alterations omitted)); *DeMarco* v. *Holy Cross High Sch.,* 4 F.3d 166, 173 (2d Cir. 1993) (Religious organizations that qualify for the Title VII religious exemption ''are subject to Title VII provisions relating to discrimination based on race, gender and national origin.''); *see also* Memorandum for William P. Marshall, Deputy Counsel to the President, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Coreligionists Exemption in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), to Religious Organizations That Would Directly Receive Substance Abuse and Mental Health Services Administration Funds Pursuant to Section 704 of H.R. 4923, the* ''*Community Renewal and New Markets Act of 2000*'' (Oct. 12, 2000); Proposal to Rescind Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 86 FR 62115, 62116, 62119–20 (Nov. 9, 2021) (DOL).

''ministerial'' employees.[10] And the Agencies must be careful not to unduly interrogate the plausibility of the religious justification in assessing whether a religious tenets claim is a pretext for some other, impermissible form of employment discrimination.[11] In addition, as the Supreme Court recently recognized, ''how these doctrines protecting religious liberty interact with Title VII are questions for future cases.'' *Bostock* v. *Clayton Cnty.,* 140 S. Ct. 1731, 1754 (2020).[12]

E. Request for Comments on Regulatory Definitions of ''Federal Financial Assistance'' or ''Financial Assistance''

Several provisions of Executive Order 13279, including those at issue in this rulemaking, turn on the conveyance or receipt of ''Federal financial assistance.'' Section 1(a) of the Executive Order defines ''Federal financial assistance'' for purposes of the Order to mean ''assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.'' 67 FR 77141.

HUD's regulations contain a definition of ''Federal financial assistance'' that largely follows the definition in the Executive Order. *See* 24 CFR 5.109(b). DOJ's and USAID's regulations have never defined ''Federal financial assistance.''

Of the other six Agencies, prior to the 2020 Rule the regulations for USDA, ED, HHS, and VA also contained no definition of ''Federal financial assistance''; the DOL regulation largely tracked the definition from Executive Order 13279; and the DHS regulation contained a definition that was based on the definition in the Executive Order but that also specifically referred to, for instance, subgrants and emergency management assistance. In the 2020 Rule, these six Agencies adopted provisions specifying that certain forms of assistance are *not* included as ''Federal financial assistance''—provisions that might be read to be materially different from the definition in Executive Order 13279.[13] For example, four of the Agencies' regulations exclude ''guaranty contracts'' from the definition (without any explanation of why, or what such contracts consist of); four Agencies included language in their regulations stating that the ''use'' of any assistance by any individual who is the ''ultimate beneficiary'' under certain specified programs is not ''Federal financial assistance''; and one Agency's regulation excludes ''the use by a private participant of assistance obtained through direct benefit programs (such as Supplemental Nutrition Assistance Program, social security, pensions).''

The effect, if any, of these changes in the 2020 regulations is unclear. Some of the Agencies stated in their notices of proposed rulemaking that they were proposing these changes ''in accordance'' with Executive Order 13279, 85 FR 2889, 2892 (Jan. 17, 2020) (DHS); 85 FR 3190, 3203, 3204 (Jan. 17, 2020) (ED), or ''to align the [regulatory] text more closely with Executive Order 13279,'' 85 FR 2929, 2933 (Jan. 17, 2020) (DOL), but the amendments themselves did not do so. HHS offered an explanation, stating (among other things) that ''[w]hen a beneficiary acquires a good or service with the financial assistance they have received from the government, the vendor of that good or service is not receiving federal financial assistance.'' 85 FR 2974, 2979 (Jan. 17, 2020). This understanding about whether such ''indirect aid'' is a form of Federal financial assistance is simply incorrect, and is belied by other provisions of the HHS regulation itself. *See* 45 CFR 87.1(a), (c) (defining direct and indirect Federal financial assistance).

Executive Order 13279 defines ''Federal financial assistance'' for purposes of its directives, and therefore the Agencies may not refuse to apply the requirements of Executive Order 13279 to any forms of assistance that the Order defines as ''Federal financial assistance''—including assistance that an agency provides to an ''ultimate beneficiary'' and that therefore only ''indirectly'' subsidizes the expenses of a service provider. *Cf. Grove City Coll.* v. *Bell,* 465 U.S. 555, 563–70 (1984) (holding that an institution receives ''federal financial assistance'' for purposes of the antidiscrimination requirements of Section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a), when it enrolls a student who pays tuition with a Federal grant that must be used for educational purposes). With the exception of USAID, which (as noted above) does not fund programs involving indirect Federal financial assistance as that term is used here, all of the Agency regulations expressly provide that they govern indirect aid,[14] which could only be the case if such aid qualifies as ''Federal financial assistance,'' as it does under the Executive Order.

The six Agencies that made changes in 2020 to their regulatory definitions of ''Federal financial assistance'' are concerned that the changes could cause some confusion and possible misunderstandings among Agency administrators, recipients, and beneficiaries. Accordingly, the Agencies seek comment on whether an Agency that adopts a definition of ''Federal financial assistance'' in its regulation should use any definition other than that in Executive Order 13279; on any positive or negative effects resulting from the changes made by certain

[10] *See, e.g., Our Lady of Guadalupe Sch.* v. *Morrissey-Berru,* 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171 (2012).

[11] *See, e.g., Curay-Cramer* v. *Ursuline Acad. of Wilmington, Del., Inc.,* 450 F.3d 130, 141 (3d Cir. 2006); *Little* v. *Wuerl,* 929 F.2d 944, 948 (3d Cir. 1991).

[12] In *Bostock,* the Court explained that ''worries about how Title VII may intersect with religious liberties are nothing new; they even predate the statute's passage.'' 140 S. Ct. at 1754 (describing how, as a result of Congress's ''deliberations in adopting the law, Congress included an express statutory exception for religious organizations'' (citing 42 U.S.C. 2000e–1(a))). Turning to its own precedents, the Court stated that it has ''recognized that the First Amendment can bar the application of employment discrimination laws 'to claims concerning the employment relationship between a religious institution and its ministers.''' *Id.* (quoting *Hosanna-Tabor,* 565 U.S. at 188). Finally, the Court acknowledged that ''Congress has gone a step further yet in'' RFRA, describing it as ''a kind of super statute'' that ''displac[es] the normal operation of other federal laws'' and stating that ''it might supersede Title VII's commands in appropriate cases.'' *Id.*

[13] *See* 6 CFR 19.2 (DHS) (defining ''Financial assistance'' to reflect the Executive Order 13279 definition but adding that ''Financial assistance does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.''); 7 CFR 16.2 (USDA) (''Federal financial assistance does not include a guarantee or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits'' (emphasis omitted)); 29 CFR 2.31(a) (DOL) (defining ''Federal financial assistance'' to reflect the Executive Order 13279 definition but adding that the term ''does not include a tax credit, deduction, or exemption, nor the use by a private participant of assistance obtained through direct benefit programs (such as Supplemental Nutrition Assistance Program, social security, pensions)''); 34 CFR 75.52(c)(3)(iii), 76.52(c)(3)(iii) (ED) (''Federal financial assistance does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.'' (emphasis omitted)); 38 CFR 50.1(c) (VA) (''Federal financial assistance does not include a tax credit, deduction, exemption, guaranty contracts, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.''); 45 CFR 87.1(d) (HHS) (''Federal financial assistance does not include a tax credit, deduction, exemption, guaranty contract, or the use of any assistance by any individual who is the ultimate beneficiary under any such program.'').

[14] *See, e.g.,* 34 CFR 75.52(c)(3)(ii), 76.52(c)(3)(ii) (ED); 2 CFR 3474.15(c)(2) (ED); 6 CFR 19.2 (DHS); 7 CFR 16.2 (USDA); 24 CFR 5.109(b) (HUD); 28 CFR 38.3(b) (DOJ); 29 CFR 2.31(a)(2) (DOL); 38 CFR 50.1(b) (VA); 45 CFR 87.1(c) (HHS).

Agencies in the 2020 Rule, particularly with respect to recipients and beneficiaries; and on whether those Agencies should retain, amend, or repeal those provisions.

F. Procedural Requirements, Technical Amendments and Miscellaneous Updates

The Agencies propose to make technical amendments to the 2020 Rule to enhance clarity and reduce confusion. For example, the 2016 Rule described four ways that an applicant for Federal funds could demonstrate nonprofit status. *E.g.,* 81 FR 19420 (revising 28 CFR 38.5(g)(1)–(4)) (DOJ). The 2020 Rule provided a fifth methodology, stating that ''an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code'' may instead provide ''evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization.'' *E.g.,* 85 FR 82139 (adding 28 CFR 38.5(g)(5)) (DOJ). Upon review and consideration, the Agencies have determined that this provision was confusing and unnecessary. Therefore, where applicable, the Agencies propose to strike the fifth methodology. DHS has proposed a slightly different standard, under which the organization may provide evidence that ''the DHS awarding agency determines to be sufficient'' to establish that the entity would otherwise qualify as a nonprofit organization. DHS believes that it is capable of making this determination and that the resources expended would be minimal, but DHS and the other Agencies welcome comment on these proposed amendments and the potential divergence.

Finally, where appropriate, Agencies have also proposed non-substantive updates to their regulations, including reorganization of certain provisions and clarifications to the text, to ensure accuracy and consistency of implementation.

III. General Regulatory Certifications

A. Regulatory Planning and Review (Executive Order 12866); Improving Regulation and Regulatory Review (Executive Order 13563)

This proposed rule has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821 (Jan. 20, 2021) (Improving Regulation and Regulatory Review), and Executive Order 12866 of September 30, 1993, 58 FR 51735 (Oct. 4, 1993) (Regulatory Planning and Review).

Section 1 of Executive Order 12866 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. 58 FR 51735–36. Under section 6 of that Executive Order, the Office of Information and Regulatory Affairs (''OIRA'') must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. *Id.* at 51740–41. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a regulation that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as an ''economically significant'' regulation);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

Id. at 51738. OIRA has determined that this proposed rule is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this proposed rule.

The Agencies have also reviewed this proposed rule under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

76 FR 3821. Section 1(c) of Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' *Id.* OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, *Re: Executive Order 13563, ''Improving Regulation and Regulatory Review''* at 1 (Feb. 2, 2011), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2011/m11-10.pdf.*

The Agencies are issuing this proposed rule upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, the Agencies selected those approaches that maximize net benefits. Based on the analysis that follows, the Agencies believe that this proposed rule is consistent with the principles in Executive Order 13563. The Agencies also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Agencies have assessed the potential costs, cost savings, and benefits, both quantitative and qualitative, of this regulatory action.

1. Costs

The potential costs of this proposed regulatory action are those resulting from implementing the beneficiary

notification requirements and regulatory familiarization. DOL previously estimated the cost of imposing a similar beneficiary notification requirement, reporting an upper-bound estimate of $200 per organization per year (in 2013 dollars). 81 FR 19395. This cost estimate was based on the expectation it would take up to $100 in annual material costs and no more than two annual burden hours for a Training and Development Specialist to print, duplicate, and distribute notices to beneficiaries. *Id.*

For the present NPRM, the Agencies adjusted the estimate to $240 (in 2021) and also replicated this methodology to generate a central estimate of the cost per organization per year. For the replication, the Agencies adjusted the annual materials cost to $116.32 (in 2021 dollars) using the consumer price index.[15] The Agencies calculated the cost of labor by multiplying the estimated time burden by the hourly compensation of a Training and Development Specialist (SOC Code 13–1151). According to the Bureau of Labor Statistics (''BLS''), the mean hourly wage rate for a Training and Development Specialist in May 2021 was $32.51.[16] For this analysis, the Agencies used a fringe benefits rate of 46 percent,[17] resulting in a fully loaded hourly compensation rate for Training and Development Specialists of $47.46 [= $32.51 + ($32.51 × 0.46)]. The Agencies estimated that a Training and Development Specialist will spend on average 2 hours ($94.93) printing, duplicating, and distributing notices to beneficiaries. The Agencies combined these estimates to generate a primary cost per organization of the beneficiary notification requirement of $211.25 [= $116.32 + $94.93]. As shown in Table 1, the Agencies estimated the total annual cost resulting from the proposed notification requirement by multiplying the number of covered providers of social service programs receiving Federal financial assistance by the annual compliance cost of the proposed notification requirement (a potential central estimate of $211.25). Only providers receiving direct Federal financial assistance are subject to the notification requirement in this proposed rule. However, we could not differentiate direct recipients from indirect recipients in calculating the annual cost of the notification requirement, and the cost was overstated as such. On the other hand, for some Agencies, the number of providers of social service programs does not include sub-recipients due to data limitations. This resulted in an underestimation of the annual cost of the notification requirement. Overall, the annual cost of the proposed notification requirement is likely to be underestimated in this analysis, but not enough to change the determination of the Agencies that the benefits justify the costs.

TABLE 1—ANNUAL COST OF PROPOSED NOTIFICATION REQUIREMENT BY AGENCY

Agencies	Number of providers of social service programs receiving federal financial assistance [18] (A)	Cost per entity [19] (B)	Annual cost (C = A × B)
DOL	[20] 39,981	$211.25	$8,445,986
HHS	[21] 10,287	211.25	2,173,129
DHS	[22] 10,648	211.25	2,249,390
USDA	[23] 240,810	211.25	50,871,113
DOJ	[24] 18,152	211.25	3,834,610
HUD	[25] 45,321	211.25	9,574,061
USAID	[26] 1,251	211.25	[27] 0
VA	[28] 1,027	211.25	216,954
ED	[29] 10,941	211.25	2,311,286

[15] To calculate this figure, the Agencies used the data on annual averages of the consumer price index (''CPI'') available at BLS, CPI Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm.* The average CPI for 2013 was $232.957; for 2021, the average CPI was $270.970. Using this ratio, the materials cost of $100 in 2013 dollars became $116.37 in 2021 dollars [= $100 × (270.970/232.957)].

[16] BLS, Occupational Employment and Wage Statistics, May 2021, *https://www.bls.gov/oes/current/oes131151.htm.*

[17] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $26.22 per hour worked in 2020, while benefit costs averaged $11.99, which is a benefits rate of 46 percent. BLS, Employer Costs for Employee Compensation Archived News Releases, *https://www.bls.gov/bls/news-release/ecec.htm#2020.*

[18] Most Agencies provided their numbers of recipients of financial assistance, and the averages over three years (FY2019 to FY2021), where available, are presented in Table 1.

[19] See the discussion preceding Table 1 for the derivation of a $211.25 estimate. The Agencies request comment on both quantitative approaches, including their presentation as central estimates or bounds.

[20] Number of recipients of DOL financial assistance under various programs authorized by title I of the Workforce Innovation and Opportunity Act in FY2019, FY2020, or FY2021.

[21] Average number of prime recipients of HHS financial assistance in affected programs in FY2019, FY2020, and FY2021.

[22] Average number of recipients of DHS financial assistance from USCIS's Citizenship and Integration Grant Program and the Federal Emergency Management Agency's Disaster Case Management, Crisis Counseling and Training Program and Emergency Food and Shelter Program in FY2019, FY2020, and FY2021.

[23] Average number of recipients of USDA financial assistance from National Institute of Food and Agriculture Program, Community Facilities Program, Single Family Housing Preservation Grant Program, Multifamily Housing Programs, nutrition assistance programs in FY2019, FY2020, and FY2021. All other USDA programs, including via State partners, States and territories of the United States, and tribal organizations, are estimates for the current fiscal year.

[24] Average number of recipients of DOJ financial assistance from the Office on Violence Against Women and Office of Justice Programs in FY2019, FY2020, and FY2021.

[25] Average number of recipients of HUD financial assistance from Community Development Block Grant Program, HOME Investment Partnerships, Public Housing Agency, Office of Native American Programs, Office of Special Needs, Multifamily Assisted Property Owners program, Office of Rural Housing and Economic Development, and Comprehensive Housing Counseling Grant Program in FY2019, FY2020, and FY2021.

[26] Average number of prime recipients of USAID financial assistance in FY2019, FY2020, and FY2021.

[27] USAID is not proposing to adopt the notification requirement, so this proposed rule will not result in any cost to recipients of financial assistance from USAID.

[28] Average number of recipients of VA financial assistance from Supportive Services for Veteran Families and Grant and Per Diem Programs in FY2019, FY2020, and FY2021. In addition, VA estimates that the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program will fund 90 grantees in each of FY2022 and FY2023.

[29] Average number of recipients of ED financial assistance from discretionary grant programs and formula grant programs in FY2019, FY2020, and FY2021.

TABLE 1—ANNUAL COST OF PROPOSED NOTIFICATION REQUIREMENT BY AGENCY—Continued

Agencies	Number of providers of social service programs receiving federal financial assistance [18] (A)	Cost per entity [19] (B)	Annual cost (C = A × B)
Total			79,676,529

The process of regulatory familiarization or reviewing the regulation to determine how it applies (if finalized as proposed) will impose a one-time direct cost on all covered providers of social service programs in the first year. The Agencies calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of a Community and Social Service Specialist (SOC Code 21–1099). According to the BLS, the mean hourly wage rate for Community and Social Service Specialist in May 2021 was $24.28.[30] For this analysis, the Agencies used a fringe benefits rate of 46 percent,[31] resulting in a fully loaded hourly compensation rate for Community and Social Service Specialists of $35.45 [= $24.28 + ($24.28 × 0.46)]. The Agencies estimated that a Community and Social Service Specialist will spend on average 30 minutes reviewing the rule ($17.72). Table 2 shows the one-time regulatory familiarization cost by Agency in the first year.

TABLE 2—ONE-TIME REGULATORY FAMILIARIZATION COST BY AGENCY

Agencies	Number of providers of social service programs (A)	Cost per entity (B)	Cost in the first year (C = A × B)
DOL	39,981	$17.72	$708,463
HHS	10,287	17.72	182,286
DHS	10,648	17.72	188,683
USDA	240,810	17.72	4,267,153
DOJ	18,152	17.72	321,653
HUD	45,321	17.72	803,088
USAID	1,251	17.72	22,168
VA	1,027	17.72	18,198
ED	10,941	17.72	193,875
Total			6,705,567

Table 3 shows the total annualized cost at a 7 percent and a 3 percent discounting for the proposed notification requirement and the one-time regulatory familiarization cost. For example, the annualized cost for DOL-regulated entities is $8,546,856 at a 7 percent discounting. The total annualized cost for all nine Agencies is $80,631,251 at a 7 percent discounting. This total cost estimate is likely to be understated because some sub-recipients are not included in the analysis, but not enough to change the determination of the Agencies that the benefits of the notification requirement justify its costs.

TABLE 3—TOTAL COST OF NOTIFICATION REQUIREMENTS AND REGULATORY FAMILIARIZATION BY AGENCY

Agencies	Annual cost of notification requirements	One-time regulatory familiarization cost	Total annualized cost at 7 percent discounting	Total annualized cost at 3 percent discounting
DOL	$8,445,986	$708,463	$8,546,856	$8,529,040
HHS	2,173,129	182,286	2,199,082	2,194,498
DHS	2,249,390	188,683	2,276,254	2,271,509
USDA	50,871,113	4,267,153	51,478,659	51,371,353
DOJ	3,834,610	321,653	3,880,406	3,872,318
HUD	9,574,061	803,088	9,688,403	9,668,208
USAID	0	22,168	3,156	2,599
VA	216,954	18,198	219,545	219,087
ED	2,311,286	193,875	2,338,890	2,334,014
Total			80,631,251	80,462,627

[30] BLS, Occupational Employment and Wage Statistics, May 2021, *https://www.bls.gov/oes/current/oes211099.htm.*

[31] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $26.22 per hour worked in 2020, while benefit costs averaged $11.99, which is a benefits rate of 46 percent.

2. Cost Savings

The proposed notice requirement could provide some cost savings to beneficiaries who may be able to receive free information about alternative providers in their area and therefore may no longer need to investigate alternative providers on their own. The Agencies invite comments on any information that could be used to quantify this potential cost savings. While the Agencies cannot quantify this cost savings with a reasonable degree of confidence, the Agencies expect this cost savings to be insignificant because the number of beneficiaries who incur costs to identify alternative providers is likely very small.

3. Benefits

Section 1(c) of Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, and distributive impacts. 76 FR 3821. The Agencies recognize a non-quantified benefit to social service providers in the form of increased clarity, consistency, and fairness that will result from imposing uniform notice requirements on faith-based and secular organizations alike, in accordance with the longstanding Federal policy that faith-based organizations are eligible to participate in grant-making programs on the same basis as other organizations. The proposed rule may also benefit providers, in that it would provide a modified referral option that could ultimately connect them with beneficiaries who are in need of their services. Additionally, in situations in which beneficiaries lack ''true private choice,'' the proposed rule would benefit faith-based organizations by enabling them to continue operating indirect aid programs, consistent with Executive Order 14015's recognition that faith-based organizations are essential to the delivery of services in our neighborhoods.

The proposed rule would also benefit beneficiaries in several important ways. Specifically, the proposed notice requirement would improve beneficiaries' access to federally funded services by informing them of their rights and thus removing certain barriers arising from discrimination. Additionally, the proposed referral option would make it easier for beneficiaries who object to receiving services from one provider to learn about alternative providers. And, where such alternatives are unavailable as a practical matter, the proposed rule would ensure that beneficiaries are not effectively required to participate in religious activities in order to receive the benefits of federally funded programs. Finally, the proposed rule would benefit all beneficiaries, including those who would freely choose faith-based providers, by expanding the universe of providers reasonably available to them.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, tit. II, 110 Stat. 847, 857, requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604.

The Agencies believe that the estimated cost of $228.97 per provider in the first year[32] is far less than 1 percent of the annual revenue of even the smallest providers of social service programs. Therefore, the Agencies certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Civil Justice Reform (Executive Order 12988)

Executive Order 12988 provides that agencies shall draft regulations that meet applicable standards to avoid drafting errors and ambiguity, minimize litigation, provide clear legal standards for affecting conduct, and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996) (Civil Justice Reform). This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4731–32.

D. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The Agencies have reviewed this proposed rule in accordance with Executive Order 13175 and determined that it will not affect the statutory prerogatives and authority of the Indian tribes, which is a policy goal underlying Executive Order 13175. 65 FR 67249 (Nov. 9, 2000) (Consultation and Coordination With Indian Tribal Governments). Tribal sovereignty and self-governance will not be affected by this proposed rule. Accordingly, this rule does not implicate the consultation requirements of Executive Order 13175.

HUD's policy is to consult with Indian tribes early in the process on matters that have tribal implications. On April 11, 2022, HUD sent letters to all tribal leaders participating in HUD programs, informing them of the nature of this forthcoming rulemaking. HUD received no comments in response to those letters. Tribal leaders are welcome to provide public comments on this proposed rule.

E. Federalism (Executive Order 13132)

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy will have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government within the meaning of the Executive Order. 64 FR 43255, 43257–58 (Aug. 10, 1999) (Federalism). Section 3(b) of the Executive Order further provides that Federal agencies may implement a regulation limiting the policymaking discretion of the States only if constitutional or statutory authority permits the regulation and the regulation is appropriate in light of the presence of a problem of national significance. *Id.* at 43256. The proposed rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of Executive Order 13132. Furthermore, the constitutional and statutory authority supports the proposed rule, and it is appropriate in light of the presence of a problem of national significance.

F. Paperwork Reduction Act

This proposed rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.* The Agencies have determined in consultation with OIRA that the requirement to provide written notice to beneficiaries of certain nondiscrimination protections is not a

[32] [= $211.25 (notification requirement) + $17.72 (rule familiarization cost)].

collection of information subject to the PRA because the Federal Government has provided or will provide the information that a provider must use. *See* 5 CFR 1320.3(c)(2).

G. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (''UMRA''), 2 U.S.C. 1532(a), requires that a Federal agency determine whether a regulation proposes a Federal mandate that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in a single year (adjusted annually for inflation). The inflation-adjusted value of $100 million in 1995 was approximately $178 million in 2021 based on the Consumer Price Index for All Urban Consumers.[33] If a Federal mandate would result in expenditures in excess of the threshold, UMRA requires the agency to prepare a written statement containing, among other things, a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate. *Id.* The Agencies have reviewed this proposed rule in accordance with UMRA and determined that the total cost to implement the proposed rule in any one year will not meet or exceed the threshold. The proposed rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than the threshold, or increased expenditures by the private sector of more than the threshold.[34] Accordingly, UMRA does not require any further action.

H. Intergovernmental Review (Executive Order 12372)

These programs are not subject to Executive Order 12372, 47 FR 30959 (July 16, 1982) (Intergovernmental Review of Federal Programs), as amended, or ED regulations in 34 CFR part 79.

[33] The Agencies again derived this figure from the data on annual averages of the consumer price index (''CPI'') available at BLS, CPI Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm*. The average CPI for 1995 was $152.40; for 2021, $270.970. Using this ratio, $100 million in 1995 dollars became $178 million in 2021 dollars [= $100,000,000 × (270.970/152.40)].

[34] *See also* 2 U.S.C. 1503 (excluding from UMRA's ambit any provision in a proposed or final regulation that, among other things, enforces constitutional rights of individuals; establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability; or provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government).

I. Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary of Education particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

List of Subjects

2 CFR Part 3474

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

6 CFR Part 19

Civil rights, Government contracts, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

7 CFR Part 16

Administrative practice and procedure, Grant programs.

22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 2

Administrative practice and procedure, Grant programs, Religious discrimination, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Copyright, Education, Grant programs—education, Indemnity payments, Inventions and patents, Private schools, Reporting and recordkeeping requirements, Youth organizations.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Prisons, Private schools, Reporting and recordkeeping requirements, Virgin Islands, Youth organizations.

38 CFR Part 50

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities,

Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—Veterans, Health care, Homeless, Housing, Indians—lands, Individuals with disabilities, Low and moderate income housing, Manpower training programs, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

45 CFR Part 87

Administrative practice and procedure, Grant programs—social programs, Nonprofit organizations, Public assistance programs.

45 CFR Part 1050

Grant programs—social programs.

DEPARTMENT OF EDUCATION

For the reasons discussed in the preamble, the Secretary of Education proposes to amend 2 CFR part 3474 and 34 CFR parts 75 and 76 as follows:

Title 2—Grants and Agreements

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 3474 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; and 2 CFR part 200, unless otherwise noted.

■ 2. Section 3474.15 is amended by:

■ a. Revising paragraph (b).

■ b. Removing note 1 to paragraph (e)(1).

■ c. In paragraph (f), removing ''and may require attendance at all activities that are fundamental to the program'' from the last sentence.

■ d. In paragraph (g), removing the second sentence.

The revision reads as follows:

§ 3474.15 Contracting with faith-based organizations and nondiscrimination.

* * * * *

(b)(1) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization.

(2)(i) In selecting providers of goods and services, grantees and subgrantees, including States—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization; and

(B) Must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee in administering Federal financial services from the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that participate in Department programs or services, including organizations with religious character, motives, or affiliation, or lack thereof, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee may disqualify faith-based organizations from participating in Department-funded programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) Neither a State nor the Department may disqualify an organization from participating in any Department program for which it is otherwise eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

Title 34—Education

PART 75—DIRECT GRANT PROGRAMS

■ 3. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; unless otherwise noted.

§ 75.51 [Amended]

■ 4. Section 75.51 is amended by:

■ a. In paragraph (b)(3), adding ''or'' at the end of the sentence.

■ b. In paragraph (b)(4), removing ''; or'' at the end of the sentence and adding, in its place, a period.

■ c. Removing paragraph (b)(5).

■ 5. Section 75.52 is amended by:

■ a. Revising paragraphs (a) and (c)(3)(ii)(B).

■ b. Removing paragraph (c)(3)(vi) and note 1 to paragraph (d)(1).

■ c. In paragraph (d)(2)(iv), removing the words ''and employees.''

■ d. In paragraph (e), removing the words ''and may require attendance at all activities that are fundamental to the program'' from the last sentence.

■ e. In paragraph (g), removing the second sentence.

The revisions read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other private organization.

(2)(i) In the selection of grantees, the Department—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization; and

(B) Must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to this part.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that receive grants under a Department program, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may disqualify faith-based organizations from applying for or receiving grants under a Department program on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) The Department may not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) The organization receives the assistance wholly as the result of the genuinely independent and private choice of the beneficiary. The availability of an adequate secular alternative is a significant factor in determining whether a program affords a genuinely independent and private choice.

* * * * *

■ 6. Add § 75.712 to read as follows:

§ 75.712 Beneficiary protections: Written notice.

(a) An organization providing social services to beneficiaries under a Department program supported by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. Such notice must be given in the manner and form prescribed by the Department. This notice must state that—

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must provide the notice at the earliest available opportunity.

(c) When applicable, as determined by the Department, the notice described in paragraph (a) of this section must also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

■ 7. Appendix A to part 75 is amended by revising paragraph (a) and (b) to read as follows:

Appendix A to Part 75—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other private organization (this part and 42 U.S.C. 2000bb *et seq.*). The Department will not, in the selection of grantees, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

* * * * *

■ 8. Appendix B to part 75 is amended by revising paragraph (a) to read as follows:

Appendix B to Part 75—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

* * * * *

PART 76—STATE-ADMINISTERED PROGRAMS

■ 9. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; unless otherwise noted.

■ 10. Section 76.52 is amended by:

■ a. Revising paragraphs (a) and (c)(3)(ii)(B).

■ b. Removing paragraph (c)(3)(vi) and note 1 to paragraph (d)(1).

■ c. In paragraph (d)(2)(iv), removing the words ''and employees.''
■ d. In paragraph (e), removing the words ''and may require attendance at all activities that are fundamental to the program'' from the last sentence.
■ e. In paragraph (g), removing the second sentence.

The revisions read as follows:

§ 76.52 Eligibility of faith-based organizations for a subgrant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization.

(2)(i) In the selection of subgrantees and contractors, States—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization; and

(B) Must ensure that all decisions about subgrants are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or a lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States in administering a Department program may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of subgrant funds must apply equally to faith-based and non-faith-based organizations. All organizations that receive a subgrant from a State under a State-Administered Formula Grant program of the Department, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States may disqualify faith-based organizations from applying for or receiving subgrants under a State-Administered Formula Grant program of the Department on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) Neither a State nor the Department may disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) The organization receives the assistance wholly as the result of the genuinely independent and private choice of the beneficiary. The availability of an adequate secular alternative is a significant factor in determining whether a program affords a genuinely independent and private choice.

* * * * *

■ 11. Add § 75.712 to read as follows:

§ 76.712 Beneficiary protections: Written notice.

(a) An organization providing social services to beneficiaries under a Department program supported by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. Such notice must be given in the manner and form prescribed by the Department. This notice must state that—

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must provide the notice at the earliest available opportunity.

(c) When applicable, as determined by the Department, the notice described in paragraph (a) of this section must also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

DEPARTMENT OF HOMELAND SECURITY

For the reasons set forth in the preamble, DHS proposes to amend 6 CFR part 19 as follows:

Title 6—Domestic Security

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

■ 12. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 101 *et seq.;* 8 U.S.C. 1101 *et seq.;* 42 U.S.C. 5164, 5183, 5189d; 42 U.S.C. 2000bb et seq; 42 U.S.C. 11331 *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13403, 71 FR 28543, 3 CFR, 2006 Comp., p. 228; E.O. 13498, 74 FR 6533, 3 CFR, 2009 Comp., p. 219; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 13. Section 19.1 is revised to read as follows:

§ 19.1 Purpose.

It is the policy of the Department of Homeland Security (DHS) to ensure the equal treatment of faith-based and other organizations in social service programs

administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. The equal treatment policies and requirements contained in this part are generally applicable to faith-based and other organizations participating or seeking to participate in any such programs. More specific policies and requirements regarding the participation of faith-based and other organizations in individual programs may be provided in the statutes, regulations, or guidance governing those programs, such as regulations in title 44 of the Code of Federal Regulations. DHS or its components may issue policy guidance and reference materials at a future time with respect to the applicability of this policy and this part to particular programs.

■ 14. Section 19.2 is amended by:

■ a. In the definition of ''Indirect Federal financial assistance or Federal financial assistance provided indirectly'', revising paragraph (2).

■ b. Revising the definition of ''Intermediary''.

The revisions read as follows:

§ 19.2 Definitions.

* * * * *

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* * * *

(2) The organization receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services supported by the Federal Government, the intermediary must ensure compliance with the provisions of this part by the recipient of a contract, grant or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

* * * * *

■ 15. Revise § 19.3 to read as follows:

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

(a) Faith-based organizations are eligible, on the same basis as any other organization and considering any religious accommodations appropriate under the Constitution or other provisions of Federal law, to seek and receive direct financial assistance from DHS for social service programs or to participate in social service programs administered or financed by DHS.

(b) Neither DHS, nor a State or local government, nor any other entity that administers any social service program supported by direct financial assistance from DHS, shall discriminate for or against an organization on the basis of the organization's religious motivation, character or affiliation (or lack thereof), or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(c) Nothing in this part shall be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(d) The Department shall not disqualify an organization from participating in any Department program for which it is otherwise eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

(e) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof, or on the basis of religious or political affiliation.

(f) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or an intermediary in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs:

(1) Because such organizations are motivated or influenced by religious faith to provide social services;

(2) Because of their religious character, affiliation, or lack thereof; or

(3) On the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by DHS or an intermediary in administering financial assistance from DHS shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

■ 16. Section 19.4 is amended by revising paragraphs (c) and (d) and adding paragraph (f) to read as follows:

§ 19.4 Explicitly religious activities.

* * * * *

(c) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, and in accordance with all other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or a State or local government in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because such organizations are motivated or influenced by religious faith to provide social services, because of their religious character, or affiliation, lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(d) The use of indirect Federal financial assistance is not subject to the restriction in paragraphs (a), (b), and (c) of this section.

* * * * *

(f) To the extent that any provision of this part is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

■ 17. Revise § 19.5 read as follows:

§ 19.5 Nondiscrimination requirements.

An organization that receives financial assistance from DHS for a social service program shall not, in providing services or in outreach activities related to such services, favor or discriminate against a beneficiary of said program or activity on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Organizations that favor or discriminate against a beneficiary will be subject to applicable sanctions and penalties, as established by the requirements of the particular DHS social service program or activity. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

■ 18. Section 19.6 is amended by revising paragraph (e) to read as follows:

§ 19.6 How to prove nonprofit status.

* * * * *

(e) Evidence that the DHS awarding agency determines to be sufficient to establish that the entity would otherwise qualify as a nonprofit organization.

■ 19. Section 19.9 is amended by revising paragraph (b) to read as follows:

§ 19.9 Exemption from Title VII employment discrimination requirements.

* * * * *

(b) Where a DHS program contains independent statutory or regulatory provisions that impose nondiscrimination requirements on all grantees, those provisions are not waived or mitigated by this part. In this case, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

■ 20. Add § 19.12 to read as follows:

§ 19.12 Notifications to beneficiaries and applicants.

(a) Organizations providing social services to beneficiaries under a program supported by direct Federal financial assistance from the Department must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner and form prescribed by the Department of Homeland Security's Office for Civil Rights and Civil Liberties, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This notice must include the following information:

(1) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) Beneficiaries or prospective beneficiaries may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Office for Civil Rights and Civil Liberties or the intermediary that awarded funds to the organization.

(b) The written notice described in paragraph (a) of this section must be given to prospective beneficiaries prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

(c) When applicable, as determined by the Department, the notice described in paragraph (a) of this section may also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations that provide these kinds of services in their area.

(d) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

■ 21. Revise appendix A to part 19 to read as follows:

Appendix A to Part 19—Notice or Announcement of Award Opportunity

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and subject to the protections and requirements of this part and 42 U.S.C. 2000bb *et seq*. DHS will not, in the selection of recipients, discriminate for or against an organization because such organizations are motivated or influenced by religious faith to provide social services, because of their religious character, affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 22. Revise appendix B to part 19 to read as follows:

Appendix B to Part 19—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

DEPARTMENT OF AGRICULTURE

For the reasons set forth in the preamble, USDA proposes to amend 7 CFR part 16 as follows:

Title 7—Agriculture

PART 16—EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

■ 23. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13280, 67 FR 77145, 3 CFR, 2002 Comp., p. 262; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 24. Revise § 16.1 to read as follows:

§ 16.1 Purpose and applicability.

(a) The purpose of this part is to set forth Department of Agriculture (USDA) policy regarding equal opportunity for faith-based or religious organizations to participate in USDA assistance programs for which other private organizations are eligible.

(b) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 2 CFR part 400 applies, and to recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

■ 25. Section 16.2 is amended by revising the definitions of ''Discriminate against an organization on the basis of the organization's religious exercise'' and ''Indirect Federal financial assistance or Federal financial assistance provided indirectly'' to read as follows:

§ 16.2 Definitions.

* * * * *

Discriminate against an organization on the basis of the organization's religious exercise means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an organization in the selection process or has such an effect, because of the organization's religious character, motives, or affiliation, or lack thereof; or because of conduct that would not be considered grounds to disfavor a secular organization.

* * * * *

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* refers to situations where the service provider receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment in accordance with the First Amendment of the U.S. Constitution. The availability of an adequate secular alternative is a significant factor in determining whether a program affords a genuinely independent and private choice.

* * * * *

■ 26. Section 16.3 is amended by revising paragraphs (a), (c), (d), and (f), and adding paragraph (h) to read as follows:

§ 16.3 Faith-Based Organizations and Federal Financial Assistance.

(a) A faith-based or religious organization is eligible, on the same basis as any other organization, to access and participate in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization. Decisions about awards of USDA direct assistance or USDA indirect assistance must also be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion, the religious belief or affiliation of a recipient organization, or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B to this part.

* * * * *

(c) A faith-based or religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when an organization participates in a USDA assistance program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-religious organizations.

(1) Any restrictions on the use of grant funds shall apply equally to faith-based or religious organizations and non-religious organizations.

(2) All organizations that participate in USDA awarding agency programs or services, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(3) No grant or agreement, document, loan agreement, covenant, memorandum of understanding, policy or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based or religious organizations from participating in the USDA awarding agency's programs or services because of the organizations' religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

* * * * *

(f) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide regulations governing

real property disposition (*see* 2 CFR part 400).

(1) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the faith-based or religious organization in accordance with applicable laws, regulations, and guidance.

(2) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

* * * * *

(h) Nothing in this part shall be construed to preclude a USDA awarding agency or any State or local government or other intermediary from accommodating religion or making an accommodation for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with Federal law and the U.S. Constitution. A USDA awarding agency, State or local government or intermediary shall not disqualify an organization from participating in any USDA assistance program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the USDA awarding agency, State or local government or intermediary has determined that it would deny the accommodation.

■ 27. Section 16.4 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services, or, in the case of direct Federal financial assistance, outreach activities funded by such financial assistance, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

(c)(1) All organizations that receive USDA direct assistance under any domestic USDA program must give written notice in a manner prescribed by USDA to all beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by USDA. This notice must state that:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries or prospective beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(iv) Beneficiaries or prospective beneficiaries may report violations of these protections (including denials of services or benefits) by an organization to USDA (or, the intermediary, if applicable).

(2) When appropriate and feasible, as determined by the USDA awarding agency, this written notice may also include a notice to beneficiaries and prospective beneficiaries about how to obtain information about other federally funded service providers in their area that provide the services available under the applicable program.

(3) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(d) Nothing in paragraphs (a) through (c) of this section shall be construed to prevent faith-based or religious organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.,* the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.,* or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

■ 28. Add § 16.6 to read as follows:

§ 16.6 Compliance.

USDA agencies will monitor compliance with this part in the course of regular oversight of USDA programs.

■ 29. Revise appendix A to part 16 to read as follows:

Appendix A to Part 16—Notice or Announcement of Award Opportunities

(a) Faith-based or religious organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of this part and 42 U.S.C. 2000bb *et seq.,* USDA will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based or religious organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in the U.S. Constitution and Federal law, including 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based or religious organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. An organization also may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 30. Revise appendix B to part 16 to read as follows:

Appendix B to Part 16—Notice of Award or Contract

(a) A faith-based or religious organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in the U.S. Constitution and Federal law, including 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(b) A faith-based or religious organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also

may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Accordingly, for the reasons set forth in the preamble, USAID proposes to amend 22 CFR part 205 as follows:

Title 22—Foreign Relations

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

■ 31. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 32. Revise § 205.1 to read as follows:

§ 205.1 Grants and cooperative agreements.

(a) As used in this section, the term ''award'' has the definition in 2 CFR 700.1. As used in this section, the following terms have the definitions in 2 CFR 200.1: ''subaward,'' ''pass-through entity,'' ''recipient,'' and ''subrecipient'' as modified by 2 CFR 700.3 to apply to both nonprofit and for-profit entities.

(b) Faith-based organizations are eligible on the same basis as any other organization to receive any U.S. Agency for International Development (USAID) award for which they are otherwise eligible. In the selection of recipients by USAID and subrecipients by pass-through entities, neither USAID nor pass-through entities shall discriminate for, or against, an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization. Notices or announcements of award opportunities shall include language to indicate that faith-based organizations are eligible on the same basis as any other organization and subject to the protections and requirements of Federal law.

(c) Organizations that receive direct Federal financial assistance from USAID under any USAID award or subaward may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of the programs or services directly funded with direct Federal financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. Nothing in this part restricts USAID's authority under applicable federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(d) A faith-based organization that applies for, or participates in, USAID-funded awards or subawards will retain its autonomy, religious character, and independence, and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance from USAID to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, a faith-based organization that receives Federal financial assistance from USAID may use space in its facilities, without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) USAID must implement its awards in accordance with the Establishment Clause. Nothing in this part shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law. USAID will consult with the U.S. Department of Justice if, in implementing a specific program involving overseas acquisition, rehabilitation, or construction of structures used for explicitly religious activities, there is any question about whether such funding is consistent with the Establishment Clause. USAID will describe any program implemented after such consultation on its Web site.

(f) An organization that receives a USAID-funded award or subaward shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(g) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall require faith-based organizations to provide assurances or notices where the Agency does not require them of secular organizations. Any restrictions on the use of award or subaward funds shall apply equally to faith-based and secular organizations. All organizations that receive USAID awards and subawards, including faith-based organizations, must carry out eligible activities in accordance with all award requirements and other applicable requirements that govern the conduct of USAID-funded activities, including those that prohibit the use of direct Federal financial assistance from USAID to engage in explicitly religious activities. No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall disqualify faith-based organizations from receiving USAID awards because such organizations are motivated or influenced by religious faith to provide social services or other assistance, or because of their religious character or affiliation.

(h) A religious organization does not forfeit its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, when the organization receives Federal financial assistance from USAID.

(i) If a USAID award requires an organization to be a ''nonprofit organization'' in order to be eligible for funding, the individual solicitation will specifically indicate the requirement for nonprofit status in the eligibility section of the solicitation. Potential applicants should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID awards in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (i)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(j) Decisions about awards of USAID Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization, or lack thereof.

(k) Nothing in this part shall be construed as authorizing the use of USAID funds for the acquisition, construction, or rehabilitation of religious structures inside the United States.

(l) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

(m) Nothing in this section shall be construed in such a way as to advantage, or disadvantage, faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

For the reasons set forth in the preamble, HUD proposes to amend 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 33. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.;* 42 U.S.C. 14043e *et seq.;* Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 34. Section 5.109 is amended by:

■ a. In paragraph (a), removing the words ''Executive Order 13831, entitled ''Establishment of a White House Faith and Opportunity Initiative'' '' and adding, in their place, the words ''Executive Order 14015, entitled ''Establishment of the White House Office of Faith-Based and Neighborhood Partnerships'' ''.

■ b. In paragraph (b), revising the definition of ''Indirect Federal financial assistance''.

■ c. Removing the introductory text of paragraph (c).

■ d. Revising paragraphs (c)(1) through (3).

■ e. In paragraph (c)(4) removing the word ''availability'' and adding, in its place, the word ''opportunity''.

■ f. Revising paragraphs (d)(1), (g) and (h).

■ g. In paragraph (l)(3) adding an ''or'' at the end of the sentence.

■ h. In paragraph (l)(4) removing ''; or'' and adding, in its place, a period.

■ i. Removing paragraph (l)(5).

The revisions read as follows:

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

* * * * *

(b) * * *

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of an adequate secular alternative is a significant factor in determining whether a program affords true private choice.

* * * * *

(c) *Equal participation of faith-based organizations in HUD programs and activities.* (1) Faith-based organizations are eligible, on the same basis as any other organizations, to participate in any HUD program or activity for which they are otherwise eligible, considering any permissible accommodations on a case-by-case basis in accordance with the Constitution and laws of the United States. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate for or against an organization on the basis of the organization's religious character, motives, affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(2) Nothing in this section shall be construed to preclude HUD from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(3) HUD shall not disqualify an organization from participating in any HUD program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and, in accordance with the Constitution and laws of the United States, HUD has determined that it would deny the accommodation.

* * * * *

(d) * * *

(1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its autonomy, right of expression, religious character, authority over its governance, and independence, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs; provided that, it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization.

* * * * *

(g) *Nondiscrimination and beneficiary protection notice requirements*—(1) *Nondiscrimination.* Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services with such assistance or carrying out activities with such assistance, discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that

participates in a program funded by indirect Federal financial assistance need not modify its program or activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(2) *Beneficiary protection notice.* An organization providing services under a program supported by direct Federal financial assistance from HUD must give written notice to a beneficiary and prospective beneficiary of certain protections in a manner and form prescribed by HUD, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This notice must include the following:

(i) Nondiscrimination requirements of paragraph (g)(1) of this section;

(ii) Prohibitions with respect to explicitly religious activities as set forth in paragraph (e) of this section; and

(iii) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Office of Faith-Based and Neighborhood Partnerships or the intermediary that awarded funds to the organization.

(3) *Notice timing.* The written notice described in paragraph (g)(2) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections at the earliest available opportunity.

(4) *Alternative option information.* When applicable, as determined by HUD, the notice described in paragraph (g)(2) of this section may also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(h) *No additional assurances from faith-based organizations.* A faith-based organization is not rendered ineligible by its religious nature to access and participate in HUD programs. Absent regulatory or statutory authority, no notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering Federal financial assistance from HUD shall require otherwise eligible faith-based organizations to provide assurances or notices where they are not required of similarly situated secular organizations. All organizations that participate in HUD programs or activities, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering financial assistance from HUD shall disqualify otherwise eligible faith-based organizations from participating in HUD's programs or activities because such organization is motivated or influenced by religious faith to provide such programs and activities, or because of its religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

* * * * *

■ 35. Appendix A to subpart A of part 5 is amended by revising paragraphs (a) and (b) to read as follows:

Appendix A to Subpart A of Part 5—Notice of Funding Opportunity

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at § 5.109, and subject to the protections and requirements of 42 U.S.C. 2000bb *et seq.,* HUD will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

* * * * *

DEPARTMENT OF JUSTICE

For the reasons set forth in the preamble, the Attorney General proposes to amend 28 CFR part 38 as follows.

Title 28—Judicial Administration

PART 38—PARTNERSHIPS WITH FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

■ 36. The authority citation for part 38 continues to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; 18 U.S.C. 4001, 4042, 5040; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107–273, 116 Stat. 1758; Pub. L. 109–162, 119 Stat. 2960; 34 U.S.C. 10152, 10154, 10172, 10221, 10382, 10388, 10444, 10446, 10448, 10473, 10614, 10631, 11111, 11182, 20110, 20125; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

■ 37. Revise § 38.1 to read as follows:

§ 38.1 Purpose.

The purpose of this part is to implement Executive Order 13279, Executive Order 13559, and Executive Order 14015.

■ 38. Section 38.3 is amended by revising paragraphs (a), (b)(2), and (d) to read as follows:

§ 38.3 Definitions.

(a) ''Direct Federal financial assistance'' or ''Federal financial assistance provided directly'' refers to situations in which the Government or an intermediary (under this part) selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via a grant or cooperative agreement). This includes recipients of sub-grants that receive Federal financial assistance through State administering agencies or State-administered programs. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of ''indirect Federal financial assistance'' or ''Federal financial assistance provided indirectly.''

(b) * * *

(2) The service provider receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of an adequate secular alternative is a significant factor in determining whether a program affords a genuinely independent and private choice.

* * * * *

(d) ''Department program'' refers to a discretionary, formula, or block grant program administered by or from the Department.

* * * * *

■ 39. Revise § 38.4 to read as follows:

§ 38.4 Policy.

(a) Faith-based organizations are eligible, on the same basis as any other organizations, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any State or local government receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) Nothing in this part shall be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(c) The Department shall not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

(d) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion, religious belief, or lack thereof.

■ 40. Section 38.5 is amended by:

■ a. Revising paragraphs (c) through (f).

■ b. Adding the word ''or'' at the end of paragraph (g)(3).

■ c. Removing ''; or'' and adding a period in its place at the end of paragraph (g)(4).

■ d. Removing paragraph (g)(5).

The revisions read as follows:

§ 38.5 Responsibilities.

* * * * *

(c) Any organization that participates in programs funded by Federal financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that receives indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that the Department or a State or local government uses in administering Federal financial assistance from the Department shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, including religious ones, that participate in Department programs must carry out all eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance from the Department to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant, document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering Federal financial assistance from the Department shall disqualify faith-based or religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services; because of their religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(e) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization receives direct or indirect Federal financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. In this case, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(f) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select organizations to provide services funded by the Federal Government, the intermediary must ensure the compliance of the recipient of a contract, grant, or agreement with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

* * * * *

§ 38.5 [Amended]

■ 41. Revise § 38.6 to read as follows:

§ 38.6 Procedures.

(a) If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(b) An organization providing social services under a program of the Department supported by direct Federal financial assistance must give written notice to a beneficiary and prospective beneficiary of certain protections in a manner and form prescribed by the Office for Civil Rights, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This notice must include the following information:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a

written complaint with the Office for Civil Rights or the intermediary that awarded funds to the organization.

(c) The written notice described in paragraph (b) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections at the earliest available opportunity.

(d) When applicable, as determined by the Department, the notice described in paragraph (b) of this section may also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(e) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

■ 42 Revise appendix A to part 38 to read as follows:

Appendix A to Part 38—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and 42 U.S.C. 2000bb *et seq.* The Department of Justice will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 43. Revise appendix B to part 38 to read as follows:

Appendix B to Part 38—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

DEPARTMENT OF LABOR

For the reasons set forth in the preamble, DOL proposes to amend 29 CFR part 2 as follows:

Title 29—Labor

PART 2—GENERAL REGULATIONS

■ 44. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 13198, 3 CFR, 2001 Comp., p. 750; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

Subpart D—Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

■ 45. Section 2.31 is amended by revising paragraph (a)(2)(ii) and the second sentence of paragraph (d) to read as follows:

§ 2.31 Definitions.

* * * * *:

(a) * * *

(2) * * *

(ii) The organization receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

* * * * *

(d) * * * Such programs include, but are not limited to, the one-stop delivery system, Job Corps, and other programs supported through the Workforce Innovation and Opportunity Act.

* * * * *

■ 46. Revise § 2.32 to read as follows:

§ 2.32 Equal participation of faith-based organizations.

(a) Faith-based organizations are eligible, on the same basis as any other organizations, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL and DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization, although this requirement does not preclude DOL, DOL social service providers, or State or local governments administering DOL support from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws. Notices and announcements of award opportunities and notices of awards and contracts shall include language substantially similar to that in appendices A and B, respectively, to this subpart.

(b) A faith-based organization that is a DOL social service provider retains its autonomy; right of expression; religious character; and independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Among other things, a faith-based organization must be permitted to:

(1) Use its facilities to provide DOL-supported social services without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(2) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on the basis of their acceptance of or adherence to the religious requirements or standards of

the organization, and including religious references in its mission statements and other governing documents.

(c) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of financial assistance under a grant shall apply equally to faith-based and non-faith-based organizations. All organizations, including religious ones that are DOL social service providers, must carry out DOL-supported activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance for explicitly religious activities (including worship, religious instruction, or proselytization), subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program shall disqualify faith-based or religious organizations from receiving DOL support or participating in DOL programs because such organizations are motivated or influenced by religious faith to provide social services; because of their religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(d) DOL shall not disqualify an organization from participating in any DOL program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and DOL has determined that it would deny the accommodation.

■ 47. Section 2.33 is amended by revising the second sentence of paragraph (a) and paragraphs (b)(1) and (c) to read as follows:

§ 2.33 Responsibilities of DOL, DOL social service providers, and State and local governments administering DOL support.

(a) * * * However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. * * *

(b)(1) Organizations that receive direct Federal financial assistance may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct Federal financial assistance. If an organization conducts such explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance, and participation must be voluntary for beneficiaries of the programs and services funded with such assistance.

* * * * *

(c) If a DOL social service intermediary provider, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the DOL social service intermediary provider must ensure the recipient's compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance. If the DOL social service intermediary provider is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 48. Add § 2.34 to read as follows:

§ 2.34 Written notice to beneficiaries.

(a) Organizations providing social services to beneficiaries under programs supported by direct Federal financial assistance from DOL must give written notice to beneficiaries and prospective beneficiaries of certain protections. The required language for this written notice to beneficiaries is set forth in appendix C to this subpart. The notice includes the following:

(1) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) Beneficiaries and prospective beneficiaries may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with DOL's Civil Rights Center, 200 Constitution Ave. NW, Room N–4123, Washington, DC 20210, or by email to *CRCExternalComplaints@dol.gov*; and

(5) Beneficiaries and potential beneficiaries may seek information about whether there are any other federally funded organizations that provide these kinds of services in their area by calling DOL's US2–JOBS helpline toll-free at 1–877–US2–JOBS (1–877–872–5627) or TTY 1–877–889–5627.

(b) The written notice set forth in appendix C to this subpart must be given to prospective beneficiaries before they enroll in the program or receive services from the program. The written notice may be incorporated into materials that are otherwise provided to prospective beneficiaries. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

■ 49. Revise § 2.37 to read as follows:

§ 2.37 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives direct or indirect Federal financial assistance from DOL. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. In this case, to determine the scope of any applicable requirements,

recipients and potential recipients should consult with the appropriate DOL program office or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N4123, Washington, DC 20210, (202) 693–6500. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to reach the above number through telecommunications relay services.

■ 50. Section 2.38 is amended by:

■ a. Revising paragraphs (b)(3) and (4).

■ b. Removing paragraph (b)(5).

The revisions read as follows:

§ 2.38 Status of nonprofit organizations.

* * * * *

(b) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

■ 51. Add appendix A to subpart D to read as follows:

Appendix A to Subpart D of Part 2—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and subject to the protections and requirements of this subpart and 42 U.S.C. 2000bb *et seq.* DOL will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, exercise, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment to the Constitution and any other applicable requirements. In providing services financially assisted by DOL, an organization may not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 52. Add appendix B to subpart D to read as follows:

Appendix B to Subpart D of Part 2—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment to the Constitution, 42 U.S.C. 2000bb *et seq.,* 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(b) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment to the Constitution and any other applicable requirements. In providing services financially assisted by DOL, an organization may not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 53. Add appendix C to subpart D to read as follows:

Appendix C to Subpart D of Part 2—Written Notice of Beneficiary Protections

[Name of Organization]

[Name of Program]

[Contact Information for Program Staff (name, phone number, and email address, if appropriate)]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Labor's Civil Rights Center, 200 Constitution Ave. NW, Room N–4123, Washington, DC 20210, or by email to *CRCExternalComplaints@dol.gov*; and

(5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please call toll-free 1–877–US2–JOBS (1–877–872–5627) or TTY 1–877–889–5627.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or urgent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

Appendix A to Part 2 [Removed]

■ 54. Remove appendix A to part 2.

Appendix B to Part 2 [Removed]

■ 55. Remove appendix B to part 2.

DEPARTMENT OF VETERANS AFFAIRS

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 50, 61, and 62 as follows:

Title 38—Pensions, Bonuses, and Veterans' Relief

PART 50—EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS

■ 56. The authority citation for part 50 continues to read as follows:

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

■ 57. Amend § 50.1 by revising paragraph (b)(2) to read as follows:

§ 50.1 Definitions.

* * * * *

(b) * * *

(2) The organization receives the assistance wholly as a result of a genuinely, independent and private choice of the beneficiary. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

* * * * *

■ 58. Revise § 50.2 to read as follows:

§ 50.2 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any VA program or service for which they are otherwise eligible. Neither the VA program nor any State or local government or other pass-through entity receiving funds under any VA program shall, in the selection of service

providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) Organizations that receive direct financial assistance from a VA program may not engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct financial assistance from the VA program, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the VA program, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based organization that participates in programs or services funded by a VA program will retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives direct Federal financial assistance may use space in its facilities to provide programs or services funded with financial assistance from the VA program without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance from a VA program does not lose the protections of law. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its mission statements and other governing documents.

(d) Any organization that participates in programs funded by Federal financial assistance from the Department shall not, in providing services, to include any outreach activities funded by such financial assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization receiving indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(e) A faith-based organization is not rendered ineligible by its religious exercise or affiliation to access and participate in VA programs. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a VA program or a State or local government in administering Federal financial assistance from any VA program shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in VA programs or services, including faith-based ones, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by VA or a State or local government in administering financial assistance from VA shall disqualify faith-based organizations from participating in the VA programs or services because such organizations are motivated or influenced by religious faith to provide social services; because of their religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(f) Nothing in this part shall be construed to preclude VA from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(g) VA shall not disqualify an organization from participating in any VA program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and VA has determined that it would deny the accommodation.

(h) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization receives direct or indirect Federal financial assistance from a VA program. Some VA programs, however, contain independent statutory provision affecting a recipient's ability to discriminate in employment. In this case, recipients should consult with the appropriate VA program office if they have questions about the scope of any applicable requirements.

(i) In general, VA programs do not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under VA programs. Some grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate VA program office to determine the scope of any applicable requirements. In VA programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (i)(1) through (3) of this section if that

item applies to a State or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate.

(j) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement VA program-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provision of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

(k) Decisions about awards of Federal financial assistance must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization, and must be free from political interference or even the appearance of such interference.

(l) Neither VA nor any State or local government or other pass-through entity receiving funds under any VA program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(m) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 59. Add § 50.3 to reads as follows:

§ 50.3 Notice requirements.

(a) An organization providing social services under a program of VA supported by direct Federal financial assistance must give written notice to a beneficiary and prospective beneficiary of certain protections, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This notice must include the following:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the VA program or the intermediary that awarded funds to the organization.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections at the earliest available opportunity.

(c) When applicable, as determined by VA, the notice described in paragraph (a) of this section may also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(d) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

■ 60. Revise Appendix A to part 50 to read as follows:

Appendix A to Part 50—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of this part and 42 U.S.C. 2000bb *et seq.,* VA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious and conscience freedom protections in Federal law.

(c) A faith-based organization may not use direct financial assistance from VA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by VA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 61. Revise appendix B to part 50 to read as follows:

Appendix B to Part 50—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct financial assistance from VA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by VA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 62. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2013, 2061, 2064.

■ 63. Amend § 61.64 by revising paragraphs (b)(2) and (g) to read as follows:

§ 61.64 Faith-based organizations.

* * * * *

(b) * * *

(2) For purposes of this section, ''Indirect financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuinely independent and private choice of a beneficiary. The availability of adequate secular alternatives is a

significant factor in determining whether a program affords true private choice. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph (b)(2).

* * * * *

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuinely independent and private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 64. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 65. Amend § 62.62 by revising paragraphs (b)(2) and (g) to read as follows:

§ 62.62 Faith-based organizations.

* * * * *

(b) * * *

(2) For purposes of this section, ''Indirect financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuinely independent and private choice of a beneficiary. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph (b)(2).

* * * * *

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuinely independent and private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons set forth in the preamble, HHS proposes to amend 45 CFR part 87 as follows:

Title 45—Public Welfare

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

■ 66. The authority citation for part 87 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.*

■ 67. Section 87.1 is amended by revising paragraph (c) to read as follows:

§ 87.1 Definitions.

* * * * *

(c) *Indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of Government-funded payment provided to a beneficiary who is able to make a choice of a service provider, and:

(1) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion and

(2) The service provider receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

* * * * *

■ 68. Section 87.2 is amended by revising paragraph (a) to read as follows:

§ 87.2 Applicability.

* * * * *

(a) *Discretionary grants.* This part is not applicable to the discretionary grant programs that are governed by the Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice regulations found at 42 CFR part 54a. This part is also not applicable to discretionary grant programs that are governed by the Community Services Block Grant (CSBG) Charitable Choice regulations at 45 CFR part 1050, with the exception of §§ 87.1 and 87.3(i) through (l) which do apply to such CSBG discretionary grants. Discretionary grants authorized by the Child Care and Development Block Grant Act are also not governed by this part.

* * * * *

■ 69. Section 87.3 is amended by:
■ a. Revising paragraph (a).
■ b. Redesignating paragraphs (b) through (h) and (i) through (k) as paragraphs (d) through (j) and (o) through (q), respectively.
■ c. Adding new paragraphs (b) and (c).
■ d. Removing note 1 following newly redesignated paragraph (e).
■ e. Revising newly redesignated paragraphs (f) through (h) and (i)(3) and (4).
■ f. Removing newly redesignated paragraph (i)(5).
■ g. Adding new paragraphs (k) through (n).

The revisions and additions read as follows:

§ 87.3 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, and considering any permissible accommodation, to participate in any HHS awarding agency program or service for which they are otherwise eligible. Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds under any HHS awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the

organization's religious character motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) Nothing in this part shall be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(c) The Department shall not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(f) An organization, whether faith-based or not, that receives Federal financial assistance shall not, with respect to services or activities funded by such financial assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, a faith-based organization receiving indirect Federal financial assistance need not modify any religious components or integration with respect to its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, whether faith-based or not, that participate in HHS awarding agency programs or services must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall disqualify faith-based organizations from participating in the HHS awarding agency's programs or services because such organizations are motivated or influenced by religious faith to provide social services because of their religious character or affiliation, or lack thereof; or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in the Civil Rights Act of 1964, 42 U.S.C. 2000e–1 and 2000e–2 and the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2), is not forfeited when the faith-based organization receives direct or indirect Federal financial assistance from an HHS awarding agency. Some HHS awarding agency programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. In this case, grantees should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements.

(i) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (i)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

* * * * *

(k) An organization providing social services under a program of the Department supported by direct Federal financial assistance must give written notice to a beneficiary and prospective beneficiary of certain protections. Such notice may be given in the form specified in appendix A of this part. This notice must include the following information:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with either the HHS awarding entity or the pass-through entity that awarded funds to the organization, which must promptly report the complaint to the HHS awarding entity. The HHS awarding entity will address the complaint in consultation with the HHS Office for Civil Rights.

(l) The written notice described in paragraph (k) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections provide the notice at the earliest available opportunity.

(m) The written notice described in paragraph (k) of this section must be given in a manner prescribed by the HHS awarding agency in consultation with the HHS Office for Civil Rights, such as by incorporating the notice into materials that are otherwise provided to beneficiaries. When applicable, as also determined by the HHS awarding agency in consultation with the HHS Office for Civil Rights, the notice may also inform each beneficiary or prospective beneficiary of the option to seek information as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(n) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices B and C of this part.

* * * * *

■ 70. Revise § 87.4 to read as follows:

§ 87.4 Severability.

To the extent that any provision of this part is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

Appendices A and B to Part 87 [Redesignated as Appendices B and C to Part 87]

■ 71. Appendices A and B to part 87 are redesignated as appendices B and C to part 87, respectively.

■ 72. Add a new appendix A to part 87 to read as follows:

Appendix A to Part 87—Notice of Beneficiary Protections.

[Insert Name of Organization]

[Insert Name of Program]

[Insert Contact information for Program Staff (name, phone number, and email address, if appropriate)]

Because this program is supported in whole or in part by direct financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by a beneficiary in such activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;
- You may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with [Insert name of the HHS awarding entity], [If applicable, insert ''or'' and identify the name of any pass-through entity that awarded funds to your organization], which will then address the complaint in consultation with the HHS Office for Civil Rights;
- We must give you this notice before you enroll in the program or receive services from us; however, when the nature of the service provided or exigent circumstances make it impracticable to provide you with this notice in advance of the actual service, we must advise you of these protections at the earliest available opportunity; and
- [When applicable, insert name of individual and phone number, or other resource such as website, where information as to whether there are any other federally funded organizations in this geographic area that provide the services available under the applicable program may be sought].

■ 73. Revise newly redesignated appendix B to part 87 to read as follows:

Appendix B to Part 87—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of this part and 42 U.S.C. 2000bb *et seq*. The Department will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(c) A faith-based organization may not use direct financial assistance from the Department to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 74. Revise newly redesignated appendix C to part 87 to read as follows:

Appendix C to Part 87—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(b) A faith-based organization may not use direct financial assistance from the Department to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Miguel A. Cardona,

Secretary, U.S. Department of Education.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Thomas J. Vilsack,

Secretary, U.S. Department of Agriculture.

Colleen R. Allen,

Assistant Administrator, Bureau for Management, U.S. Agency for International Development.

Marcia L. Fudge,

Secretary, U.S. Department of Housing and Urban Development.

Dated: November 28, 2022.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

Denis McDonough,

Secretary, U.S. Department of Veterans Affairs.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2022–28376 Filed 1–12–23; 8:45 am]

BILLING CODE 4000–01–P, 9112–FH–P, 3410–14–P, 6116–01–P, 4210–67–P, 4410–18–P, 4510–45–P, 8320–01–P, 4150–27–P

FEDERAL REGISTER

Vol. 88 Friday,
No. 9 January 13, 2023

Part III

Department of the Interior

Bureau of Indian Affairs
25 CFR Part 226
Mining of the Osage Mineral Estate for Oil and Gas; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

[Docket No. BIA–2022–0006; 2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0180, 1012–0004, 1012–0006]

RIN 1076–AF59

Mining of the Osage Mineral Estate for Oil and Gas

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to revise the regulations governing leasing of the Osage Nation's mineral estate (''Osage Mineral Estate'') for oil and gas mining. The proposed rule would allow the BIA to strengthen management of the Osage Mineral Estate by updating bonding, royalty payment and reporting, production valuation and measurement, site security, and operational requirements to address changes in technology and industry standards that have occurred in the 47 years since the regulations were issued. The proposed rule would also allow the BIA to respond to recommendations made by the Office of Inspector General, U.S. Department of the Interior (OIG).

DATES: *Proposed Regulations:* Submit your comments on the proposed rule to the BIA on or before March 17, 2023. *Information Collection Requirements:* Submit your comments on the information collection requirements in the proposed rule on or before March 17, 2023. *Public Meeting:* A public meeting will be held on February 8, 2023, 6:30 p.m. to 9 p.m. central time.

ADDRESSES:

Proposed Regulations: You may submit your comments on the proposed rule by any of the methods listed below.

- *Federal Rulemaking Portal: https://www.regulations.gov.* Enter ''RIN 1076–AF59'' in the search box and click ''Search.'' Follow the instructions for sending comments.
- *Mail:* U.S. Department of the Interior, Eastern Oklahoma Region, Bureau of Indian Affairs, Attn: Regional Director, P.O. Box 8002, Muskogee, OK 74402. All submissions must include the words ''Bureau of Indian Affairs'' or ''BIA'' and ''RIN 1076–AF59.''
- *Hand Delivery/Courier:* U.S. Department of the Interior, Eastern Oklahoma Region, Bureau of Indian Affairs, Attn: Regional Director, 3100 W Peak Boulevard, Muskogee, OK 74402.

Public Meeting: The BIA is holding a public meeting on the Proposed Rule on Wednesday, February 8, 2023, from 6:30 p.m. to 9 p.m. central time at the Osage Casino and Hotel, 5591 W Rogers Boulevard, Skiatook, OK 74070. Please see **SUPPLEMENTARY INFORMATION**, Section II, Public Comment Procedures, for details.

Information Collection Requirements: Comments on the information collection requirements in the proposed rule must be submitted to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104; or by email to *comments@bia.gov* with a copy to *ONRR_RegulationsMailbox@onrr.gov.* All submissions must include the applicable Office of Management and Budget (OMB) Control Number(s) for the BIA or ONRR information collection(s) you are commenting on:

- OMB Control Number 1076–0180, Mining of the Osage Mineral Estate for Oil and Gas.
- OMB Control Number 1012–0004, Royalty and Production Reporting.
- OMB Control Number 1012–0006, Suspensions Pending Appeal and Bonding.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, (202) 738–6065, *comments@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Public Comment Procedures
III. Background
IV. Incorporation by Reference of Industry Standards
V. Discussion of Proposed Changes
VI. Procedural Matters

I. Executive Summary

The purpose of this proposed rule is to amend 25 CFR part 226, Leasing of Osage Reservation Lands for Oil and Gas Mining, to strengthen the Bureau of Indian Affairs' (BIA) management and administration of the Osage Mineral Estate. The last major substantive revisions to the regulations in 25 CFR part 226 occurred in 1974, with many provisions having remained virtually unchanged since well before then. As a result, the regulations are outdated, inconsistent with industry standards, and do not reflect technological advancements or modern oil and gas operations within the Osage Mineral Estate. The BIA believes that the proposed rule updating the regulations makes critical changes that will improve accounting and production measurement standards; offer consistency in production valuation; address inadequate bonding; support the implementation of electronic reporting systems; enhance accountability; clarify lessees' obligations; prevent waste; promote safe and environmentally sound operations; and protect resource values. The BIA also believes that the proposed rule will allow it to take the necessary actions to resolve certain recommendations made by the Office of Inspector General, U.S. Department of the Interior (OIG).

In 2013, the OIG performed an assessment of the BIA Osage Agency's effectiveness in managing the Osage Mineral Estate. On October 20, 2014, the OIG issued its final evaluation report, titled ''BIA Needs Sweeping Changes to Manage the Osage Nation's Energy Resources.'' While the OIG acknowledged the complexity of managing the Osage Mineral Estate due, in part, to the number of competing interests, it documented multiple deficiencies in the BIA Osage Agency's management of the oil and gas program and called for broad reform.

The OIG report set forth 33 recommendations for improvement of the BIA Osage Agency's oil and gas program. The first issue the OIG report addressed was deficiencies in the regulations in 25 CFR part 226. Specifically, the OIG found that the existing regulations are vague, inadequate, and fail to mirror the oil and gas regulations governing the rest of Indian country. Accordingly, the OIG recommended that the BIA ''use its authority to correct program deficiencies by modifying 25 CFR part 226 to mirror other Indian Country oil and gas regulations.'' The OIG also identified issues with accounting, reconciliation, bonding requirements, royalty and production reporting, inspections, lease compliance, and enforcement measures, among other things. The BIA Osage Agency resolved 26 of the OIG's recommendations through the implementation of new and revised policies and procedures but determined that the remaining seven recommendations could not be fully resolved without revision of the regulations in 25 CFR part 226.

This proposed rule modernizes the regulations and brings them in line with the regulations governing oil and gas leasing and development throughout the rest of Indian country consistent with the OIG's recommendation. In addition, the proposed rule will allow the BIA Osage Agency to respond to the open OIG recommendations regarding engagement of the Office of Natural Resources Revenue (ONRR) to perform accounting and compliance activities,

implementation of ONRR's electronic reporting systems, reconciliation of royalty payments, verification of allowances and arm's-length sales transactions, and the implementation of sampling thresholds. These revisions are critical to ensure that oil and gas produced from the Osage Mineral Estate is properly accounted for and lessees timely pay the correct and full amount of royalties due to the Osage Nation.

II. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BIA by mail, hand delivery/courier, or through *https://www.regulations.gov* (see **ADDRESSES**). Please make your comments on the proposed rule as specific as possible, provide a detailed explanation of any changes you recommend, and include any relevant supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposed rule that you are addressing. The BIA is not obligated to consider comments received after the comment period closes (see **DATES**) or comments delivered to an address, or using methods other than, those identified (see **ADDRESSES**).

Comments, including the names and street addresses of respondents, will be available for public review at the BIA Eastern Oklahoma Regional Office, 3100 W Peak Boulevard, Muskogee, OK 74402, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the BIA to withhold your personal identifying information from public review in your comment, we cannot guarantee that we will be able to do so. As discussed in detail below, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, you must send such comments directly to the OMB (see **ADDRESSES**).

The BIA is holding a public meeting on the Proposed Rule on Wednesday, February 8, 2023, from 6:30 p.m. to 9 p.m. central time at the Osage Casino and Hotel, 5591 West Rogers Boulevard, Skiatook, OK 74070. At the meeting, you may sign up for a two-minute time slot to provide verbal comments on the Proposed Rule. The BIA requests that groups or organizations wishing to provide verbal comments elect a single representative to speak on behalf of the group or organization.

III. Background

A. Osage Allotment Act

In 1872, the U.S. Congress established a reservation for the Osage Nation in the Oklahoma Territory. On June 16, 1906, Congress passed the Oklahoma Enabling Act, Public Law 59–234, 34 Stat. 256, joining the Oklahoma Territory with Indian Territory to form the state of Oklahoma. Shortly thereafter, Congress passed the Act of June 28, 1906, Public Law 59–321, 34 Stat. 539 (1906 Act), titled an ''Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory.'' The 1906 Act provided for the allotment of the Osage Nation's lands to individual Tribal members. Upon statehood in 1907, the Osage Indian Reservation, comprising approximately 1,475,000 acres, became Osage County, Oklahoma.

Section 3 of the 1906 Act, as amended, severed the surface estate from the subsurface mineral estate, reserving all oil, gas, coal, and other minerals to the Osage Nation in perpetuity. Accordingly, the United States holds the subsurface mineral estate in Osage County, Oklahoma (''Osage Mineral Estate'') in trust for the benefit of the Osage Nation. The 1906 Act authorizes the Osage Nation to lease the Osage Mineral Estate for oil, gas, and other mineral development ''with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe.'' The Secretary of the Interior delegated this authority to the Superintendent of the BIA Osage Agency. See 209 Departmental Manual 8.1(A).

Section 4 of the 1906 Act, as amended, required that the United States hold the revenues derived from the Osage Mineral Estate in trust and distribute the funds to individual Tribal members on the authorized roll of membership in a timely (quarterly) and proper (pro rata with interest) basis. This prospective right to share in the royalties, rental, and bonuses derived from the Osage Mineral Estate is referred to as a ''headright.'' See Act of October 30, 1984, Pub. L. 98–605, section 11, 98 Stat. 3163.

B. Osage Tribal Trust Settlement and Negotiated Rulemaking

On October 14, 2011, the United States and Osage Nation signed the Osage Tribal Trust Settlement (Settlement) resolving litigation regarding the United States' alleged mismanagement of the Osage Mineral Estate along with other unrelated breach of trust claims. As part of the Settlement, the Department of the Interior (Department) agreed to engage in negotiated rulemaking with the Osage Nation pursuant to 5 U.S.C. 561–570a and revise the regulations in 25 CFR part 226 to improve management of the Osage Mineral Estate. The negotiated rulemaking process began on June 18, 2012, when the Department published a notice of the intent to establish an Osage Negotiated Rulemaking Committee (Committee). See 77 FR 36226.

On July 31, 2012, the Department announced the establishment of the Committee, comprised of four Federal Government representatives and five members of the Osage Minerals Council who were selected by Council vote. See 77 FR 45301. The Osage Minerals Council representatives on the Committee identified five priority areas to be discussed during negotiations: (1) modernization of royalty value and royalty rate for oil production; (2) modernization of royalty value, royalty rate, and royalty calculations for gas production; (3) strengthening drilling obligations for oil lessees; (4) requiring detailed electronic reporting by all lessees; and (5) strengthening oil gauging and gas meter inspection, calibration, and adjustment.

The Committee held the first public meeting in August 2012 and, except for December 2012, met monthly until April 2013. On April 25, 2013, the Negotiated Rulemaking Committee submitted its Consensus Report to the Department on a package of proposed revisions to the regulations, completing the negotiated rulemaking process required by the Settlement. The Department published the proposed rule based on the Committee's recommendations on August 28, 2013. See 78 FR 53083. The Department received, evaluated, and responded to a significant number of public comments on the proposed rule and amended the regulations to make necessary changes in accordance therewith. On May 11, 2015, the Department published the final rule, which had an effective date of July 10, 2015. See 80 FR 26994.

On July 1, 2015, the Osage Minerals Council and Osage Producers Association each filed suit in the U.S. District Court for the Northern District of Oklahoma (Court), seeking to enjoin implementation of the final rule. The arguments advanced in the lawsuits included, among other things, claims that the final rule conflicted with the 1906 Act, would impose administrative costs that would lead to decreased

production, and the Department failed to complete the analyses required by the Regulatory Flexibility and Small Business Regulatory Enforcement Acts. The Court consolidated the two lawsuits and entered an order enjoining implementation of the final rule pending resolution of the litigation.

Upon review of the issues raised in the litigation, the Department determined that a voluntary remand of the final rule was appropriate. The Osage Minerals Council and Osage Producers Association supported such action. On November 19, 2015, the Department filed the Joint Motion for Voluntary Remand and the Court, in turn, entered the Judgment of Remand. As a result of the remand, the 2015 final rule never went into effect. Accordingly, the version of 25 CFR part 226 that was in effect prior to publication of the final rule remained operative. To ensure that the correct version of the regulations appeared in the CFR, the Department published a final rule formally confirming that the prior version of 25 CFR part 226 (last updated in 1974) remained in full force and effect. See 81 FR 39572.

C. Current Rulemaking

Following remand of the 2015 final rule, the BIA determined that it was appropriate to review the regulations in 25 CFR part 226 to consider whether, and to what extent, the regulations should be revised to strengthen the BIA's management and administration of the Osage Mineral Estate. On September 22, 2016, the BIA mailed letters to the Principal Chief of the Osage Nation and Chairman of the Osage Minerals Council requesting government-to-government consultation (consultation) regarding the need for such revisions. On October 25, 2016, the BIA held a consultation with representatives from the Osage Nation Executive and Legislative Branches, the Osage Minerals Council, and their legal counsel, in Pawhuska, Oklahoma. The outcome of the consultation was agreement by all parties that revision of the regulations was necessary. See Section VI, Procedural Matters, for additional information regarding the Tribal consultation process for the proposed rule.

The current effort to revise the regulations in 25 CFR part 226 is not a continuation of the negotiated rulemaking process undertaken pursuant to the Settlement, nor is it a republication of the 2015 final rule.

IV. Incorporation by Reference of Industry Standards

This proposed rule would incorporate industry standards and recommended practices, either in whole or in part, without republishing the standards in their entirety in the CFR. This practice is known as incorporation by reference (IBR). These standards currently apply to all federal and Indian lands except those within Osage County, Oklahoma. The BIA reviewed these standards and determined that they achieve the intent of 25 CFR 226.106 through 226.116 and 25 CFR 226.120 through 226.141 of the proposed rule. The proposed rule proposes to incorporate the versions of the standards listed. Some of the standards referenced would be incorporated in their entirety. For other standards, the BIA would incorporate only those sections that are relevant to the rule, meet the intent of 25 CFR 226.0, and do not require further clarification.

The National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, 15 U.S.C. 3701, *et seq.,* states that ''all Federal agencies and departments shall use technical standards that are developed by consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies or departments,'' subject to certain exceptions. The BIA may incorporate these standards into its regulations by reference without republishing the standards in their entirety in the regulations. The legal effect of IBR is that the incorporated standards would become regulatory requirements. The incorporated standards, like any other regulation, have the force and effect of law. Accordingly, lessees and other regulated parties would be required to comply with the standards incorporated by reference in the regulations.

The Office of the Federal Register (OFR) regulations governing IBR are set forth in 1 CFR part 51. The industry standards for this proposed rule are eligible for incorporation pursuant to 1 CFR 51.7 because, among other things, they substantially reduce the volume of material published in the **Federal Register**; are published, bound, numbered, and organized; and are readily available to the public free of charge or through purchase from the standards organization or through inspection at the BIA Osage Agency. The IBR language in § 226.0 meets the requirements set forth in 1 CFR 51.9. Where appropriate, the BIA would incorporate by reference an industry standard governing a particular process and impose requirements that add to, or modify, the requirements imposed by that standard (*e.g.,* the BIA sets a specific value for a variable where the industry standard proposed a range of values or options).

All American Petroleum Institute (API) materials are available for inspection and purchase at the API, 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20001, (202) 682–8000. API also offers free, read-only access to the standards in the API IBR Reading Room at *https://publications.api.org.* All American Gas Association (AGA) standards are available for inspection and purchase from AGA, 400 North Capitol Street NW, Suite 450, Washington, DC 20001, (202) 824–7000, *https://www.aga.org/publication-store.* All Gas Processors Association (GPA) standards are available for inspection and purchase from GPA, 6526 E 60th Street, Tulsa, OK 74145, (918) 493–3872, *https://my.midstream association.org/publications-store/ publications.*

The following industry standards and recommendations are proposed for incorporation by reference, in whole or in part, in subpart J of the proposed rule:

- API Manual of Petroleum Measurement Standards (MPMS), Chapter 2—Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method; First Edition, February 1995; Reaffirmed 2017 (''API 2.2A''). This standard describes calibration procedures for upright cylindrical tanks used for storing oil.
- API MPMS Chapter 2—Tank Calibration, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method; First Edition, March 1989; Reaffirmed April 2019; Addendum 1, October 2019 (''API 2.2B''). This standard describes measurement and calibration procedures for determining the diameters of upright welded cylindrical tanks or vertical cylindrical tanks with a smooth surface and either floating or fixed roofs.
- API MPMS Chapter 2—Tank Calibration, Section 2C, Calibration of Upright Cylindrical Tanks Using the Optical-triangulation Method; First Edition, January 2002; Reaffirmed April 2019 (''API 2.2C''). This standard describes a calibration procedure for tanks above 26 feet in diameter with cylindrical courses that are substantially vertical.
- API MPMS Chapter 3.1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products; Third Edition, August 2013; Reaffirmed

December 2018 (''API 3.1A''). This standard describes the: (a) procedures for manually gauging the liquid level of petroleum and petroleum products in non-pressure fixed roof tanks; (b) procedures for manually gauging the level of free water that may be found with the petroleum or petroleum products; (c) methods used to verify the length of gauge tapes under field conditions and the influence of bob weights and temperature on the gauge tape length; and (d) influences that may affect the position of gauging reference point (either the datum plate or the reference gauge point).

- API MPMS Chapter 3—Tank Gauging, Section 1B—Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging; Third Edition, April 2018 (''API 3.1B''). This standard describes the level measurement of liquid hydrocarbons in stationary, above ground, atmospheric storage tanks using ATGs. This standard also discusses automatic tank gauging in general, including the accuracy, installation, commissioning, calibration, and verification of ATGs that measure either innage or ullage.
- API MPMS Chapter 3—Tank Gauging, Section 6, Measurement of Liquid Hydrocarbons by Hybrid Tank Measurement Systems; First Edition, February 2001; Errata September 2005; Reaffirmed January 2017 (''API 3.6''). This standard describes the selection, installation, commissioning, calibration, and verification of Hybrid Tank Measurement Systems. This standard also provides a method of uncertainty analysis to enable users to select the correct components and configurations to address for the intended application.
- API MPMS Chapter 4—Proving Systems, Section 1, Introduction; Third Edition, February 2005; Reaffirmed June 2014 (''API 4.1''). Section 1 is a general introduction to the subject of proving meters.
- API MPMS Chapter 4—Proving Systems, Section 2—Displacement Provers; Third Edition, September 2003; Reaffirmed March 2011; Addendum February 2015 (''API 4.2''). This standard outlines the essential elements of meter provers that do, and do not, accumulate a minimum of 10,000 whole meter pulses between detector switches and provides design and installation details for the types of displacement provers that are currently in use. The provers discussed in this chapter are designed for proving measurement devices under dynamic operating conditions with single-phase liquid hydrocarbons.
- API MPMS Chapter 4.5, Master-Meter Provers; Fourth Edition, June 2016 (''API 4.5''). This standard covers the use of displacement and Coriolis meters as master meters. The requirements in this standard are for single-phase liquid hydrocarbons.
- API MPMS Chapter 4—Proving Systems, Section 6, Pulse Interpolation; Second Edition, May 1999; Errata April 2007; Reaffirmed October 2013 (''API 4.6''). This standard describes how the double-chronometry method of pulse interpolation, including system operating requirements and equipment testing, is applied to meter proving.
- API MPMS Chapter 4.8, Operation of Proving Systems; Second Edition, September 2013 (''API 4.8''). This standard provides information for operating meter provers on single-phase liquid hydrocarbons.
- API MPMS Chapter 4—Proving Systems, Section 9—Methods of Calibration for Displacement and Volumetric Tank Provers, Part 2—Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration; First Edition, December 2005; Reaffirmed July 2015 (''API 4.9.2''). This standard provides all the procedures required to determine the field data necessary to calculate a Base Prover Volume of Displacement Provers by the Waterdraw Method of Calibration.
- API MPMS Chapter 5—Metering, Section 6—Measurement of Liquid Hydrocarbons by Coriolis Meters; First Edition, October 2002; Reaffirmed November 2013 (''API 5.6''). This standard applies to custody-transfer applications for liquid hydrocarbons and covers the API standards used in the operation of Coriolis meters, proving and verification using volume-based methods, installation, operation, and maintenance.
- API MPMS Chapter 6, Metering Assemblies, Section 1—Lease Automatic Custody Transfer (LACT) Systems; Second Edition, May 1991; Reaffirmed May 2012 (''API 6.1''). This standard describes the design, installation, calibration, and operation of a LACT system.
- API MPMS Chapter 7, Temperature Determination, Section 1—Liquid-in-Glass Thermometers; Second Edition, August 2017 (''API 7.1''). This standard describes how to use various types of liquid-in-glass thermometers to accurately determine the temperatures of hydrocarbon liquids. This standard is proposed for incorporation for its standards covering the use of liquid-in-glass thermometers for temperature determination in tank-gauging operations.
- API MPMS Chapter 7—Temperature Determination, Section 2—Portable Electronic Thermometers; Third Edition, May 2018 (''API 7.2''). This standard describes the methods, equipment, and procedures for manually determining the temperature of liquid petroleum and petroleum products by use of a portable electronic thermometer. This standard is proposed for incorporation for its standards covering the use of portable electronic thermometers for temperature determination in tank gauging operations.
- API MPMS Chapter 7—Temperature Determination, Section 4—Dynamic Temperature Measurement; Second Edition, January 2018 (''API 7.4''). This standard describes methods, equipment, installation, and operating procedures for the proper determination of the temperature of hydrocarbon liquids under dynamic conditions in custody transfer applications. This standard is proposed for incorporation for its standards covering the use of dynamic temperature determination in LACT and CMS operations.
- API MPMS Chapter 8.1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products; Fourth Edition, October 2013, (''API 8.1''). This standard covers procedures and equipment for manually obtaining samples of liquid petroleum and petroleum products from the sample point into the primary containers.
- API MPMS Chapter 8.2, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products; Fourth Edition, November 2016 (''API 8.2''). This standard describes general procedures and equipment for automatically obtaining samples of liquid petroleum, petroleum products, and crude oils from a sample point into a primary container.
- API MPMS Chapter 8—Sampling, Section 3—Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products; First Edition, October 1995; Reaffirmed, March 2015 (''API 8.3''). This standard covers the handling, mixing, and conditioning procedures required to ensure that a representative sample of the liquid petroleum or petroleum product is delivered from the primary sample container/receiver into the analytical test apparatus or into intermediate containers.
- API MPMS Chapter 9.1, Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method; Third Edition, December 2012; Reaffirmed, May 2017 (''API 9.1''). This standard

covers the determination of the density, relative density, or API gravity of crude petroleum, petroleum products, or mixtures of petroleum and non-petroleum products normally handed as liquids have a Reid vapor pressure of 101.325 Kilopascal (kPa) (14.696 psi) or less, using a glass hydrometer in conjunction with a series of calculations.

- API MPMS Chapter 9.2, Standard Test Method for Density or Relative Density of Light Hydrocarbons by Pressure Hydrometer; Third Edition, December 2012; Reaffirmed, May 2017 (''API 9.2''). This standard covers the determination of the density or relative density of light hydrocarbons including liquefied petroleum gases having a Reid vapor pressure exceeding 101.325 kPa (14.696 psi).
- API MPMS Chapter 9.3, Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method; Third Edition, December 2012; Reaffirmed, May 2017 (''API 9.3''). This standard covers the determination of the density, relative density, or API gravity of crude petroleum, petroleum products, or mixtures of petroleum and non-petroleum products normally handed as liquids and having a Reid vapor pressure of 101.325 kPa (14.696 psi) or less, using a glass thermohydrometer in conjunction with a series of calculations.
- API MPMS Chapter 10.4, Determination of Water and/or Sediment in Crude Oil by the Centrifuge Method (Field Procedure); Fourth Edition, October 2013; Errata, March 2015 (''API 10.4''). This standard describes the field centrifuge method for determining both water and sediment, or sediment only, in crude oil.
- API MPMS Chapter 11—Physical Properties Data, Section 1—Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products and Lubricating Oils; May 2004; Addendum 1, September 2007, Addendum 2, May 2019; Reaffirmed, August 2012 (''API 11.1''). This standard provides the algorithm and implementation procedure for the correction of temperature and pressure effects on density and the volume of liquid hydrocarbons that fall within the categories of crude oil.
- API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 2—Measurement Tickets; Third Edition, June 2003; Reaffirmed February 2016 (''API 12.2.2''). This standard provides standardized calculation methods for the quantification of liquids and specifies the equations for computing correction factors, rules for rounding, calculation sequences, and discrimination levels to be employed in the calculations.
- API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 3—Proving Report; First Edition, October 1998; Reaffirmed May 2014 (''API 12.2.3''). This standard provides standardized calculation methods for the determination of meter factors under defined conditions. The criteria contained in this standard will allow entities using various computer languages on different computer hardware (or by manual calculations) to arrive at identical results using the same standardized input data. This standard also specifies the equations for computing correction factors, including the calculation sequence, discrimination levels, and rules for rounding to be employed in the calculations.
- API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 4—Calculation of Base Prover Volumes by the Waterdraw Method; First Edition, December 1997; Errata July 2009; Reaffirmed September 2014 (''API 12.2.4''). This standard provides standardized calculation methods for the quantification of liquids and determination of base prover volumes under defined conditions. The criteria contained in this standard allows individuals, using various computer languages on different computer hardware (or manual calculations), to arrive at identical results using the same standardized input data. This standard specifies the equations for computing correction factors, rules for rounding, the sequence of the calculations, and the discrimination levels of all numbers to be used in these calculations.
- API MPMS Chapter 13.3, Measurement Uncertainty; Second Edition, December 2017 (''API 13.3''). This standard establishes a methodology for developing an uncertainty analysis.
- API MPMS Chapter 14, Section 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines; Fourth Edition, September 2012; Errata July 2013; Reaffirmed, September 2017 (''API 14.3.1''). This standard provides reference for engineering equations and uncertainty estimations.
- API MPMS Chapter 18—Custody Transfer, Section 1—Measurement Procedures for Crude Oil Gathered from Lease Tanks by Truck; Third Edition, May 2018 (''API 18.1''). This standard describes the procedures, organized into a recommended sequence of steps, for manually determining the quantity and quality of crude oil being transferred under field conditions.
- API MPMS Chapter 21—Flow Measurement Using Electronic Metering Systems, Section 2—Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters; First Edition, June 1998; Reaffirmed October 2016 (''API 21.2''). This standard provides for the effective utilization of electronic liquid measurement systems for custody-transfer measurement of liquid hydrocarbons.
- API Recommended Practice (RP) 12R1, Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service; Fifth Edition, August 1997; Reaffirmed April 2008; Addendum 1, December 2017 (''API RP 12R1''). This recommended practice is a guide on new tank installations and the maintenance of existing tanks. Specific provisions from this recommended practice are identified as requirements.
- API RP 2556, Correction Gauge Tables for Incrustation; Second Edition, August 1993; Reaffirmed November 2013 (''API RP 2556''). This recommended practice provides for correcting gauge tables for incrustation applied to tank capacity tables. The tables in this recommended practice show the percent of error of measurement caused by varying thicknesses of uniform incrustation in tanks of various sizes.

The following industry standards and recommendations are proposed for incorporation by reference, in whole or in part, in subpart K of the proposed rule:

- API MPMS Chapter 14—Natural Gas Fluids Measurement, Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer; Seventh Edition, May 2016; Addendum, August 2017; Errata, August 2017 (''API 14.1''). This standard provides comprehensive guidelines for properly collecting, conditioning, and handling representative samples of natural gas that are at or above their hydrocarbon dew point.
- API MPMS, Chapter 14, Section 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines; Fourth Edition,

September 2012; Errata, July 2013 (''API 14.3.1''). This standard provides engineering equations and uncertainty estimations for the calculation of flow rate through concentric, square-edge, flange-tapped orifice meters.

• API MPMS Chapter 14, Section 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 2, Specification and Installation Requirements; Fifth Edition, March 2016; Errata 1, March 2017; Errata 2, January 2019) (''API 14.3.2''). This standard provides construction and installation requirements, and standardized implementation recommendations, for the calculation of flow rate through concentric, square-edge, flange-tapped orifice meters.

• API MPMS Chapter 14, Section 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 3, Natural Gas Applications; Fourth Edition, November 2013 (''API 14.3.3''). This standard is an application guide for the calculation of natural gas flow through a flange-tapped, concentric orifice meter.

• API MPMS, Chapter 14.5, Calculation of Gross Heating Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures for Custody Transfer; Third Edition, January 2009; Reaffirmed November 2020 (''API 14.5''). This standard presents procedures for calculating the following properties of natural gas mixtures at base conditions from composition: gross heating value, relative density (real and ideal), compressibility factor, and theoretical hydrocarbon liquid content.

• API MPMS Chapter 21.1, Flow Measurement Using Electronic Metering Systems—Electronic Gas Measurement; Second Edition, February 2013 (''API 21.1''). This standard describes the minimum specifications for electronic gas measurement systems (EGMs) used in the measurement and recording of flow parameters of gaseous phase hydrocarbon and other related fluids for custody transfer applications utilizing industry recognized primary measurement devices.

• AGA Report No. 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids; Second Edition, September 1985 (''AGA Report No. 3''). This report provides construction and installation requirements, and standardized implementation recommendations, for the calculation of flow rate through concentric, square-edged, flange-tapped orifice meters.

• AGA Transmission Measurement Committee Report No. 8, Compressibility Factors of Natural Gas and Other Related Hydrocarbon Gases; Second Edition, November 1992 (''AGA Report No. 8''). This report presents detailed information for precise computations of compressibility factors and densities of natural gas and other hydrocarbon gases, calculation uncertainty estimations, and FORTRAN computer program listings.

• GPA Midstream Standard 2166–17, Obtaining Natural Gas Samples for Analysis by Gas Chromatography, Reaffirmed 2017 (''GPA 2166–17''). This standard recommends procedures for obtaining samples from flowing natural gas streams that represent the compositions of the vapor phase portion of the system being analyzed.

• GPA Standard Midstream 2261–19, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography; Revised 2019 (''GPA 2261–19''). This standard establishes a method to determine the chemical composition of natural gas and similar gaseous mixtures within set ranges using a gas chromatograph (CG).

• GPA Midstream Standard 2198–16, Selection, Preparation, Validation, Care and Storage of Natural Gas and Natural Gas Liquids Reference Standard Blends; Revised 2016 (''GPA 2198–16''). This standard establishes procedures for selecting the proper natural gas and natural gas liquids reference standards, preparing the reference standards for use, verifying the accuracy of composition as reported by the manufacturer, and the proper care and storage of those reference standards to ensure their integrity while they are in use.

V. Discussion of Proposed Changes

This proposed rule adds new sections and redesignates or revises current sections as set forth in the table below. The proposed rule removes all references to the ''Osage Tribal Council,'' and replaces them with ''Osage Nation'' or ''Osage Minerals Council,'' as applicable, because the Osage Tribal Council ceased to exist upon ratification of the Constitution of the Osage Nation in 2006.

New section	Current section	Proposed changes
226.0	N/A	The proposed rule identifies the API standards incorporated by reference in subpart J, Oil Measurement, and the API, AGA, and GPA standards incorporated by reference in subpart K, Gas Measurement.
226.1	226.1	The proposed rule defines new key terms, updates existing definitions, and removes definitions of terms that are no longer used in the regulations.
226.2 (new)	N/A	The proposed rule identifies the legal authorities that govern oil and gas leasing and development activities within the Osage Mineral Estate.
226.3 (new)	N/A	The proposed rule describes the Superintendent's authority and responsibility to administer oil and gas leasing and development of the Osage Mineral Estate.
226.4 (new)	N/A	The proposed rule describes ONRR's authority and responsibility to administer the Osage royalty management program.
226.5	226.45	The proposed rule clarifies the Superintendent's authority to issue orders and notices and adds a provision specifying ONRR's authority to issue orders and notices.
226.6	226.31	The proposed rule removes the provision requiring lessees who reside outside the state of Oklahoma to designate in-state process agents for the purpose of serving notice. The proposed rule also removes the provision providing for the Superintendent to serve notice on employees present on the lease if the designated process agent is incapacitated or absent from the state of Oklahoma. The proposed rule adds provisions setting forth the procedures the Superintendent and ONRR will use to serve official correspondence.
226.7	226.7	No substantive change.
226.8	226.4	The proposed rule removes the language allowing cash payments and updates the accepted forms of payment to include electronic funds transfer (EFT), certified check, cashier's check, money order, or commercial or personal check drawn on a solvent bank.

New section	Current section	Proposed changes
226.9	226.2(c)	The proposed rule clarifies the Superintendent's obligations to conduct environmental reviews and cultural surveys prior to approving leases and operations involving new or additional ground-disturbance.
226.10	226.46	The proposed rule updates this section to reflect amendments to the Paperwork Reduction Act promulgated after the section was last revised requiring the BIA to obtain OMB approval for the information collections in 25 CFR part 226. The proposed rule also adds language identifying the applicable OMB Control Numbers.
226.11 (new)	N/A	The proposed rule informs submitters of information that the BIA and ONRR will make records available to the public without prior notification, subject to exceptions for trade secrets, confidential commercial or financial information, and information protected by the Privacy Act.
226.12	226.2(f)	The proposed rule clarifies that the OMC must submit requests for the Superintendent to negotiate leases in writing and provide a resolution authorizing such negotiation. This change reflects the BIA's and OMC's existing practices for the submission of leasing requests.
226.13	226.2(f)	The proposed rule clarifies that the OMC must submit requests for the Superintendent to advertise lease sales in writing and provide a resolution authorizing such advertising. This change reflects the BIA's and OMC's existing practices for the submission of lease sale requests.
226.14	226.2(a)	The proposed rule removes the nomination fee for lease sales and clarifies the content and submission requirements for lease sale nominations. These clarifications reflect the BIA's existing requirements for lease sale nominations.
226.15	226.2(b)	The proposed rule specifies that the Superintendent will publish the Notice of Lease Sale at least 30 calendar days prior to the date of the sale. This change reflects the BIA's and OMC's existing practices for publishing such notices.
226.16	226.2(b), 226.6(a)	The proposed rule specifies that successful bidders must submit 25 percent of the bonus by 4:30 p.m. central standard time on the day of the sale. The proposed rule also removes the language allowing cash payments and updates the accepted forms of payment to electronic funds transfer (EFT), cashier's check, or money order.
226.17	226.2(b)	No substantive change.
226.18	226.2(f)	The proposed rule specifies what information offerors must include in non-competitive lease offers submitted to the OMC.
226.19	226.6(a)	The proposed rule requires successful offerors of non-competitive leases to submit the bonus and required documentation to the Superintendent within 20 calendar days of the OMC's acceptance of the offer. This change reflects the BIA's and OMC's existing requirements for non-competitive leases and is consistent with the requirements for competitive leases in the new § 226.16.
226.20	226.2(d)	The proposed rule removes oil-only and gas-only leases and requires all leases executed after the effective date of the final rule to be combination oil and gas leases.
226.21	226.9(b), 226.10	The proposed rule combines the regulations regarding extension of the primary term and the term of the lease into one section. The proposed rule specifies the actions that constitute ''actual drilling operations'' for purposes of obtaining an extension of the primary term.
226.22	226.5	No substantive change.
226.23	226.2(e)	The proposed rule clarifies the prohibition on U.S. Government employees acquiring interests in leases of the Osage Mineral Estate.
226.24	226.15(a)	The proposed rule specifies that lessees must submit cooperative agreements to the Superintendent for approval at least 90 calendar days prior to expiration of the leases covered by the agreements.
226.25	226.15(a)	No substantive change.
226.26	226.15(b)	No substantive change.
226.27	226.15(b)	No substantive change.
226.28 (new)	N/A	The proposed rule specifies the effective date of the transfer for lease assignments.
226.29 (new)	N/A	The proposed rule specifies that assignors are liable for lease obligations and compliance issues that accrue prior to approval of the assignment.
226.30 (new)	N/A	The proposed rule specifies that assignees are liable for lease obligations and compliance issues that accrue after approval of the assignment.
226.31	226.15(c)	No substantive change.
226.32	226.15(d)	The proposed rule removes the provision authorizing the Superintendent to approve drilling contracts because it is contrary to law and clarifies that lessees are simply required to file copies of drilling contracts with the Superintendent.
226.33	226.3	No substantive change.
226.34	226.9(a), 226.29(a)	The proposed rule combines the regulations regarding lease termination and lessees' obligations upon termination into one section. The proposed rule adds a provision specifying that leases in the extended term terminate by operation of law as of the date production in paying quantities ceases. The provision regarding termination in the extended term reflects the BIA's existing practices.
226.35	226.9(a)	The proposed rule increases the rental rate for leases approved after the effective date of the final rule. The proposed rule also requires lessees to pay advance annual rental for the full primary term within 15 calendar days of the Superintendent's approval of the lease.

New section	Current section	Proposed changes
226.36	226.11(a)(1)	The proposed rule removes the language requiring a royalty rate of not less than 20 percent when the quantity of oil from all wells in a quarter-section or fraction thereof during any calendar month averages 100 bbl or greater per well, per day. The proposed rule adds language authorizing the Superintendent to approve an oil royalty rate that is below the minimum royalty rate in the regulations if it is determined to be in the best interest of the Osage Nation.
226.37	226.11(a)(2)	The proposed rule requires the value of oil to be calculated using the NYMEX Calendar Month Average Price of oil at Cushing, Oklahoma instead of the highest posted price by a major purchaser in Osage County, Oklahoma.
226.38 (new)	N/A	The proposed rule specifies how to calculate the gravity adjustment of the NYMEX Calendar Month Average Price of oil.
226.39	226.11(b)	The proposed rule adds language authorizing the Superintendent to approve a gas royalty rate that is below the minimum royalty rate in the regulations if it is determined to be in the best interest of the Osage Nation.
226.40	226.11(b)	The proposed rule requires the value of gas to be calculated using the ONRR Monthly Index Zone Price for Oklahoma Zone 1 instead of the market value of the gas and products extracted therefrom.
226.41	226.11(c)	The proposed rule requires lessees to submit minimum royalty payments to ONRR instead of the Superintendent.
226.42	226.11(a)(3)	The proposed rule revises the royalty-in-kind provision to allow the OMC to take both oil and gas royalty-in-kind and adds a provision setting forth notice requirements for the OMC initiating and terminating royalty-in-kind status.
226.43	226.13(a) and (c)	The proposed rule requires lessees and purchasers to submit royalty payments to ONRR instead of the Superintendent and establishes a new due date for royalty payments. The proposed rule also adds a provision specifying the procedure for payors to recoup overpayments.
226.44	226.14	The proposed rule removes the language requiring the Superintendent's approval of royalty payment contracts and division orders and clarifies that lessees are simply required to file such contracts and division orders with the Superintendent prior to removing production from the lease.
226.45	226.13(b)	The proposed rule requires lessees to submit royalty reports to ONRR electronically, subject to certain exceptions, and establishes a new due date for reporting.
226.46	226.30	The proposed rule requires lessees to retain rental, royalty, and payment records for a minimum of six years unless the Superintendent or ONRR direct otherwise. The proposed rule also adds a provision requiring lessees to make such records available to ONRR upon request.
226.47	226.12	The proposed rule updates this section by requiring the U.S. Government to purchase oil produced from the Osage Mineral Estate at the price set forth in § 226.37.
226.48 (new)	N/A	The proposed rule authorizes ONRR to conduct audits and reviews of compliance with rental, royalty, and other payment and reporting requirements.
226.49 (new)	N/A	The proposed rule exempts existing lease (quarter-section) and collective bonds from certain changes to the bonding requirements.
226.50	226.6	The proposed rule adds a provision identifying the accepted types of performance bonds.
226.51	226.6(a) and (c)	The proposed rule replaces the $5,000 lease bond for each quarter-section or fraction thereof covered by the lease with an individual well bond of $6 per foot of measured or projected well depth.
226.52	226.6(a) and (b)	The proposed rule combines the collective and nationwide bond provisions into one section. The proposed rule changes the collective bond (covering all leases up to 10,240 acres) to a countywide bond covering only those operations in Osage County up to 10,240 acres and increases the bond amount from $50,000 to $75,000.
226.53	226.6(d)	The proposed rule clarifies the conditions that justify the Superintendent increasing the required bond amount and adds a provision placing a limit on the amount of any such increase.
226.54 (new)	N/A	The proposed rule specifies that the Superintendent has authority to call for the forfeiture of performance bonds and clarifies lessees' obligations upon default. This change reflects the Superintendent's existing authority, as all bonds are payable to the Superintendent. The proposed rule adds a provision specifying that the United States or OMC may take action to recover from lessees all costs in excess of the amount collected under the bond if an obligation in default exceeds the face amount of the bond.
226.55 (new)	N/A	The proposed rule specifies that the period of liability under a performance bond will not terminate, and the bond will not be released, until all lease obligations have been satisfied. This reflects the BIA's existing practices for the release of bonds.
226.56 (new)	N/A	The proposed rule requires bonding for geophysical exploration activities, subject to certain exceptions for existing lessees.
226.57 (new)	N/A	The proposed rule specifies that the Superintendent has authority to call for the forfeiture of geophysical exploration bonds. This is consistent with the Superintendent's authority for performance bonds for all other oil and gas operations within the Osage Mineral Estate.

New section	Current section	Proposed changes
226.58 (new)	N/A	The proposed rule specifies that the period of liability under a geophysical exploration bond will not terminate, and the bond will not be released, until all permit obligations have been satisfied. This is consistent with the BIA's existing practices for the release of performance bonds for all other oil and gas operations within the Osage Mineral Estate.
226.59	226.19(a)	The proposed rule adds a provision requiring lessees and permittees to properly maintain installations and equipment and comply with the National Electrical Code.
226.60	226.30	The proposed rule clarifies the Superintendent's authority to inspect and investigate operations.
226.61	226.16(a)	The proposed rule clarifies the language regarding the commencement of operations, expressly stating that operations may not commence until the Superintendent approves a lease or geophysical exploration permit, as applicable.
226.62	226.17	No substantive change.
226.63	226.18	The proposed rule adds a provision requiring lessees and permittees to send meeting requests to surface owners by certified mail. The proposed rule also adds a provision authorizing the Superintendent to approve the commencement of operations if a meeting request cannot be delivered to the surface owner's last known address or the surface owner fails to accept the request within 30 calendar days of receiving it.
226.64	226.19(b) through (d)	The proposed rule combines the regulations regarding commencement money for operations and tank siting fees into one section. The proposed rule increases the amount of commencement money for drilling and reentering wells and siting tanks and adds a provision requiring lessees and permittees to pay commencement money for the acreage occupied during seismic surveys using vibroseis. The proposed rule also adds a provision stating that commencement money that cannot be delivered to the surface owner's last known address or that the surface owner refuses is deemed forfeited.
226.65	226.19(a), 226.24	The proposed rule combines the regulations regarding the use of surface lands and water into one section. No substantive changes.
226.66	226.16(b)(1) and (c); 226.33.	The proposed rule combines the regulations regarding drilling operations and line drilling requirements into one section. The proposed rule specifies that lessees must provide the Superintendent with five calendar days' notice of drilling operations. The proposed rule adds a line drilling requirement imposing a setback from certain water sources. This setback is consistent with the BIA's existing permit conditions under the Osage County Oil and Gas Final Environmental Impact Statement (2020).
226.67	226.36	The proposed rule requires lessees to obtain the Superintendent's prior approval to drill wells that deviate significantly from the vertical and conduct directional surveys if deviation occurs without prior approval.
226.68	226.40	No substantive change.
226.69	226.16(b)(1) and (2), (c);	The proposed rule specifies that lessees must provide the Superintendent with at least five calendar days' notice of workover operations. The proposed rule adds a provision clarifying that prior approval and a subsequent report of operations are not required for certain well maintenance activities. This change reflects the BIA's existing practices with respect to well maintenance activities.
226.70 (new)	N/A	The proposed rule establishes testing, training, operational, and safety requirements for drilling and workover operations in Hydrogen Sulfide (H_2S) areas.
226.71	226.32(b), (d)	The proposed rule adds a provision requiring lessees to conduct reasonable tests of the mechanical integrity of downhole equipment.
226.72	226.28(a)	The proposed rule clarifies the language regarding temporary abandonment, more clearly stating that lessees must obtain the Superintendent's approval to temporarily abandon a well for more than 30 calendar days.
226.73	226.28(a) and (b); 226.29(c) and (d).	The proposed rule combines the regulations regarding permanent abandonment and plugging obligations into one section. The proposed rule removes the plugging application fee and requirement that oil-only and gas-only lessees offer wells to one another prior to abandonment. The proposed rule specifies that lessees must provide the Superintendent with five calendar days' notice of plugging operations.
226.74	226.32(a), (c), and (e)	The proposed rule requires lessees to submit certain information together with the subsequent report of hydraulic fracturing operations and adds a provision specifying the procedure for lessees to withhold confidential information regarding such operations. The proposed rule also clarifies that lessees must retain well records and reports for a minimum of six years unless the Superintendent directs otherwise.
226.75	226.34	The proposed rule adds a provision requiring lessees to mark wells that are permanently plugged and abandoned.
226.76	226.22(a), 226.35	The proposed rule combines the regulations regarding the prevention of pollution and protection of formations into one section. The proposed rule specifies that lessees and permittees must conduct surveys and tests of the measures taken to protect fresh water and mineral bearing formations and provide the results to the Superintendent upon request.

New section	Current section	Proposed changes
226.77	226.22(b) through (e)	The proposed rule adds provisions prohibiting lessees from constructing pits in certain sensitive locations consistent with the BIA's existing permit conditions under the Osage County Oil and Gas Final Environmental Impact Statement (2020). The proposed rule also adds a provision requiring the Superintendent's prior approval for the land application of drilling fluids.
226.78 (new)	N/A	The proposed rule requires lessees to remove fire hazards from well sites and facilities and safely dispose of waste oil. These requirements are consistent with the BIA's existing permit conditions under the Osage County Oil and Gas Final Environmental Impact Statement (2020).
226.79 (new)	N/A	The proposed rule requires a geophysical exploration permit to conduct geophysical exploration operations on both leased and unleased lands.
226.80 (new)	N/A	The proposed rule specifies that lessees and permittees must provide the Superintendent with five calendar days' notice of geophysical exploration operations.
226.81 (new)	N/A	The proposed rule requires lessees and permittees to submit subsequent reports of geophysical exploration operations to the Superintendent.
226.82	226.20	No substantive change.
226.83	226.21	No substantive change.
226.84	226.9(a)	The proposed rule specifies that lessees must place oil and gas into marketable condition at no cost to the lessor. This change is consistent with current industry practices within the Osage Mineral Estate.
226.85	226.13(b)	The proposed rule requires lessees to submit production reports to ONRR electronically, subject to certain exceptions, and establishes a new due date for production reports.
226.86 (new)	N/A	The proposed rule requires lessees to submit site facility diagrams to the Superintendent and specifies the format and content of such diagrams.
226.87 (new)	N/A	The proposed rule requires lessees to use FMP numbers when reporting production to ONRR.
226.88 (new)	N/A	The proposed rule specifies what information production records must contain and requires lessees to maintain such records for a minimum of six years unless the Superintendent or ONRR direct otherwise. The proposed rule also requires lessees, purchasers, and transporters to provide production records to ONRR upon request.
226.89	226.23	No substantive change.
226.90	226.37	No substantive change.
226.91 (new)	N/A	The proposed rule requires lessees to pay compensatory royalty for avoidably lost or wasted production. This change reflects the BIA's existing requirement to pay royalty for lost and wasted production. The proposed rule specifies when production is considered avoidably and unavoidably lost or wasted.
226.92 (new)	N/A	The proposed rule sets forth lessees' responsibilities for protecting oil and gas resources from drainage.
226.93 (new)	N/A	The proposed rule requires lessees to pay compensatory royalty for drainage if protective action is not taken within a reasonable time and specifies how compensatory royalty will be calculated.
226.94 (new)	N/A	The proposed rule requires the use of seals on appropriate valves at oil storage and sales facilities and prohibits tampering with such valves.
226.95 (new)	N/A	The proposed rule requires the use of seals on oil measurement system components.
226.96 (new)	N/A	The proposed rule requires transporters removing oil from storage tanks to possess run tickets, trip logs, and manifests.
226.97 (new)	N/A	The proposed rule requires any person transporting oil or gas to possess documentation indicating the first purchaser and authorizes the Superintendent and law enforcement to conduct vehicle inspections.
226.98 (new)	N/A	The proposed rule requires lessees, purchasers, and transporters to record certain information when water is drained from tanks holding oil.
226.99 (new)	N/A	The proposed rule requires lessees to record certain information when oil is removed from storage and used on the lease or unit for hot oiling, clean up, and completion operations. The proposed rule also requires lessees to report all production removed from storage and used on a different lease to ONRR.
226.100 (new)	N/A	The proposed rule specifies the records that lessees must maintain for each seal.
226.101 (new)	N/A	The proposed rule requires lessees to obtain the Superintendent's approval for off-lease measurement of production.
226.102	226.41	The proposed rule specifies that lessees must report spills, thefts, mishandling of production, accidents, and fires to both the Superintendent and surface owners immediately upon discovery and requires lessees to submit incident reports with proposed contingency or remediation plans to the Superintendent. This change reflects the BIA's current requirements for reporting of such incidents. The proposed rule adds a provision requiring lessees to provide surface owners with both emergency and written notification of such incidents.
226.103 (new)	N/A	The proposed rule prohibits bypasses of meters and tampering with oil measurement devices, the components of such devices, and the measurement process and imposes the maximum penalty for such violations.
226.104 (new)	N/A	The proposed rule establishes the timeframe for complying with the new requirements for oil measurement equipment and procedures.
226.105	N/A	[Reserved]

New section	Current section	Proposed changes
226.106 (new)	N/A	The proposed rule establishes requirements for oil volume uncertainty levels, measurement bias, and equipment verification.
226.107	226.38	The proposed rule specifies that tank gauging may be used to measure oil and updates requirements for the use and calibration of oil storage tanks.
226.108	226.38	The proposed rule specifies the required tank gauging procedures.
226.109	226.38	The proposed rule specifies that Lease Automatic Custody Transfer (LACT) systems may be used to measure oil and sets forth general requirements for LACT systems.
226.110	226.38	The proposed rule identifies required LACT system equipment and sets forth standards for operating LACT system components.
226.111	226.38	The proposed rule specifies that Coriolis Measurement Systems (CMS) may be used to measure oil and sets forth general requirements for CMS and CMS components.
226.112	226.38	The proposed rule establishes Coriolis meter operating requirements.
226.113 (new)	N/A	The proposed rule sets forth requirements for volumetric meter proving.
226.114 (new)	N/A	The proposed rule requires the completion and submission of run tickets for tank gauging, LACT systems, and CMS. This change codifies the BIA's existing requirements with respect to run tickets.
226.115	226.38	The proposed rule specifies that the Superintendent's approval is required to use methods of oil measurement other than tank gauging, LACT system, or CMS.
226.116 (new)	N/A	The proposed rule prohibits the sale and disposal of waste oil without the Superintendent's approval. This change codifies the BIA's existing requirement.
226.117 (new)	N/A	The proposed rule prohibits bypasses of meters. The proposed rule also prohibits tampering with any measurement device, component of a measurement device, or the measurement process. The proposed rule imposes the maximum penalty for such violations.
226.118 (new)	N/A	The proposed rule establishes the timeframe for complying with the new requirements for gas measurement equipment and procedures.
226.119	N/A	[Reserved]
226.120 (new)	N/A	The proposed rule establishes requirements for gas flow rate and heating value uncertainty, measurement bias, and equipment verification.
226.121	226.39	The proposed rule specifies the standards for orifice plates and meter tubes and sets forth inspection requirements.
226.122	226.39	The proposed rule establishes standards for the use of mechanical recorders.
226.123 (new)	N/A	The proposed rule establishes requirements for the verification and calibration of mechanical recorders, correction of reported gas volumes, and certification of test equipment.
226.124 (new)	N/A	The proposed rule specifies what information integration statements must contain and requires lessees to retain integration statements.
226.125	226.39	The proposed rule establishes standards for the use of electronic gas measurement (EGM) systems.
226.126 (new)	N/A	The proposed rule establishes requirements for the verification and calibration of transducers, correction of reported gas volumes, and certification of test equipment.
226.127 (new)	N/A	The proposed rule provides the gas flow rate, volume, and average value calculations.
226.128 (new)	N/A	The proposed rule requires lessees to retain certain logs and records and make them available to the Superintendent upon request.
226.129 (new)	N/A	The proposed rule specifies the methods of gas sampling and analysis that may be used.
226.130 (new)	N/A	The proposed rule establishes standards for the location, design, and type of sampling probes and sample tubing size.
226.131 (new)	N/A	The proposed rule establishes the general requirements for taking spot samples.
226.132 (new)	N/A	The proposed rule specifies the methods of spot sampling that may be used.
226.133 (new)	N/A	The proposed rule specifies the frequency with which lessees must take and analyze spot samples.
226.134 (new)	N/A	The proposed rule establishes specifications for composite sampling methods.
226.135 (new)	N/A	The proposed rule establishes requirements for the installation, operation, verification, and calibration of on-line gas chromatographs.
226.136 (new)	N/A	The proposed rule establishes requirements for the installation, operation, verification, and calibration of gas chromatographs.
226.137 (new)	N/A	The proposed rule identifies the components of gas that must be analyzed and the frequency with which component analysis must occur.
226.138 (new)	N/A	The proposed rule specifies what information gas analysis reports must contain.
226.139 (new)	N/A	The proposed rule specifies the effective date of a spot or composite gas sample.
226.140 (new)	N/A	The proposed rule establishes requirements for calculating the heating value, average heating value, and volume of a gas sample.
226.141 (new)	N/A	The proposed rule establishes requirements for reporting gross and real heating values and volumes.
226.142	226.27(b)	The proposed rule updates the provision by requiring the Osage Nation and Tribal members to pay for gas at the price set forth in § 226.40.
226.143	226.27(b)	The proposed rule updates the provision by requiring the lessee to pay royalty on all gas furnished to the Osage Nation and Tribal members at the rate set forth in § 226.39.

New section	Current section	Proposed changes
226.144	226.11(a)(1) and (b)(2)	No substantive change.
226.145 (new)	N/A	The proposed rule identifies the uses of production on a lease or unit that do not require the Superintendent's prior approval for royalty-free treatment.
226.146 (new)	N/A	The proposed rule identifies the uses of production on a lease or unit that require the Superintendent's prior approval for royalty-free treatment.
226.147 (new)	N/A	The proposed rule identifies the uses of production off the lease or unit that do not require the Superintendent's prior approval of royalty-free treatment.
226.148 (new)	N/A	The proposed rule identifies the uses of production off the lease or unit that require the Superintendent's prior approval of royalty-free treatment.
226.149 (new)	N/A	The proposed rule sets forth requirements for the measurement and reporting of royalty-free volumes of oil and gas used.
226.150 (new)	N/A	The proposed rule specifies that lessees do not need to own or lease the equipment or facility that uses royalty-free oil and gas.
226.151 (new)	N/A	The proposed rule sets forth procedures for requesting royalty-free use of oil and gas.
226.152	226.37	The proposed rule adds a provision prohibiting the venting and flaring of gas without the Superintendent's prior approval. The proposed rule also requires all flares and combustible devices to be equipped with an automatic ignition system. This reflects the BIA's existing requirements for venting and flaring and is consistent with the BIA's existing permit conditions under the Osage County Oil and Gas Final Environmental Impact Statement (2020).
226.153 (new)	N/A	The proposed rule adds a provision prohibiting the venting and flaring of gas-well gas unless it is unavoidably lost.
226.154 (new)	N/A	The proposed rule authorizes the venting and flaring of oil-well gas in accordance with §§ 226.155, 226.156, and 226.157.
226.155 (new)	N/A	The proposed rule requires gas to be flared, rather than vented, subject to certain exceptions.
226.156 (new)	N/A	The proposed rule authorizes the venting and flaring of gas during certain tests, well maintenance activities, and emergencies.
226.157 (new)	N/A	The proposed rule sets forth the requirements for measuring and reporting the volumes of gas vented and flared.
226.158	226.42	The proposed rule identifies the remedies the Superintendent may utilize to address violations of lease or permit terms and conditions, the regulations, and orders or notices.
226.159	226.43	The proposed rule updates the list of lease operation violations that will result in immediate assessments.
226.160 (new)	N/A	The proposed rule authorizes the Superintendent to issue assessments if a lessee fails to commence or perform an operation within five calendar days of an order to do so if the Superintendent performs the operation or must retain a third-party to perform the operation.
226.161 (new)	N/A	The proposed rule sets forth the procedure the Superintendent will use to notify lessees of lease violations that have a period to correct prior to the assessment of penalties and the penalty amounts imposed if violations are not timely corrected.
226.162 (new)	N/A	The proposed rule sets forth the procedure the Superintendent will use to notify lessees of lease violations that do not have a period to correct prior to the assessment of penalties and the penalty amounts imposed for such violations.
226.163 (new)	N/A	The proposed rule specifies the factors the Superintendent will consider in determining that amount of the penalty to assess.
226.164	226.28(c)	The proposed rule clarifies the circumstances under which the Superintendent may take shut-in action.
226.165	226.29(b); 226.42	The proposed rule specifies the circumstances under which the Superintendent may cancel a lease or permit and the procedure for cancelling a lease or permit.
226.166	226.42	The proposed rule specifies that interest on unpaid and underpaid civil penalties and assessments will be charged at the IRS underpayment rate or such other rate as the Superintendent may prescribe.
226.167 (new)	N/A	The proposed rule identifies the remedies ONRR may utilize to address violations of lease or permit terms and conditions, the regulations, and orders or notices.
226.168 (new)	N/A	The proposed rule authorizes ONRR to issue assessments for incorrect or late royalty and production reporting and specifies the amount of such assessments.
226.169 (new)	N/A	The proposed rule authorizes ONRR to issue assessments for failing to submit the correct payment amount or providing inadequate or erroneous information and specifies the amounts of such assessments.
226.170 (new)	N/A	The proposed rule sets forth the procedure ONRR will use to notify reporters and payors of violations that have a period to correct prior to the assessment of penalties and the penalty amounts imposed if violations are not timely corrected.
226.171 (new)	N/A	The proposed rule sets forth the procedure ONRR will use to notify reporters and payors of violations that do not have a period to correct prior to the assessment of penalties and the penalty amounts imposed.
226.172 (new)	N/A	The proposed rule specifies the factors ONRR will consider in determining the amount of the penalty to assess.
226.173 (new)	N/A	The proposed rule specifies the due date for remitting payment of penalties and assessments to ONRR and that interest on unpaid and underpaid penalty and assessment amounts will be charged at the rate set forth in § 226.166(b).

New section	Current section	Proposed changes
226.174 (new)	N/A	The proposed rule specifies the actions ONRR may take to collect unpaid civil penalties.
226.175 (new)	N/A	The proposed rule specifies that ONRR will refer past due debts to the U.S. Treasury for collection or tax refund offset and may assess administrative costs.
226.176	226.43(j)	No substantive change.
226.177	226.44	The proposed rule clarifies the procedures for filing administrative appeals of decisions the Superintendent and Regional Director issue.
226.178 (new)	N/A	The proposed rule sets forth the procedures for filing administrative appeals of orders that ONRR issues.
226.179 (new)	N/A	The proposed rule specifies the conditions for suspension of compliance with an ONRR order during an administrative appeal.
226.180 (new)	N/A	The proposed rule sets forth the requirements for posting an appeal bond or other surety on an appellant's behalf for administrative appeals of ONRR orders.
226.181 (new)	N/A	The proposed rule specifies when an obligation to comply with an ONRR order is suspended due to judicial review.
226.182 (new)	N/A	The proposed rule specifies when ONRR will collect bonds and other surety instruments posted for administrative appeals.
226.183 (new)	N/A	The proposed rule specifies that the ONRR bond-approving officer's determination of the required surety amount is not subject to appeal.
226.184 (new)	N/A	The proposed rule sets forth the standards for ONRR-specified surety instruments.
226.185 (new)	N/A	The proposed rule explains how ONRR will determine the bond or surety instrument amount.
Appendix A	N/A	Table of Atmospheric Pressures to be used with §§ 226.123(a)(7) and (c)(10), 226.124(c), 226.126(a)(3), and 226.127(b).

VI. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 further emphasizes 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 developed this proposed rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) requires Federal agencies to prepare a regulatory flexibility analysis for rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500, *et seq.*) to determine whether a regulation would have a significant economic impact on a substantial number of small entities. The BIA does not believe the proposed rule would have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required by the RFA. Although such analysis is not required, BIA performed an initial regulatory flexibility analysis pursuant to section 603 of the RFA as part of its Regulatory Impact Analysis (RIA). The IFRA, included as Appendix B to the RIA, analyzes impacts on small entities that may be affected by the proposed rule and is available upon request (see **ADDRESSES**). The IFRA for the proposed rule uses the best available information to identify potential impacts on small entities.

Small entities include small businesses, small governmental jurisdictions, and small organizations, as defined by section 601 of the RFA. A small entity is one that is independently owned and operated and is not dominant in its field of operation. The small entities most likely to be impacted by the proposed rule are small businesses in the mining sector; impacts to small governmental jurisdictions and small organizations are not anticipated. The Small Business Administration (SBA) defines small businesses in the crude petroleum and natural gas extraction industry as those with 1,250 employees or less. For subsector mining support activities, the SBA defines small businesses as drilling contractors with 1,000 employees or less and service companies with less than $41.5 million per year in revenues. Under these size standards, most oil and gas lessees and supporting entities within the Osage Mineral Estate would be classified as small businesses. Accordingly, the proposed rule would likely impact a substantial number of small entities within the Osage Mineral Estate.

Using the best available data for the past three years of production (2018–2020), there were an average of 223 lessees actively and exclusively producing oil from the Osage Mineral Estate, 5 lessees actively and exclusively producing gas from the Osage Mineral Estate, and 59 lessees actively producing both oil and gas from the Osage Mineral Estate, for a combined average of 286 lessees actively producing oil and gas. The volume of production varies substantially across lessees, with a substantial number of smaller lessees producing marginal volumes of oil and gas and several larger lessees producing the majority of annual production from the Osage Mineral Estate. For example, two lessees produced over 250,000 barrels of oil annually between 2018 and 2020, comprising 41 percent of all oil production from the Osage Mineral Estate during that period. In contrast, approximately 100 lessees during the same period produced less than 1,000 barrels of oil annually. The allocation of production for gas is similarly skewed.

To estimate the economic impacts on small entities, the IFRA estimates costs of the proposed rule for ''average'' lessees (286 active lessees) by assuming that lessees produce an average volume

of oil and gas, that costs are shared equally across lessees, and that small entities would bear all costs of the proposed rule. The estimated costs of the proposed rule (including compliance costs, reporting and recordkeeping costs, and other payments) are $18,000 to $26,000 per year for ''average'' lessees, which could represent between 15 to 65 percent of annual profits depending on the lessee. As the IFRA assumes that costs are shared equally across lessees, however, the estimated per entity costs are higher than would be expected for lessees with small production volumes and lower than would be expected for lessees with large production volumes. For example, a lessee producing marginal oil volumes will have lower impacts from a change in the valuation of oil for royalty purposes than a lessee producing the ''average'' volume of oil.

The BIA does not believe the proposed rule would conflict with, duplicate, or overlap any relevant Federal rules in a way that would unnecessarily add cumulative regulatory burdens on small entities without any gain in regulatory benefits. BIA invites public comments identifying any Federal rules that may conflict with, duplicate, or overlap the proposed rule.

C. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This proposed rule would not have an annual effect on the economy of $100 million or more; would not cause a major increase in the costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of $100 million or more per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531, *et seq.,* is not required for this proposed rule.

E. Takings (Executive Order 12630)

This proposed rule would not constitute a taking of private property or otherwise have takings implications under Executive Order 12630. The proposed rule would revise certain operational and administrative requirements for existing lessees. All such operations are subject to lease terms and conditions and a current regulation expressly requiring compliance with amendments to the regulations except that the term of the lease, acreage, rental rate, and royalty rate may not be changed absent agreement by both parties to the lease. The proposed rule conforms to those requirements. A takings implication assessment is not required.

F. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule would not have a substantial direct effect on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. A federalism impact statement is not required.

G. Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule was reviewed to eliminate errors and ambiguity and written to minimize litigation. In addition, this proposed rule was written in clear language and contains clear legal standards.

H. Consultation With Indian Tribal Governments (Executive Order 13175)

The BIA evaluated this proposed rule under the criteria set forth in Executive Order 13175 and in accordance with Departmental policy to identify possible effects on federally recognized Indian Tribes and Indian trust assets. This proposed rule applies to oil and gas leasing and development activities within the Osage Mineral Estate in Osage County, Oklahoma. As the Osage Mineral Estate is held in trust by the United States for the benefit of the Osage Nation, this proposed rule has the potential to affect the Osage Nation.

On September 22, 2016, the BIA sent letters to the Osage Nation and Osage Minerals Council inviting their participation in government-to-government consultation to discuss potential revision of the regulations in this part. Both the Osage Nation and Osage Minerals Council expressed an interest in such consultation. On October 25, 2016, the BIA held a consultation with the Osage Nation, Osage Minerals Council, and their legal counsel in Pawhuska, Oklahoma and the parties agreed that revision of the regulations was appropriate. As part of the rulemaking effort, the BIA proposed that the process include an opportunity for the Osage Nation and Osage Minerals Council to provide input on proposed revisions to the regulations prior to the BIA preparing the proposed rule for publication in the **Federal Register**. The parties agreed that the BIA would prepare a discussion draft revising the regulations, provide it to the Osage Nation and Osage Minerals Council for review and comment, and hold a second government-to-government consultation to discuss Tribal representatives' feedback. Thereafter, the BIA would begin preparation of the proposed rule.

On August 18, 2020, the BIA provided the Osage Nation and Osage Minerals Council with the discussion draft revising the regulations in 25 CFR part 226. The BIA proposed that the parties conduct the second government-to-government consultation to receive the Tribe's feedback on the discussion draft in November 2020. On October 7, 2020, the Osage Minerals Council requested that the review period for the discussion draft be extended to February 1, 2021. The BIA agreed to the extension. On December 16, 2020, the Osage Minerals Council requested an additional government-to-government consultation prior to providing feedback on the discussion draft. The BIA agreed to conduct an additional consultation, but the Osage Nation and Osage Minerals Council did not respond to communications attempting to schedule the consultation.

On February 11, 2021, the Director of the Bureau of Indian Affairs, exercising the delegated authority of the Assistant Secretary—Indian Affairs, sent a letter to the Osage Nation and Osage Minerals Council advising of the deadline for scheduling the additional consultation requested and providing feedback on the discussion draft. On February 25, 2021, the Osage Minerals Council responded and declined the BIA's invitation to provide written feedback on the discussion draft and participate in government-to-government consultations relating thereto. The BIA advised the Osage Nation and Osage Minerals Council that they would still have the opportunity to provide feedback following publication of the proposed rule in the **Federal Register**.

On February 22, 2022, the Osage Minerals Council sent a letter to the Assistant Secretary—Indian Affairs requesting that the BIA not publish a proposed rule based on the discussion

draft the Council received in 2020 and, instead, work with the Council to prepare a new set of regulations. The Assistant Secretary—Indian Affairs spoke with the Chairman of the Osage Minerals Council by phone and explained that the proposed rule had already been prepared and the BIA was in the process of completing the procedural requirements for publication. The Assistant Secretary—Indian Affairs advised that the BIA remained open to consulting with the Osage Nation and Osage Minerals Council following publication of the proposed rule in the **Federal Register** and noted that written feedback can also be provided as part of the public comment process.

I. Paperwork Reduction Act

All information collections require approval 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 Office of Management and Budget (OMB) Control Number. There are BIA and ONRR information collection requirements in this proposed rule. The BIA is proposing to renew its information collection with revisions (OMB Control No. 1076–0180) and ONRR is proposing to renew two information collections with revisions (OMB Control Nos. 1012–0004 and 1012–0006).

1. OMB Control Number 1076–0180 (BIA)

The OMB has reviewed and approved information collections for the existing regulations in 25 CFR part 226, which are assigned OMB Control No. 1076–0180. The BIA is proposing to renew information collection 1076–0180 with revisions. The following BIA revisions to reporting and recordkeeping requirements in the proposed rule require OMB's approval:

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
226.6(b)	Lessees must provide the name and address for a designated point of contact upon whom the Superintendent can serve official correspondence regarding the lease and operations thereon.	Osage Form A—Lease Contact of Record.
226.9(a)	Lessees may submit a draft environmental assessment (EA) for proposed drilling operations and any other proposed ground-disturbing activities occurring outside the existing well pad. This requirement is the same as the requirement in existing § 226.2(c).	None.
226.9(b)	Lessees must submit a Cultural Resources Survey for proposed drilling operations and any other proposed ground-disturbing activities occurring outside the existing well pad if the location of the operations or activities is not covered by a prior survey. This requirement is the same as the requirement in existing § 226.2(c).	None.
226.12(b)	The Osage Minerals Council (OMC) may request that the Superintendent negotiate a non-competitive lease with a prospective lessee on its behalf by submitting a Resolution authorizing the Superintendent to undertake such action. This requirement is the same as the requirement in existing § 226.2(f).	None.
226.13(a)	The OMC may request that the Superintendent advertise a competitive lease sale by submitting a Resolution that specifies the proposed location, date, and time of the lease sale as well as the minimum acceptable bid. This requirement is the same as the requirement in existing § 226.2(f).	None.
226.14(a)	An individual who wants to nominate a tract for a competitive lease sale must submit a nomination letter that includes their name and address as well as the legal description of the tract they are nominating. This requirement is the same as the requirement in existing § 226.2(a).	None.
226.17(a)(2) through (4)	The successful bidder at a competitive lease sale must submit an executed lease form, evidence of authority to execute papers form, and certificate of good standing from the Oklahoma Secretary of State. This requirement is the same as the requirement in existing § 226.2(b).	Osage Form B—Evidence of Authority to Execute Papers. Osage Form C—Oil and/or Gas Mining Lease.
226.19(a)(2) through (4)	A prospective lessee who negotiates a non-competitive lease with the OMC must submit an executed lease form, evidence of authority to execute papers form, and certificate of good standing from the Oklahoma Secretary of State. This requirement is the same as the requirement in existing § 226.2(f).	Osage Form B—Evidence of Authority to Execute Papers. Osage Form C—Oil and/or Gas Mining Lease.
226.21(b)	Lessees may submit a lease amendment form evidencing an agreement between the lessee and OMC to extend the primary term of the lease. This requirement is the same as the requirement in existing § 226.9(b).	Osage Form D—Lease Amendment.
226.24(b)	The lessee or OMC may submit a proposed cooperative agreement whereby the parties agree to unitize or merge one or more leases of the Osage Mineral Estate to promote development. This requirement is the same as the requirement in existing § 226.15(a).	None.
226.24(c)	The lessee or OMC may submit an agreement whereby the parties agree to modify, amend, or terminate an approved cooperative agreement. This requirement is the same as the requirement in existing § 226.15(a).	None.
226.26(c)	A lessee (assignor) may submit a lease assignment form transferring record title in an approved lease to another existing or prospective lessee (assignee). This requirement is the same as the requirement in existing § 226.15(b).	Osage Form E—Assignment of Record Title Interest.
226.33(a)	Lessees must submit a request to surrender all or part of an approved lease. This requirement is the same as the requirement in existing § 226.3.	None.
226.34(d)	Lessees must submit a copy of any agreement with a surface owner where the parties agree that the lessee can remove permanent improvements from the lease following termination. This requirement is the same as the requirement in existing § 226.29(a).	None.

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
226.36	The OMC must submit a Resolution approving a royalty rate for oil that is below the regulatory minimum of 12½ percent. This requirement is the same as the requirement in existing § 226.11(a).	None.
226.39	The OMC must submit a Resolution approving a royalty rate for gas that is below the regulatory minimum of 12½ percent. This requirement is the same as the requirement in existing § 226.11(b).	None.
226.42(b)	The OMC must submit a Resolution providing notice of its intention to take oil and/or gas royalty in kind. This requirement is the same as the requirement in existing § 226.11(a), except that the new provision allows the OMC to take both oil and gas royalty in kind, instead of allowing the OMC to only take oil royalty in kind.	None.
226.44(a)	Lessees must submit contracts or division orders with purchasers of oil and gas. This requirement is the same as the requirement in existing § 226.14, except that the Superintendent's approval of contracts and division orders is no longer required.	None.
226.46(b)	Lessees must make, retain, and preserve royalty, rental, and payment records for six years from the date upon which the relevant transaction was recorded or such longer period as the Superintendent or ONRR may require. This requirement is the same as the requirement in existing § 226.30, except that it reduces the burden by providing a specific timeframe for record retention and clarifies that both the Superintendent ONRR may request the subject records.	None.
226.51(c), 226.52(a) and (b)	Lessees must file an individual well bond for each well the lessee proposes to drill, reenter, recomplete, or accept responsibility for through assignment; a countywide bond covering all leases of the Osage Mineral Estate (10,240 acres maximum); or a nationwide bond covering all leases within the United States to which the lessee is a party. This requirement is the same as the requirement in existing § 226.6(a).	Osage Form F—Oil and Gas Lease Bond.
226.56(a) and (c)	Lessees and permittees must file an Oil and Gas Exploration Bond Form for geophysical exploration operations. An existing lessee with a countywide or nationwide Oil and Gas Lease Bond may file a bond rider covering geophysical exploration operations in lieu of filing an Oil and Gas Exploration Bond. There is no form for bond riders because they are prepared by the surety.	Osage Form G—Oil and Gas Geophysical Exploration Bond.
226.65(b)	Lessees must submit a request to expand an approved drilling site beyond the acreage set forth in the approved EA. This requirement is the same as the requirement in existing § 226.19(b).	None.
226.66(a)	Lessees must submit an application for a permit to drill or reenter a well. This requirement is the same as the requirement in existing § 226.16(b), but the burden on respondents is reduced because Osage Form 139 is now a fillable form that can be completed and submitted electronically.	Osage Form 139—Application for Permit to Drill or Workover Wells.
226.66(c)	Lessees must notify the Superintendent of planned drilling and reentry operations five days prior to the commencement thereof. Notice may be provided by phone or email. This requirement is the same as the requirement in existing § 226.16(c), except that the new provision specifies that the timeframe for providing notice is five days as opposed to ''a reasonable time in advance.''.	None.
226.66(d)	Lessees must submit a request to drill a well within 300 feet of the lease boundary or locate a well or tank within 200 feet of roads or highways maintained for public use, water sources, and residences, granaries, and barns. This requirement is the same as the requirement in existing § 226.33.	None.
226.67(b)	Lessees must submit a request to drill a well that deviates significantly from the vertical and report the drilling of any well that deviates significantly from the vertical without prior approval.	None.
226.69(a)	Lessees must submit an application for a permit to workover a well. This requirement is the same the requirement in existing § 226.16(b), but the burden hours are reduced because Osage Form 139 is now a fillable form that can be completed and submitted electronically.	Osage Form 139—Application for a Permit to Drill or Workover Wells.
226.69(c)	Lessees must notify the Superintendent of planned workover operations five days prior to the commencement thereof. Notice may be provided by phone or email. This requirement is the same as the requirement in existing § 226.16(c), except that the new provision specifies that the timeframe for providing notice is five days as opposed to ''a reasonable time in advance.''.	None.
226.70(a)	Lessees must submit the results of H_2S concentration tests upon request and submit radius of exposure calculations for any well or production facility with an H_2S concentration of 100 ppm or more.	None.
226.70(b)(1) and (2)	Lessees must report any release of a potentially hazardous volume of H_2S as soon as practicable, but not later than 24 hours following identification of the release. Notice must be provided by phone. A lessee must submit a Public Protection Plan for the potential release of a hazardous volume of H_2S if: 1. The 100 ppm radius of exposure is greater than 50 feet and includes any part of a residence, school, church, park, place of business, or other area the general public can reasonably be expected to frequent; 2. The 500 ppm radius of exposure is greater than 50 feet and includes any part of a federal, state, county, or municipal road or highway that is owned and maintained for public use; or	None.

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
	3. The 100 ppm radius of exposure if greater than or equal to 3,000 feet. The regulations specify the information that Public Protection Plans must include.	
226.70(d)	Lessees must maintain a record of all tests of H_2S monitoring systems and make the records available to the Superintendent upon request.	None.
226.72	Lessees must submit a request to temporarily abandon a well for more than 30 calendar days. This requirement is the same as the requirement in existing § 226.28.	None.
226.73(d)	Lessees must submit an application for a permit to plug a well. This requirement is the same as the requirement in existing § 226.28(a), (c), but the burden hours are reduced because Osage Form 139 is now a fillable form that can be completed and submitted electronically.	Osage Form 139—Application for a Permit to Drill, Workover, or Plug Wells.
226.73(f)	Lessees must notify the Superintendent of planned plugging operations five days prior to the commencement thereof. Notice may be provided by phone or email. This requirement is the same as the requirement in existing § 226.16(c), except that the new provision specifies that the timeframe for providing notice is five days as opposed to ''a reasonable time in advance.''.	None.
226.73(h)	Lessees must submit any agreement with a surface owner whereby the parties agree that lessee will condition a well that is being plugged for the surface owner's use as a water supply well. This requirement is the same as the requirement in existing § 226.29(d).	None.
226.74(a)	Lessees must make all books and records relating to lease operations available to the Superintendent upon request. This requirement is the same as the requirement in existing § 226.30.	None.
226.74(c) through (f)	Lessees must submit a report upon completion of all approved drilling, workover, and plugging operations, together with copies of the results for all samples, tests, and surveys conducted on the well; copies of the electrical, mechanical, and radioactive logs or other surveys of the wellbore; core analysis; and for plugging operations, cementing tickets. This requirement is the same as the requirement in existing § 226.32(a), (b) and (c). Lessees must submit a report upon completion of hydraulic fracturing operations together with a report of the fracking fluids used. The regulations specify the information that such reports of fracking fluids must include. Lessees or owners of the fracking fluid information may withhold proprietary information that is exempt from public disclosure by submitting a signed withholding statement.	Osage Form 208—Well Completion or Recompletion Report. Osage Form 209—Report of Workover or Plugging Operations. Osage Form 210—Withholding of Proprietary Hydraulic Fracturing Information.
226.74(h)	Lessees must maintain well records and reports for six years from the date they were generated unless the Superintendent requires a longer retention period due to an audit or investigation. This requirement is the same as the requirement in existing § 226.32(c), except that the new provision specifies the timeframe for retention.	None.
226.76	Lessees must submit the results of tests and surveys performed to establish the effectiveness of measures taken to protect fresh water and mineral bearing formations upon request. This requirement is the same as the requirement in existing § 226.35.	None.
226.77(c)	Lessees must submit a request to construct, utilize, enlarge, or relocate a pit. This requirement is the same as the requirement in existing § 226.22(d).	None.
226.77(d)	Lessees must file a copy of any agreement whereby the lessee and surface owner reach an alternative agreement regarding the emptying and leveling of pits. This requirement is the same as the requirement in existing § 226.22(b).	None.
226.77(f)	Lessees must submit a request for the land-application of waste	None.
226.79(a)	A lessee or individual wishing to conduct oil and gas geophysical exploration activities within the Osage Mineral Estate must submit an Application for an Oil and Gas Geophysical Exploration Permit. This requirement is the same as the requirement in existing § 226.16(a), except that the Proposed Rule provides a form for such applications.	Osage Form 339—Application for Oil and Gas Geophysical Exploration Permit.
226.80	A lessee or permittee must notify the Superintendent of planned oil and gas geophysical operations five days prior to the commencement thereof. Notice may be provided by phone or email.	None.
226.81	A lessee or permittee must submit a Completion Report for Oil and Gas Geophysical Exploration Operations providing a subsequent report of the exploration operations performed.	Osage Form 408—Completion Report for Oil and Gas Geophysical Exploration Operations.
226.82(d)	A person claiming an interest in leased lands for the purpose of the settlement of surface damages must notify the Superintendent of that interest. This requirement is the same as the requirement in existing § 226.20(d).	None.
226.83(f)	A lessee or permittee must file a report of each settlement agreement whereby the lessee or permittee and an Indian landowner agree to the amount of surface damages to be paid. This requirement is the same as the requirement in existing § 226.21(g).	None.
226.84(e)	Lessees must report the emergency pumping of oil into a pit. Emergency reports must be submitted by phone.	None.

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
226.86(a) through (e)	Lessees must submit a site facility diagram for all permanent facilities. The regulations specify the information that site facility diagrams must include and the timeframe for submitting site facility diagrams, which varies depending on the date the relevant facilities became operational. Lessees have an ongoing obligation to update and amend site facility diagrams if facilities are modified to ensure that the diagrams accurately represent facilities. Sample site facility diagrams are available at *https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency*.	None.
226.88(a) through (c)	Lessees, purchasers, transporters, and other persons involved in producing, transporting, purchasing, selling, or measuring oil and gas must retain all records for a minimum of six years from the date upon which the relevant transaction was recorded unless the Superintendent or ONRR requires retention for a longer period. Such records must be made available to the Superintendent or ONRR upon request. The regulations specify the information that production records must include.	None.
226.92(b)	A lessee may request the use of alternative protective measures to prevent drainage.	None.
226.97(a) and (b)	Persons engaged in transporting oil by motor vehicle or pipeline must maintain documentation showing the amount, origin, and intended first purchaser of the oil.	None.
226.98	Lessees, purchasers, or transporters who drain water from a production storage tank must document such draining operations. The regulations specify the information that documentation of water draining operations must include.	None.
226.99(a)	Lessees must document the removal of oil from storage, temporary use of the oil for operations, and return of the oil to storage during hot-oil, clean-up, or completion operations. The regulations specify the information that documentation for temporary removal of oil from storage must include.	None.
226.100	Lessees must maintain a record of the seals used on valves and meter components. The regulations specify the information that seal records must include.	None.
226.101(a)	Lessees must submit a request for off-lease measurement of production. The regulations specify the information that requests for off-lease measurement of production must include.	None.
226.102(a) and (c)	Lessees must report spills, theft, mishandling of production, blowouts, fires, and accidents that occur on the lease by phone or email immediately upon discovery, but not later than one calendar day following discovery. Lessees must also submit a written report of the incident together with a proposed contingency or remediation plan. The initial report of spills, theft, mishandling of production, blowouts, fires, and accidents is provided by phone. This requirement is the same as the requirement in existing § 226.41.	Osage Form H—Spill and Remediation Report.
226.107(f)	Lessees measuring oil by tank gauging must submit tank tables within 45 days after calibrating a tank or recalculation of the tables. This requirement is the same as the requirement in existing § 226.38, except that the new provision specifies the timeframe for submitting tank tables.	None.
226.108(a)	Lessee must submit a request to use automatic tank gauging for oil measurement. The regulations specify the information that requests to use automatic tank gauging must include. This requirement is the same as the requirement in existing § 226.38.	None.
226.108(b)(5)(ii)(B)	Lessees must submit a detailed log of field verifications of automatic tank gauges upon request. This requirement is the same as the requirement in existing § 226.38.	None.
226.109(e)	Lessees must provide notice of any LACT system failures or equipment malfunctions that may have resulted in measurement error within 15 calendar days of discovering such failure or malfunction.	None.
226.112(c), (e), (f), and (g)	Lessees must submit Coriolis meter specifications upon request. Lessees must maintain the following information on-site at the FMP: • Make, model, and size of each sensor; • Make, model, range, and calibrated span of the pressure and temperature transducers used to determine gross standard volume; and • A log of all meter factors, zero verifications, and zero adjustments. Lessees must retain QTRs, configuration logs, event logs, and alarm logs for six years from the date they were generated or such longer period as the Superintendent may require.	None.
226.113(b)	Lessees must have a certificate of calibration for the meter prover (*e.g.,* a device that verifies the accuracy of the meter) on-site and available for review.	None.
226.113(j)	Lessees must submit a report of meter proving and volume adjustments within 14 days after any LACT system or CMS malfunction, including excessive meter-factor deviation.	None.
226.114(d)	Lessees must submit run tickets on or before the last calendar day of the month following the production month. The regulations specify the information that run tickets for tank gauging, LACT, and CMS must include. This requirement is the same as the requirement in existing § 226.16(b), except that the new provision specifies the information run tickets must contain. The information required is consistent with what is currently submitted and prevailing industry standards.	None.
226.115	Lessees must submit a request to use any method of oil measurement other than tank gauging, LACT system, or CMS.	None.

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
226.116(c)	Lessees must submit a request to sell or dispose of slop oil and, following the approved sale or disposal of slop oil, must submit a report identifying the volume of slop oil sold or disposed of, the method used to computer that volume, and the gross revenue from the sale. This provision codifies lessees' existing practices for the sale or disposal of slop oil. Accordingly, it does not impose a new burden on lessees with respect to such sales.	None.
226.121(e)	Lessees must document orifice plate inspections and include that documentation as part of the verification report submitted in accordance with §§ 226.123 (for mechanical recorders) or 226.126 (for EGM systems). The regulations specify the information that documentation of orifice plate inspections must include.	None.
226.121(i)	Lessees must document meter tube inspections and must make such documentation available upon request. The regulations specify the information that documentation of meter tube inspections must include.	None.
226.121(j)	Lessees must notify the Superintendent at least 72 hours in advance of performing basic or detailed meter tube inspections under § 226.121(d), (g), and (h) or submit a monthly or quarterly schedule or inspections. Notice may be provided by phone or email. This provision codifies lessees' existing practice of providing notice of meter tube inspections but specifies that 72 hours' advance notice be provided. The provision introduces the option for lessees to submit inspection schedules to provide additional flexibility for notice requirements.	None.
226.122(g)	Lessees must maintain certain data at FMPs for mechanical recorders. The regulations specify the information that mechanical recorder data maintained at FMPs must include.	None.
226.123(d)	Lessees must retain documentation of mechanical recorder verifications and make such documentation available to the Superintendent upon request. The regulations specify the information that documentation of mechanical recorder verifications must include.	None.
226.123(e)	Lessees must notify the Superintendent at least 72 hours in advance of performing mechanical recorder verifications following installation or repair or performing routine verifications. Notice may be provided by phone or email, or lessees may submit a monthly or quarterly schedule of verifications.	None.
226.123(g)	Purchasers or purchasers' representatives must retain documentation of test equipment certifications on-site. The regulations specify the information that documentation of certification of test equipment include. This collection does not impose a burden on respondents pursuant to 5 CFR 1320.3(h)).	None.
226.124(a)	Lessees must retain an unedited integration statement and make such statement available to the Superintendent upon request. The regulations specify the information that unedited integration statements must include. Lessees already obtain integration statements containing the above information consistent with industry standards. This provision codifies lessees' existing practices. The requirement to retain such statements is the same as the requirement in existing § 226.30.	None.
226.125(e)	Lessees must maintain certain data at FMPs for EGM systems. The regulations specify the information that data for EGM systems must include.	None.
226.126(e)	Lessees must retain documentation of each verification of EGM systems and make such documentation available to the Superintendent upon request. The regulations specify the information that documentation of EGM system verifications must include.	None.
226.126(f)	Lessees must notify the Superintendent at least 72 hours before conducting routine EGM system verifications and verifications following installation or repairs. Notice may be provided by phone or email, or lessees may submit a monthly or quarterly verification schedule. This provision codifies lessees' existing practice of providing notice EGM verifications but specifies that 72 hours' advance notice be provided.	None.
226.126(h)	Purchasers or purchasers' representatives must maintain documentation of test equipment certifications on-site. The regulations specify the information that documentation of test equipment certifications must include. This collection does not impose a burden on respondents pursuant to 5 CFR 1320.3(h)).	None.
226.128(a)	Lessees must retain QTRs for EGM systems and make them available to the Superintendent upon request. The regulations specify the information that QTRs for EGM systems must include.	None.
226.128(b)	Lessees must retain the original, unaltered, unprocessed, and unedited configuration log for the EGM system and make it available upon request. The regulations specify the information that configuration logs must include.	None.
226.128(c)	Lessees must retain the original, unaltered, unprocessed, and unedited event log for the EGM system and make it available upon request. The regulations require the configuration log to contain the information identified in API 21.1, subsection 5.5 and have sufficient capacity to be retrieved and stored at intervals that will maintain a continuous record of events for either the required six-year retention period or the life of the FMP, whichever is shorter.	None.
226.128(d)	Lessees must retain an alarm log and make it available upon request. The regulations require alarm logs to comply with the requirements set forth in API 21.1, Subsection 5.6.	None.

Section(s)	Proposed revision(s) to OMB 1076–0180	OMB 1076–0180 form(s)
226.131(b)	Lessees must notify the Superintendent at least 72 hours before obtaining a spot sample. Notice may be provided by phone or email, or lessees may submit a monthly or quarterly sampling schedule. This provision codifies lessees' existing practice of providing notice of spot sampling but specifies that 72 hours' advance notice be provided. The provision introduces the option for lessees to submit spot sample schedules to provide additional flexibility for notice requirements.	None.
226.131(c)	Lessees must maintain documentation of the cleaning of sample cylinders and make such documentation available upon request.	None.
226.132(a)(2)	Lessees must maintain documentation demonstrating that the cylinder was evacuated and pre-charged before sampling for spot sampling using the Helium ''pop'' method and make such documentation available upon request.	None.
226.132(a)(3)	Lessees must maintain documentation of the seal material and type of lubricant used for the floating piston cylinder method of spot sampling and make such documentation upon request.	None.
226.136(e)	Lessees must retain documentation of the gas chromatograph verifications and make the documentation available upon request. The regulations specify the information that documentation of gas chromatograph verifications must include.	None.
226.138(a), (e)	Lessees must submit all gas analysis reports within 14 calendar days after the due date for the sample as specified in § 226.133. The regulations specify the information that gas analysis reports must include.	None.
226.141(c)(2)	Lessees must document all edits made to reported heating value or volume data before the report is submitted to ONRR, including verifiable justifications for the edits made, and such documentation must be made available upon request.	None.
226.142(d)	Lessees must submit a request to stop furnishing gas to Tribally owned buildings or enterprises or members of the Osage Nation residing in Osage County. This requirement is the same as the requirement in existing § 226.27(b)(3).	None.
226.146(b)	Lessees must submit a request for certain royalty-free uses of production on the lease or unit. The regulations require the Superintendent's approval of: • Use of oil or gas the lessee removes from the pipeline at a location downstream of the FMP; • Use of gas that has been removed from the lease or unit for treatment or processing because the particular physical characteristics of the gas require it to be treated or processed prior to use, where the gas is returned to, and used on, the same lease or unit from which it is produced; and • Any other uses of produced oil and gas for operations and production purposes that are not set forth in § 226.145. The regulations specify the information that requests for royalty-free use of production on the lease or unit must include.	None.
226.148(c)	Lessees must submit a request for certain royalty-free uses of production off the lease or unit. The regulations require the Superintendent's approval of royalty-free treatment of oil or gas used in operations conducted off the lease or unit if the: • Use is among those listed in §§ 226.145(a) or 226.146(a); • Equipment or facility in which the operation is conducted is located off the lease or unit for engineering, economic, resource protection, or physical accessibility reasons; and • Operations are conducted upstream of the FMP. The regulations specify the information that requests for royalty use of production off the lease or unit must include.	None.
226.149(d)	Lessees must notify the Superintendent in writing if oil or gas is removed downstream of the FMP for royalty-free use pursuant to §§ 226.145 through 226.148 and obtain an approved FMP to measure the production removed for use.	None.
226.152(a)	Lessees must submit a request to vent or flare gas. The regulations require the Superintendent's approval to vent or flare gas to ensure that the natural gas disposed of through venting or flaring is properly measured and, where applicable, proper royalties paid. This provision codifies the Superintendent's existing notice to lessees requiring prior approval for all venting and flaring. Accordingly, this provision does not impose a new burden on lessees.	None.
226.158	Lessees must submit a self-certification following the correction of any lease violations for which a notice of non-compliance is received. This provision codifies the Superintendent's existing requirement that self-certification forms be submitted upon completion of the correction of lease violations. Accordingly, this provision does not impose a new burden on lessees.	Osage Form I—Self-Certification for Correction of Lease Violations.

Title of Collection: Mining of the Osage Mineral Estate for Oil and Gas.

OMB Control Number: 1076–0180.

Abstract: Under the 1906 Act, the BIA is required to administer oil and gas leasing and development of the Osage Mineral Estate. The BIA needs to perform the IC activities set forth in the regulations at 25 CFR part 226 to perform its responsibilities under the statute.

Form Number: Osage Form A (Lease Contact of Record); Osage Form B (Evidence of Authority to Execute Papers); Osage Form C (Oil and Gas Mining Lease); Osage Form D (Lease Amendment); Osage Form E (Assignment of Record Title Interest); Osage Form F (Oil and Gas Lease Bond); Osage Form G (Oil and Gas Geophysical Exploration Bond); Osage Form H (Spill

and Remediation Report); Osage Form I (Self-Certification for Correction of Lease Violations); Osage Form 139 (Application for Permit to Drill or Workover Wells); Osage Form 208 (Well Completion or Reentry Report); Osage Form 209 (Report of Workover or Plugging Operations); Osage Form 210 (Withholding of Proprietary Hydraulic Fracturing Information); Osage Form 339 (Application for Permit to Conduct Oil and Gas Geophysical Exploration Operations); Osage Form 408 (Oil and Gas Geophysical Exploration Completion Report).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individual Indians, businesses, and Tribal authorities.

Total Estimated Number of Annual Respondents: 4,974.

Total Estimated Number of Annual Responses: 59,196.

Estimated Completion Time per Response: Varies from six minutes to 40 hours.

Total Estimated Number of Annual Burden Hours: 22,564.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Varies from monthly to yearly.

Total Estimated Annual Non-Hour Burden Cost: $0.

2. OMB Control Number 1012–0004 (ONRR)

The OMB has reviewed and approved information collections for ONRR's royalty and production reporting operations throughout the rest of Indian country, which are assigned OMB Control No. 1012–0004. ONRR is proposing to renew information collection 1012–0004 with revisions to provide for such collections within the Osage Mineral Estate. The following ONRR royalty and production reporting and recordkeeping requirements in the proposed rule require OMB's approval:

Section(s)	Proposed revision(s) to OMB 1012–0004	OMB 1012–0004 Form(s)
226.43(c) and (d)	Lessees must make royalty payments to ONRR by EFT (preferred) or the other forms of payment identified in § 226.8. Non-EFT royalty payments submitted via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627. Royalty reports submitted manually via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Entrance N–1, Room 332, 6th Avenue and Kipling Street, Denver, CO 80225.	None.
226.45	Lessees must submit certified monthly royalty reports to ONRR by 4 p.m. mountain time on or before the last calendar day of the month that follows the month during which the oil and gas is produced and sold. Royalty reports must be submitted electronically via ONRR's eCommerce Reporting website, https://onrrreporting.onrr.gov, unless the lessee meets the qualifications for manual reporting. Royalty reports submitted manually via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627. Royalty reports submitted manually via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Entrance N–1, Room 332, 6th Avenue and Kipling Street, Denver, CO 80225.	ONRR 2014—Report of Sales and Royalty Remittance.
226.46	Lessees must make, retain, and preserve records demonstrating that rental, royalty, and other payments relating to oil and gas leases comply with the terms and conditions of the lease, the regulations in 25 CFR part 226, and applicable orders and notices. Lessees must preserve records for a minimum of six years from the date upon which the relevant transaction was recorded unless the Superintendent or ONRR provides notice that records must be maintained for a longer period due to investigation or audit. Lessees must make records available to the Superintendent ONRR for inspection upon request. Covered under burden for §§ 226.32(c) and (d) and 226.45.	None.
226.85	Lessees must submit certified monthly productions reports to ONRR by 4 p.m. mountain time on or before the 15th day of the second month following the production month. Production reports must be submitted electronically via ONRR's eCommerce Reporting website, https://onrrreporting.onrr.gov, unless the lessee meets the qualifications for manual reporting. Production reports submitted manually via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO, 80225–0627. Production reports submitted manually via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Entrance N–1, Room 332, 6th Avenue and Kipling Street, Denver, CO 80225.	ONRR 4054—Oil and Gas Operations Report (OGOR).
226.88	Lessees, purchasers, transporters, and other persons involved in producing, transporting, purchasing, selling, or measuring oil and gas through the point of royalty measurement or point of first sale, whichever is later, must retain all records, including source records, relevant to determining the quality, quantity, disposition, and verification of production attributable to the subject lease. The regulations specify the information that production records must include. Production records must be preserved for a minimum of six years from the date upon which the relevant transaction was recorded unless the Superintendent or ONRR provides notice that records must be maintained for a longer period due to investigation or audit. Lessees must make records available to the Superintendent ONRR for inspection upon request. Covered under burden for § 226.85.	None.

Title of Collection: Royalty and Production Reporting.

OMB Control Number: 1012–0004.

Revisions: Under the 1906 Act, the BIA is required to administer oil and gas

leasing and development of the Osage Mineral Estate. The proposed rule would allow BIA to transfer the royalty and production reporting and compliance functions for the Osage Mineral Estate to ONRR. ONRR would perform the specified IC activities in 25 CFR part 226 to carry out the BIA's responsibilities and ensure that lessees pay proper royalties and revenues on oil and gas produced from the Osage Mineral Estate. The requirement to timely and accurately report royalties and production is mandatory.

Form Number: ONRR–2014, ONRR–4054.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 3,490 oil, gas, and geothermal reporters.

Total Estimated Number of Annual Responses: 12,827,063 lines of data.

Estimated Completion Time per Response: Varies between 1 and 7 minutes per line, depending on the activity. The average completion time is 1.72 minutes per line. The average completion time is calculated by first multiplying the estimated annual burden hours (369,379) by 60 to obtain the total annual burden minutes. Then the total annual burden minutes (22,162,740) is divided by the estimated annual number of lines submitted (12,827,063).

Total Estimated Number of Annual Burden Hours: 369,379.

Respondent's Obligation: Mandatory.

Frequency of Collection: Monthly.

Total Estimated Annual Non-Hour Burden Cost: ONRR identified no ''non-hour cost'' burden associated with this information collection.

3. OMB Control Number 1012–0006 (ONRR)

The OMB has reviewed and approved information collections for ONRR's suspensions pending appeal and bonding throughout the rest of Indian country, which are assigned OMB Control No. 1012–0006. ONRR is proposing to renew information collection 1012–0006 with revisions to provide for such collections within the Osage Mineral Estate. The following ONRR suspensions pending appeal and bonding requirements in the proposed rule require OMB's approval:

Section(s)	Proposed revision(s) to OMB 1012–0006	OMB 1012–0006 Form(s)
226.179(b)(2)	A party who appeals an order regarding the payment and reporting of royalties, or other payments due, may suspend compliance with such order by submitting an ONRR-specified surety instrument within 60 days after receiving the Order or Notice of Order.	ONRR 4435—Administrative Appeal Bond. ONRR 4436—Letter of Credit. ONRR 4437—Assignment of Certificate of Deposit.
226.180(a)	Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument on behalf of an appellant. If such person is assuming an appellant's responsibility, they must notify ONRR in writing of such assumption. Covered under burden for § 226.179(b)(2).	None.
226.182(b)(2)	ONRR will suspend an obligation to comply with an order if the amount under appeal is $1,000 or more if the appellant submits an ONRR-specified surety instrument within the required timeframe. Covered under burden for § 226.179(b)(2).	None.
226.185(c)	An appellant whose appeal is not decided within one year from the filing date must increase the surety amount to cover additional estimated interest for another one-year period and continue such increases annually. Covered under burden for § 226.179(b)(2).	None.

Title of Collection: Suspensions Pending Appeal and Bonding.

OMB Control Number: 1012–0006.

Revision: Under the 1906 Act, the BIA is required to administer oil and gas leasing and development of the Osage Mineral Estate. The proposed rule would allow BIA to transfer the royalty and production reporting and compliance functions for the Osage Mineral Estate to ONRR. ONRR would perform the specified IC activities in 25 CFR part 226 to carry out enforcement and compliance actions for the Osage Mineral Estate.

Form Number: ONRR–4435, ONRR–4436, and ONRR–4437.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 107.

Total Estimated Number of Annual Responses: 107.

Estimated Completion Time per Response: The time per response is 120 mins. The average completion time is calculated by first multiplying the estimated annual burden hours (214 burden hours) by 60 to obtain the total annual burden minutes. Then the total annual burden minutes (12,840) is divided by the estimated annual responses (107).

Total Estimated Number of Annual Burden Hours: 214.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually and on occasion.

Total Estimated Annual Non-Hour Burden Cost: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates 5 appellants per year will pay a $50 fee to obtain credit data from a business information or credit reporting service, which is a total non-hour cost burden of $250 per year (5 appellants per year × $50 = $250).

J. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.* Therefore, this proposed rule is categorically excluded from further review under 43 CFR 46.210(i) because these are regulations ''whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA review process either collectively or case by case.'' No extraordinary circumstances exist that require greater NEPA review.

K. Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

L. Clarity of This Regulation (Executive Orders 12866, 12988, and 13563)

We are required by Executive Orders 12866, 12988, and 13563 and by the

Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments using one of the methods listed in the **ADDRESSES** section. To better help the BIA revise the rule, your comments should identify the numbers of the sections or paragraphs that you find unclear and specify which sections or sentences are too long, the sections where you believe lists or tables would be useful.

List of Subjects in 25 CFR Part 226

Administrative practice and procedure, Environmental protection, Incorporation by reference, Indians-lands, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Bureau of Indian Affairs proposes to revise 25 CFR part 226 as follows:

PART 226—MINING OF THE OSAGE MINERAL ESTATE FOR OIL AND GAS

Subpart A—General

Sec.
226.0 Incorporation by reference (IBR).
226.1 Definitions.
226.2 Authorities that govern oil and gas activities within the Osage Mineral Estate.
226.3 Authority and responsibility of the Superintendent of the Osage Agency.
226.4 Authority and responsibility of the Office of Natural Resources Revenue (ONRR).
226.5 Orders and notices.
226.6 Service of official correspondence.
226.7 Forms.
226.8 Acceptable forms of payment.
226.9 Environmental reviews and cultural surveys.
226.10 Information collection.
226.11 Public availability of information.

Subpart B—Acquiring a Lease

Authorized Procedures

226.12 Procedures the Osage Minerals Council may use to enter into a lease.

Competitive Leases

226.13 Advertisement of a lease sale.
226.14 Nominating lands for a lease sale.
226.15 Publication of a Notice of Lease Sale.
226.16 Bidding system.
226.17 Award of leases.

Non-Competitive Leases

226.18 Submitting an offer to lease.
226.19 Acceptance of an offer to lease.

Lease Terms

226.20 Types of leases.
226.21 Primary term of leases.
226.22 Effect of changes in current regulations on existing leases.
226.23 U.S. Government employees may not acquire leases.

Subpart C—Cooperative Agreements and Unitization

226.24 Cooperative agreements.
226.25 Unit development plans.

Subpart D—Transferring a Lease by Assignment

226.26 Assignment of record title interest in a lease.
226.27 Qualifications of the assignee.
226.28 Effective date of transfer.
226.29 Effect of assignment on the assignor's liability under the lease.
226.30 Effect of assignment on the assignee's liability under the lease.
226.31 Overriding royalty agreements.
226.32 Drilling contracts.

Subpart E—Ending a Lease

226.33 Surrender of all or any portion of a lease.
226.34 Termination of a lease by operation of law.

Subpart F—Rental and Royalty

Rental Obligations

226.35 Annual rental requirements.

Royalty Obligations

226.36 Royalty rate for oil.
226.37 Calculating the value of oil for royalty purposes.
226.38 Gravity adjustment for oil.
226.39 Royalty rate for gas.
226.40 Calculating the value of gas for royalty purposes.
226.41 Minimum royalty.
226.42 Royalty-in-kind.
226.43 Royalty payments.
226.44 Royalty payment contracts and division orders.
226.45 Royalty reports.
226.46 Requirements for royalty, rental, and payment records.
226.47 Right of the U.S. Government to purchase oil.

Audits

226.48 Audits and reviews.

Subpart G—Bonds

Lease Bonds

226.49 Grandfathering of existing bonds.
226.50 Bond obligations.
226.51 Individual well bond requirements.
226.52 Countywide and nationwide bond requirements.
226.53 Authorization to increase the required bond amount.
226.54 Bond forfeiture.
226.55 Termination of the period of liability and release of bonds.

Geophysical Exploration Bonds

226.56 Geophysical exploration bond requirements.
226.57 Bond forfeiture.
226.58 Termination of the period of liability and release of bonds.

Subpart H—Operations

General Requirements

226.59 Conduct of operations.
226.60 Inspection of operations.

Commencement of Operations

226.61 No operations may commence prior to approval of a lease or geophysical exploration permit.
226.62 Prior authorization required to commence operations on trust or restricted lands.
226.63 Notice and information to be given to surface owners prior to commencement of operations.
226.64 Payment of commencement money and tank siting fees to the surface owner.

Drilling, Workover, and Well Abandonment Operations

226.65 Use of surface lands and water for operations.
226.66 Drilling operations.
226.67 Well control.
226.68 Use of gas for artificial lifting of oil.
226.69 Workover operations.
226.70 Requirements for operations in Hydrogen Sulfide (H_2S) areas.
226.71 Surveys, samples, and tests.
226.72 Temporary abandonment.
226.73 Permanent plugging and abandonment operations.
226.74 Well records and reports.
226.75 Well and facility identification.
226.76 Pollution prevention.
226.77 Storage and disposal of fluids.
226.78 Removal of fire hazards.

Geophysical Exploration Operations

226.79 Applying for a geophysical exploration permit.
226.80 Commencement of operations.
226.81 Records and reports.

Settlement of Surface Damages

226.82 Lessee or permittee required to settle surface damages.
226.83 Procedure for settlement of surface damages.

Subpart I—Production and Site Security

General Requirements

226.84 Production obligations.
226.85 Production reporting.
226.86 Site facility diagrams.
226.87 Assignment of facility measurement point (FMP) numbers.
226.88 Requirements for production records.
226.89 Easements for access to wells located off-lease.

Waste Prevention

226.90 Prevention of waste.
226.91 Royalty on lost or wasted production.

Drainage Requirements

226.92 Prevention of drainage.
226.93 Compensatory royalty for drainage.

Site Security

226.94 Storage and sales facilities—seals.
226.95 Oil measurement system components—seals.
226.96 Removing production from tanks for sale and transportation by truck.
226.97 Documentation required for transportation of oil and gas.
226.98 Water draining operations.
226.99 Hot oiling, clean-up, and completion operations.
226.100 Seal records.
226.101 Requirements for off-lease measurement of production.
226.102 Report of spills, theft, mishandling of production, accidents, or fires.

Subpart J—Oil Measurement

226.103 General requirements.
226.104 Timeframes for compliance.
226.105 [Reserved]
226.106 Specific measurement performance requirements.
226.107 Tank gauging—general requirements.
226.108 Tank gauging—procedures.
226.109 LACT system—general requirements.
226.110 LACT system—components and operating requirements.
226.111 Coriolis measurement systems (CMS)—general requirements and components.
226.112 Coriolis meter—operating requirements.
226.113 Meter proving requirements.
226.114 Run tickets.
226.115 Oil measurement by alternate methods.
226.116 Determination of oil volumes by methods other than measurement.

Subpart K—Gas Measurement

226.117 General requirements.
226.118 Timeframes for compliance.
226.119 [Reserved]
226.120 Specific performance requirements.
226.121 Flange-tapped orifice plates (primary devices).
226.122 Mechanical recorder (secondary device).
226.123 Verification and calibration of mechanical recorder.
226.124 Integration statements.
226.125 Electronic gas measurement (secondary and tertiary device).
226.126 Verification and calibration of electronic gas measurement systems.
226.127 Flow rate, volume, and average value calculation.
226.128 Logs and records.
226.129 Gas sampling and analysis.
226.130 Sampling probe and tubing.
226.131 Spot samples—general requirements.
226.132 Spot samples—allowable methods.
226.133 Spot samples—frequency.
226.134 Composite sampling methods.
226.135 On-line gas chromatographs.
226.136 Gas chromatographs.
226.137 Components to analyze.
226.138 Gas analysis report requirements.
226.139 Effective date of a spot or composite gas sample.
226.140 Calculation of heating value and volume.
226.141 Reporting of heating value and volume.

Subpart L—Tribal and Royalty-Free Use of Production

Tribal Use of Gas Production

226.142 Use of gas by the Osage Nation and Tribe members.
226.143 Royalty on gas furnished for Tribal use.

Royalty–Free Use of Lease Production

226.144 Production on which no royalty is due.
226.145 Uses of production on a lease or unit that do not require the Superintendent's prior approval of royalty-free treatment.
226.146 Uses of production on a lease or unit that require the Superintendent's prior approval of royalty-free treatment.
226.147 Uses of production moved off the lease or unit that do not require the Superintendent's prior approval of royalty-free treatment.
226.148 Uses of production moved off the lease or unit that require the Superintendent's prior approval of royalty-free treatment.
226.149 Measurement or estimation of royalty-free volumes of oil or gas.
226.150 Ownership of equipment or facilities.
226.151 Requesting approval of royalty-free treatment for volumes used.

Subpart M—Venting and Flaring

226.152 General requirements.
226.153 Gas-well gas.
226.154 Oil-well gas.
226.155 Limitations on venting gas.
226.156 Authorized venting and flaring of gas.
226.157 Measurement and reporting of volumes of gas vented or flared.

Subpart N—Assessments and Penalties

Lease Management Assessments and Civil Penalties

226.158 Remedies for violations of lease or permit terms and conditions, regulations, orders, and notices.
226.159 Immediate assessments for violations of certain operating regulations.
226.160 Other assessments.
226.161 Civil penalties with a period to correct.
226.162 Civil penalties without a period to correct.
226.163 Penalty amount.
226.164 Shut-in actions.
226.165 Lease or permit cancellation.
226.166 Payment of assessments and civil penalties.

Royalty Management Assessments and Civil Penalties

226.167 Remedies for violations of lease or permit terms and conditions, regulations, orders, and notices.
226.168 Assessments for incorrect or late reports and failure to report.
226.169 Assessments for failure to submit payment amount indicated on a form or bill document or to provide adequate information.
226.170 Civil penalties with a period to correct.
226.171 Civil penalties without a period to correct.
226.172 Penalty amount.
226.173 Payment of civil assessments and civil penalties.
226.174 Collection of unpaid civil penalties.
226.175 Debt collection and administrative offset.

Criminal Penalties

226.176 Penalties for filing fraudulent reports.

Subpart O—Appeals

Appeals of BIA Decisions

226.177 Procedure for filing an administrative appeal of a decision, order, or notice of the Superintendent.

Appeals of ONRR Decisions

226.178 Procedures for filing an administrative appeal of an order from ONRR.
226.179 Suspension of compliance with an ONRR order.
226.180 Requirements for posting a bond or other surety on behalf of appellant.
226.181 Suspension of obligation to comply with an ONRR order due to judicial review in federal court.
226.182 ONRR's collection of bonds and other surety instruments.
226.183 ONRR bond-approving officer's determination of surety amount not subject to appeal.
226.184 Standards for ONRR-specified surety instruments.
226.185 ONRR's determination of bond or surety instrument amount.

Appendix A Appendix A to Part 226—Table of Atmospheric Pressures

Authority: Sec. 3, Pub. L. 59–321, 34 Stat. 543; Secs. 1–2, Pub. L. 66–360, 41 Stat. 1249; Secs. 1–2, Pub. L. 70–919, 45 Stat. 1478; Sec. 3, Pub. L. 75–711, 52 Stat. 1034; Pub. L. 81–548, 65 Stat. 215; Pub. L. 88–632, 78 Stat. 1008; Secs. 2, 4, Pub. L. 95–496, 92 Stat. 1660.

Subpart A—General

§ 226.0 Incorporation by reference (IBR).

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than those specified in this section, the Bureau of Indian Affairs (BIA) must publish a document in the **Federal Register**, and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the BIA and at the National Archives and Records Administration (NARA). To inspect the material at BIA, contact: the BIA Osage Agency, 513 Grandview Avenue, Pawhuska, OK 74056; phone 918–287–5700. For information on the availability of this material at NARA,

visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) American Petroleum Institute (API), 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20005; phone: 202–682–8000; website: *https://www.api.org.*

(1) API Manual of Petroleum Measurement Standards (MPMS), Chapter 2—Tank Calibration, Section 2A—Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method; First Edition, February 1995; Reaffirmed August 2017 (''API 2.2A''); IBR approved for § 226.107(f).

(2) API MPMS Chapter 2—Tank Calibration, Section 2B—Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method; First Edition, March 1989; Reaffirmed, April 2019; Addendum 1, October 2019 (''API 2.2B''); IBR approved for § 226.107(f).

(3) API MPMS Chapter 2—Tank Calibration, Section 2C—Calibration of Upright Cylindrical Tanks Using the Optical-Triangulation Method; First Edition, January 2002; Reaffirmed April 2019 (''API 2.2C''); IBR approved for § 226.107(f).

(4) API MPMS Chapter 3—Tank Gauging, Section 1A—Standard Practice for the Manual Gauging of Petroleum and Petroleum Products; Third Edition, August 2013; Reaffirmed December 2018 (''API 3.1A''); IBR approved for § 226.108(b).

(5) API MPMS Chapter 3—Tank Gauging, Section 1B—Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging; Third Edition, April 2018 (''API 3.1B''); IBR approved for § 226.108(b).

(6) API MPMS Chapter 3—Tank Gauging, Section 6—Measurement of Liquid Hydrocarbons by Hybrid Tank Measurement Systems; First Edition, February 2001; Errata September 2005; Reaffirmed January 2017 (''API 3.6''); IBR approved for § 226.108(b).

(7) API MPMS Chapter 4—Proving Systems, Section 1—Introduction; Third Edition, February 2005; Reaffirmed June 2014 (''API 4.1''); IBR approved for § 226.113(c).

(8) API MPMS Chapter 4—Proving Systems, Section 2—Displacement Provers; Third Edition, September 2003; Reaffirmed March 2011, Addendum February 2015 (''API 4.2''); IBR approved for § 226.113(b) and (c).

(9) API MPMS Chapter 4—Proving Systems, Section 5—Master-Meter Provers; Fourth Edition, June 2016, (''API 4.5''); IBR approved for § 226.113(b).

(10) API MPMS Chapter 4—Proving Systems, Section 6—Pulse Interpolation; Second Edition, May 1999; Errata April 2007; Reaffirmed October 2013 (''API 4.6''); IBR approved for § 226.113(c).

(11) API MPMS Chapter 4—Proving Systems, Section 8—Operation of Proving Systems; Second Edition, September 2013 (''API 4.8''); IBR approved for § 226.113(b).

(12) API MPMS Chapter 4—Proving Systems, Section 9—Methods of Calibration for Displacement and Volumetric Tank Provers, Part 2—Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration; First Edition, December 2005; Reaffirmed July 2015 (''API 4.9.2''); IBR approved for § 226.113(b).

(13) API MPMS Chapter 5—Metering, Section 6—Measurement of Liquid Hydrocarbons by Coriolis Meters; First Edition, October 2002; Reaffirmed November 2013 (''API 5.6''); IBR approved for §§ 226.111(d); 226.113(i) and (j).

(14) API MPMS Chapter 6—Metering Assemblies, Section 1—Lease Automatic Custody Transfer (LACT) Systems; Second Edition, May 1991; Reaffirmed May 2012 (''API 6.1''); IBR approved for § 226.110(a) and (b).

(15) API MPMS Chapter 7—Temperature Determination, Section 1—Liquid-in-glass Thermometers, Second Edition, August 2017 (''API 7.1''); IBR approved for § 226.108(b).

(16) API MPMS Chapter 7—Temperature Determination, Section 2—Portable Electronic Thermometers; Third Edition, May 2018 (''API 7.2''); IBR approved for § 226.108(b).

(17) API MPMS Chapter 7—Temperature Determination, Section 4—Dynamic Temperature Measurement, Second Edition, January 2018 (''API 7.4''); IBR approved for § 226.110(b).

(18) API MPMS Chapter 8—Sampling, Section 1—Standard Practice for Manual Sampling of Petroleum and Petroleum Products; Fourth Edition, October 2013 (''API 8.1''); IBR approved for §§ 226.108(b); 226.113(i).

(19) API MPMS Chapter 8—Sampling, Section 2—Standard Practice for Automatic Sampling of Petroleum and Petroleum Products; Fourth Edition, November 2016 (''API 8.2''); IBR approved for §§ 226.110(b); 226.113(i).

(20) API MPMS Chapter 8—Sampling, Section 3—Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products; First Edition, October 1995; Reaffirmed, March 2015 (''API 8.3''); IBR approved for §§ 226.110(b); 226.113(i).

(21) API MPMS Chapter 9—Density Determination, Section 1—Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method; Third Edition, December 2012; Reaffirmed May 2017 (''API 9.1''); IBR approved for §§ 226.108(b); 226.110(b).

(22) API MPMS Chapter 9—Density Determination, Section 2—Standard Test Method for Density or Relative Density of Light Hydrocarbons by Pressure Hydrometer; Third Edition, December 2012; Reaffirmed May 2017 (''API 9.2''); IBR approved for §§ 226.108(b); 226.110(b).

(23) API MPMS Chapter 9—Density Determination, Section 3—Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method; Third Edition, December 2012; Reaffirmed May 2017 (''API 9.3''); IBR approved for §§ 226.108(b); 226.110(b).

(24) API MPMS Chapter 10—Sediment and Water, Section 4—Determination of Water and/or Sediment in Crude Oil by the Centrifuge Method (Field Procedure); Fourth Edition, October 2013; Errata March 2015 (''API 10.4''); IBR approved for §§ 226.108(b); 226.110(b).

(25) API MPMS Chapter 11—Physical Properties Data, Section 1—Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products and Lubricating Oils; May 2004, Addendum 1 September 2007, Addendum 2 May 2019; Reaffirmed August 2012 (''API 11.1''); IBR approved for §§ 226.109(g); 226.110(b); 226.111(e); 226.114(a).

(26) API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 2—Measurement Tickets; Third Edition, June 2003; Reaffirmed February 2016 (''API 12.2.2''); IBR approved for § 226.110(b).

(27) API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 3—Proving Report; First Edition, October 1998; Reaffirmed May 2014 (''API 12.2.3''); IBR approved for § 226.113(c) and (j).

(28) API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 4—Calculation of Base Prover Volumes by the Waterdraw

Method; First Edition, December 1997; Reaffirmed September 2014 (''API 12.2.4''); IBR approved for § 226.113(b).

(29) API MPMS Chapter 13—Statistical Aspects of Measuring and Sampling, Section 3—Measurement Uncertainty; Second Edition, December 2017 (''API 13.3''); IBR approved for § 226.106(a).

(30) API Manual of Petroleum Measurement Standards (MPMS) Chapter 14—Natural Gas Fluids Measurement, Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer; Seventh Edition, May 2016; Addendum August 2017; Errata August 2017 (''API 14.1''); IBR approved for §§ 226.130(b) and (c); 226.131(c); 226.132(b).

(31) API MPMS Chapter 14—Natural Gas Fluids Measurement, Section 3—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 1—General Equations and Uncertainty Guidelines; Fourth Edition, September 2012; Errata July 2013; Reaffirmed September 2017 (''API 14.3.1''); IBR approved for §§ 226.106(a); 226.120(a).

(32) API MPMS Chapter 14—Natural Gas Fluids Measurement, Section 3—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 2—Specification and Installation Requirements; Fifth Edition, March 2016; Errata 1, March 2017; Errata 2, January 2019 (''API 14.3.2''); IBR approved for § 226.121(b) through (f), (h), (i), and (l).

(33) API MPMS Chapter 14—Natural Gas Fluids Measurement, Section 3—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters, Part 3—Natural Gas Applications; Fourth Edition, November 2013 (''API 14.3.3''); IBR approved for §§ 226.124(b); 226.127(a).

(34) API MPMS, Chapter 14—Natural Gas Fluids Measurement, Section 5—Calculation of Gross Heating Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures for Custody Transfer; Third Edition, January 2009; Reaffirmed November 2020 (''API 14.5''); IBR approved for §§ 226.138(c); 226.140(a).

(35) API MPMS Chapter 18—Custody Transfer, Section 1—Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck; Third Edition, May 2018 (''API 18.1''); IBR approved for § 226.108(b).

(36) API MPMS Chapter 21—Flow Measurement Using Electronic Metering Systems, Section 1—Electronic Gas Measurement; Second Edition, February 2013 (''API 21.1''); IBR approved for §§ 226.125(a) and (g); 226.126(a), (c), and (d); 226.127(c); 226.128(a) through (d).

(37) API MPMS Chapter 21—Flow Measurement Using Electronic Metering Systems, Section 2—Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters; First Edition, June 1998; Reaffirmed October 2016 (''API 21.2''); IBR approved for §§ 226.110(b); 226.111(e); 226.112(g).

(38) API Recommended Practice (RP) 12R1, Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service; Fifth Edition, August 1997; Reaffirmed April 2008; Addendum 1, December 2017 (''API RP 12R1''); IBR approved for § 226.107(b).

(39) API RP 2556, Correction Gauge Tables for Incrustation; Second Edition, August 1993; Reaffirmed November 2013 (''API RP 2556''); IBR approved for § 226.107(f).

(b) American Gas Association (AGA), 400 North Capitol Street NW, Suite 450, Washington, DC 20001; phone: 202–824–7000; website: *https://www.aga.org.*

(1) AGA Report No. 3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Second Edition, September 1985 (''AGA Report No. 3''); IBR approved for § 226.124(b).

(2) AGA Transmission Measurement Committee Report No. 8, Compressibility Factors of Natural Gas and Other Related Hydrocarbon Gases; Second Edition, November 1992 (''AGA Report No. 8''); IBR approved for §§ 226.127(a); 226.138(d).

(c) Gas Processors Association (GPA), 6526 E. 60th Street, Tulsa, OK 74145; phone 918–493–3872; website: *https://www.gpamidstream.org.*

(1) GPA Midstream Standard 2166–17, Obtaining Natural Gas Samples for Analysis by Gas Chromatography; Reaffirmed 2017 (''GPA 2166–17''); IBR approved for §§ 226.131(c) and (d); 226.132(a); 226.135(a).

(2) GPA Midstream Standard 2261–20, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography; Revised 2020 (''GPA 2261–20''); IBR approved for § 226.136(a) and (c).

(3) GPA Midstream Standard 2198–16, Selection, Preparation, Validation, Care and Storage of Natural Gas and Natural Gas Liquids Reference Standard Blends; Revised 2016 (''GPA 2198–16''); IBR approved for § 226.136(c).

§ 226.1 Definitions.

(a) As used in this part, the term:

Alarm log means a log for recording any system alarm, user-defined alarm, or error conditions (such as out-of-range temperature or pressure) that occur. This includes a description of each alarm condition and the times the condition occurred and cleared.

Appropriate valve means those valves that provide access to production before it is measured for sales and that are subject to the sealing requirements set forth in this part.

Area ratio means the smallest unrestricted area at the primary device divided by the cross-sectional area of the meter tube. For example, the area ratio (A_r) of an orifice plate is the area of the orifice bore (A_d) divided by the area of the meter tube (A_D). For an orifice plate with a bore diameter (d) of 1.000 inches in a meter tube with an inside diameter (D) of 2.000 inches, the area ratio is 0.25 and is calculated as follows:

$$A_d = \frac{\pi d^2}{4} = \frac{\pi \cdot 1.000^2}{4} = 0.7854 in^2 \qquad A_D = \frac{\pi D^2}{4} = \frac{\pi \cdot 2.000^2}{4} = 3.1416 in^2$$

$$A_r = \frac{A_d}{A_D} = \frac{0.7854 in^2}{3.1416 in^2} = 0.25$$

As-found means the reading of a mechanical or electronic transducer when compared to a certified test device, prior to making any adjustments to the transducer.

As-left means the reading of a mechanical or electronic transducer when compared to a certified test device after adjusting the transducer, but prior to returning the transducer to service.

Audit means a review of production reporting, royalty reporting, or payment activities of lessees, designees, or other persons or entities who report production or pay royalties, rents, bonuses, or other revenues on leases or properties where a lease, or portion of a lease, is committed to a cooperative agreement.

Automatic ignition system means an automatic ignitor and, where needed to ensure continuous combustion, a continuous pilot flame.

Averaging period means the previous 12 months or life of the meter, whichever is shorter. For an FMP that measures production from a newly drilled well, the averaging period excludes production from the well that occurred during or prior to the first full month of production.

Barrel (bbl) means 42 standard United States gallons.

Beta (or diameter) ratio means the reference inside diameter (measured inside diameter corrected to a reference temperature of 68 °F) of the orifice bore divided by the reference inside diameter of the meter tube. This is also referred to as a diameter ratio.

Bias means a shift in the mean value of a set of measurements away from the true value of what is being measured.

Business day means any day Monday through Friday, excluding weekends and Federal holidays.

Bypass means any piping or equipment used at an FMP to go around or otherwise avoid a meter or other measurement device, or any component thereof, to allow oil or gas to flow without accountability. Equipment that allows the changing of the orifice plate of a gas meter without bleeding the pressure off the gas meter run (*e.g.,* senior fitting) is not a bypass.

Capture means the physical containment of natural gas for transportation to market or productive use of natural gas and includes injection and royalty-free on-site uses pursuant to the regulations in this part.

Calendar day means all days in a month, including weekends and Federal holidays.

Composite meter factor means a meter factor corrected from normal operating pressure to base pressure. The composite meter factor is determined by proving operations where the pressure is considered constant during the measurement period between provings. This definition applies to liquid meter provings only.

Configuration log means a record that contains all selected flow parameters used in the generation of a quantity transaction record.

Cooperative agreement means a binding legal agreement between two or more parties for the development or operation of a designated area as a single unit without regard to separate ownership of the leased lands included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements and communitization agreements.

Coriolis measurement system (CMS) means a metering system using a Coriolis meter in conjunction with a tertiary device, pressure transducer, and temperature transducer to derive and report gross standard oil volume. A CMS system provides real-time, on-line measurement of oil.

Deleterious substance means any chemical, saltwater, oil field brine, waste oil, waste emulsified oil, basic sediment, mud, or other injurious substance produced or used in the drilling, development, production, transportation, refining, and processing of oil and gas.

Director means the Director of ONRR, the Director's authorized representative acting under delegated authority, or such other person as the Director may delegate to fulfill responsibilities and exercise authorities under this part.

Discharge coefficient means an empirically derived correction factor that is applied to the theoretical differential flow equation to calculate a flow rate that is within stated uncertainty limits.

Drainage means the migration of hydrocarbons, inert gases, or associated resources caused by production from other wells.

Effectively sealed means sealed in such a manner that the sealed component cannot be accessed, moved, or altered without breaking the seal.

Element range means the difference between the minimum and maximum value that the element of a mechanical recorder (*e.g.,* differential-pressure bellows, static pressure element, temperature element) is designed to measure.

Ephemeral stream or water source means a stream or water source that only flows in direct response to precipitation and whose channel is always above the water table.

Escape rate means the maximum volume of gas determined to be available for escape (Q), calculated as follows:

(1) For production facilities, the maximum daily rate of gas produced through that facility or the best estimate thereof;

(2) For oil wells, the producing gas/oil ratio multiplied by the maximum daily production rate or the best estimate thereof; and

(3) For gas wells, the current daily absolute open flow rate against atmospheric pressure.

Event log means an electronic record of all exceptions and changes to the flow parameters contained within the configuration log that have an impact on a quantity transaction record.

Facility measurement point (FMP) means a point where oil or gas produced from a lease is measured and such measurement affects calculation of the volume or quality of production on which royalty is owed. Each individual meter installation (including its primary, secondary, and tertiary devices) and tank battery is a separate FMP.

Free water means the measured volume of water that is present in a container and that is not in suspension in the contained liquid at observed temperature.

Gas means any fluid, either combustible or non-combustible, hydrocarbon or non-hydrocarbon, which is extracted from a reservoir and has neither independent shape nor volume, but tends to expand indefinitely, and which exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas-to-oil ratio (GOR) means the ratio of gas to oil in the production stream expressed in standard cubic feet of gas per barrel of oil.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas. This does not include residue gas.

Gas well means a well that produces natural gas that is not associated with oil at the time of well completion or for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced by at least 15,000 standard cubic feet for each barrel of oil produced at the time of well completion.

Geophysical exploration means activity relating to the search for evidence of oil and gas which requires physical presence upon surface lands and may result in damage to the lands or resources located thereon. This includes, but is not limited to, geophysical operations, construction of roads and trails, cross-country transit of vehicles, and drilling operations to place explosive charges, where

approved. This does not include drilling for oil and gas.

Gross proceeds means the total monies and other consideration accruing to a lessee for the disposition of the oil, gas, or other marketable products produced.

Gross standard volume means a volume of oil corrected to base pressure and temperature and includes meter factor, as applicable.

Heating value means the gross heat energy released by the complete combustion of one standard cubic foot of gas at 14.73 psia and 60 °F.

High-volume FMP means any gas FMP that measures more than 200 Mcf/day, but less than 1,000 Mcf/day, over the averaging period. This definition only applies to gas FMPs; it does not apply to oil FMPs on an equivalent-gas basis.

Indicated volume means the uncorrected volume indicated by the meter in a LACT system or the Coriolis meter in a CMS. For a positive displacement meter, the indicated volume is represented by the non-resettable totalizer on the meter head. For Coriolis meters, the indicated volume is the uncorrected (without the meter factor) mass of liquid divided by the density.

Innage gauge means the level of a liquid in a tank, measured from the datum plate or tank bottom to the surface of the liquid.

Intermittent stream or water source means a stream or water source flowing only at certain times of the year when it receives water from springs or other surface sources.

Knowingly or willfully means an act, or failure to act, that is committed with actual knowledge, deliberate ignorance, or reckless disregard of the facts surrounding the event or violation; it requires no proof of specific intent to defraud. The knowing or willful nature of conduct may be established by plain indifference or reckless disregard of the terms and conditions of the lease or permit or applicable laws, regulations, orders, or notices. A consistent pattern of performance, or failure to perform, may be sufficient to establish the knowing or willful nature of the conduct. Conduct that is regarded as knowing or willful is not accidental, nor is it mitigated by the belief that the conduct is reasonable or legal.

Lease means any contract approved by the United States under the Act of June 28, 1906, Public Law 59–321, 34 Stat. 539, as amended, that authorizes exploration for, or the extraction and removal of, oil and gas from the Osage Mineral Estate.

Lease automatic custody transfer (LACT) system means a system of components designed for the unattended custody transfer of oil produced from a lease or unit to the transporting carrier. The system must determine the net standard volume and quality and provide for safe and tamper-proof operations.

Legal description means the geographical description of a location utilizing the quarter-section, section, township, and range.

Lessee means any person holding record title to, or owning operating rights in, an oil and/or gas lease issued under the regulations in this part and any authorized representative thereof, including any designee who reports production or submits royalty payments on behalf of the lessee.

Liquids unloading means the removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.

Lost oil or gas means produced oil or gas that escapes containment, whether such loss is intentional or unintentional, or that is flared before being removed from the lease or unit and cannot be recovered.

Low-volume FMP means any gas FMP that measures more than 35 Mcf/day, but less than or equal to 200 Mcf/day, over the averaging period. This definition only applies to gas FMPs; it does not apply to oil FMPs on a gas-equivalent basis.

Marketable condition means a condition in which lease products are sufficiently free from impurities or otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

Maximum ultimate economic recovery means the recovery of oil and gas that a prudent lessee could be expected to make from the field or reservoir given existing knowledge and other pertinent facts and utilizing common industry practices for primary, secondary, or tertiary recovery operations.

Meter factor means a ratio obtained by dividing the measured volume of liquid that passed through a prover or master meter during the proving by the measured volume of liquid that passed through the line meter during the proving, corrected to base pressure and temperature.

Mole percent means the number of molecules of a particular type that are present in a gas mixture divided by the total number of molecules in the gas mixture, expressed as a percentage.

Monthly Index Zone Price means the index-based value per MMBtu for gas production from a lease in an index zone. The Monthly Index Zone Price is calculated by averaging the highest reported prices for all index-pricing points in the relevant index zone for each ONRR-approved publication, summing those averages, dividing by the number of ONRR-approved publications, and reducing the number calculated by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

Natural gas liquids (NGLs) means gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

Net standard volume means the gross standard volume corrected for quantities of non-merchantable substances such as sediment and water.

NYMEX Calendar Month Average Price means the average of the New York Mercantile Exchange (NYMEX) daily settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows: (1) Sum the prices published for each day during the calendar month of production, excluding weekends and Federal holidays, for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day; and (2) Divide the sum by the number of days on which those prices are published, excluding weekends and Federal holidays.

Oil well means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced at the time of completion.

Operating right (working interest) means a percentage of ownership in a lease granting the owner the right to enter upon the leased lands to conduct exploratory, drilling, or related operations, including the production of oil and gas, in accordance with the terms and conditions of the lease.

Orphan well means an oil, gas, disposal, injection, or service well that is no longer in use whether dry, inoperable, or incapable of production; that the current lessee did not assume through assignment; that has not been drilled, re-entered, operated, or affected by the current lessee; and for which there is no legally or financially responsible party with sufficient resources to conduct proper plugging, abandonment, and surface restoration operations.

Osage Minerals Council means the independent agency within the Osage Nation created by Article XV, section 4, of the Constitution of the Osage Nation (2006) with administrative authority to consider and approve leases of the Osage Mineral Estate and propose other forms of development thereof, and its successors in interest.

Osage Mineral Estate means the subsurface mineral estate underlying Osage County, Oklahoma that is held in trust by the United States for the benefit of the Osage Nation in accordance with the Act of June 28, 1906, Public Law 59–321, section 3, 34 Stat. 539, as amended.

Osage Nation means the federally recognized Indian Tribe referred to by Article I of the Constitution of the Osage Nation (2006) and its predecessors and successors in interest.

Perennial stream or water source means a stream or water source that flows continuously.

Permittee means any person, other than a lessee, who applies for and receives a geophysical exploration permit.

Person means any individual, corporation, partnership, association, firm, consortium, joint venture, or other entity.

Primary term means the initial term of the lease during which the lease contract may be kept in force by either commencement of production in paying quantities or the payment of annual rental.

Production in paying quantities means production of oil or gas from a lease that is of sufficient value to exceed direct operating costs and the cost of annual rental or minimum royalty.

Production phase means that event during which oil is delivered directly to or through production equipment to the storage facilities and includes all operations at the facility other than those defined as being within the sales phase.

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

Quantity transaction record (QTR) means a report generated by a flow computer on a LACT, CMS, or other approved system that summarizes the daily and/or hourly volume calculated by the flow computer and the average or totals of the dynamic data that is used in the calculation of gross standard volume.

Record title means a lessee's interest in a lease which includes the obligation to pay rental and the right to assign or surrender the lease. Overriding royalty and operating rights are severable from record title interests.

Regional Director means the Regional Director for the Eastern Oklahoma Region, Bureau of Indian Affairs, or the Regional Director's authorized representative acting under delegated authority.

Residue gas means hydrocarbon gas consisting principally of methane and resulting from processing gas.

Sales phase means that event during which oil is removed from storage facilities at an FMP for sale.

Seal means a uniquely numbered device that completely secures either a valve or those components of a measuring system that affect the quality or quantity of the oil being measured.

Senior fitting means a type of orifice plate holder that allows the orifice plate to be removed, inspected, and replaced without isolating and depressurizing the meter tube.

Slop oil means oil that is of such quality that it is not acceptable to normal purchasers and is usually sold to oil reclaimers. Oil that can be made acceptable to normal purchasers through special treatment economically provided at existing or modified facilities or using portable equipment at, or upstream of, the FMP, is not slop oil.

Source record means any unedited, original record, document, or data that is used to determine the volume and quality of production, regardless of how it was created or stored or the format it is in (*i.e.,* paper or electronic). This includes, but is not limited to, raw and unprocessed data (*e.g.,* instantaneous and continuous information used by flow computers to calculate volumes); gas charts; run tickets; calibration, verification, prover and configuration reports; lessee field logs; volume statements; event logs; seal records; and gas analyses.

Statistically significant means a difference between two data sets that exceeds the threshold of significance. The threshold of significance is the maximum difference between two data sets (*a* and *b*) that can be attributed to uncertainty effects, and is calculated as follows:

$$T_s = \sqrt{U_a^2 + U_b^2}$$

Where:

T_s = Threshold of significance, in percent

U_a = Uncertainty (95 percent confidence) of data set a, in percent

U_b = Uncertainty (95 percent confidence) of data set b, in percent

Superintendent means the Superintendent of the Osage Agency, Bureau of Indian Affairs, the Superintendent's authorized representative acting under delegated authority, or such other person or official that may be delegated to fulfill responsibilities and exercise authorities under this part.

Surface owner means any person who owns a surface estate within Osage County, Oklahoma, regardless of whether the surface estate is held in fee, restricted fee, or trust status.

Total observed volume (TOV) means the total measured volume of all oil, sludge, S&W, and free water at the measured or observed temperature and pressure.

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official website, *http://www.cmegroup.com,* in which case the NYMEX definition will apply.

Upper calibrated limit means the maximum engineering value for which a transducer was calibrated by certified equipment, either in the factory or in the field.

US well number means a unique, permanent numeric identifier assigned to each oil and gas well drilled in the United States that includes the completion code.

Very-high-volume FMP means any gas FMP that measures more than 1,000 Mcf/day over the averaging period. This definition only applies to gas FMPs; it does not apply to oil FMPs on an equivalent-gas basis.

Very-low-volume FMP means any gas FMP that measures 35 Mcf/day or less over the averaging period. This definition only applies to gas FMPs; it does not apply to oil FMPs on an equivalent-gas basis.

Waste of oil or gas means any action or inaction by the lessee that is not sanctioned by the Superintendent as necessary for proper development and production, where compliance costs are not greater than the monetary value of the resources they are expected to conserve, and that results in:

(1) A reduction in the quality or quantity of oil or gas ultimately producible from a reservoir under prudent and proper operations; or

(2) Avoidable surface loss of oil or gas.

Waste oil means oil that the Superintendent determined is of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment, cannot be sold to reclaimers, and has no economic value.

(b) As used in this part, the following acronyms apply:

API means American Petroleum Institute.

BIA means Bureau of Indian Affairs.

Btu means British thermal unit.

CPL means correction for the effect of pressure on a liquid.

CTL means correction for the effect of temperature on a liquid.

FCCP means a Failure to Correct Civil Penalty Notice.

ft msl means feet above mean sea level.

GPA means Gas Processors Association.

GPS means Global Positioning System.

IBIA means the Interior Board of Indian Appeals, Office of Hearings and Appeals.

IBLA means the Interior Board of Land Appeals, Office of Hearings and Appeals.

ILCP means an Immediate Liability Civil Penalty Notice.

IRS means Internal Revenue Service.

Mcf means 1,000 standard cubic feet.

MMBtu means million metric British thermal units.

MMcf means million cubic feet.

NIST means National Institute of Standards and Technology.

NONC means a Notice of Noncompliance.

NTL means Notice to Lessee(s).

ONRR means Office of Natural Resources Revenue.

psia means pounds per square inch—absolute.

psig means pounds per square inch—gauge.

S&W means sediment and water.

SWD means saltwater disposal.

§ 226.2 Authorities that govern oil and gas activities within the Osage Mineral Estate.

All oil and gas exploration and development activities conducted within the Osage Mineral Estate are subject to:

(a) The regulations in this part;

(b) Lease and permit terms and conditions;

(c) Orders, notices, and instructions the Superintendent issues;

(d) Orders, notices, and instructions ONRR issues; and

(e) All other applicable laws, regulations, and authorities.

§ 226.3 Authority and responsibility of the Superintendent of the Osage Agency.

The Superintendent of the Osage Agency has the authority and responsibility to administer leasing and development of the Osage Mineral Estate.

§ 226.4 Authority and responsibility of the Office of Natural Resources Revenue (ONRR).

The Office of Natural Resources Revenue (ONRR) has the authority and responsibility for administering the Osage Agency's royalty management program including, but not limited to, royalty and production accounting, reporting, verification, collection, enforcement, and appeals.

§ 226.5 Orders and notices.

(a) The Superintendent is authorized to issue orders and notices when necessary to implement, supplement, clarify, and enforce the regulations in this part. Orders and notices the Superintendent issues under this section are binding on the lessee and any other persons they apply to. The Superintendent may, in their discretion, grant an extension of the time to comply with an order or notice.

(b) ONRR is authorized to issue orders and notices when necessary to implement, supplement, clarify, and enforce the regulations in this part. Orders that ONRR issues under this section are binding on the lessee and any other persons they apply to.

§ 226.6 Service of official correspondence.

(a) The Superintendent and ONRR will serve all official correspondence by regular U.S. mail, certified mail—return receipt requested, private delivery service (*i.e.,* UPS or FedEx), or hand delivery.

(b) The Superintendent will serve official correspondence to the party identified on the most recently received Lease Contact of Record form. The lessee is responsible for notifying the Superintendent of any change in the designated point of contact's name, address, or phone number by submitting an updated form within two weeks of any such change.

(c) ONRR will serve official correspondence to the party identified on the most recently received Form ONRR–4444, Address/Addressee of Record, for the type of correspondence at issue. The reporter is responsible for notifying ONRR of any name or address changes within two weeks of any such change.

(d) If the lessee, reporting party, or payor fails to submit or update contact information in accordance with the requirements in this section:

(1) The Superintendent may use the name and address listed on the lease; and

(2) ONRR may use the individual or departmental name, address, or position title, contained in ONRR's database based on previous formal or informal communications or correspondence.

(e) The Superintendent and ONRR may also obtain contact information from public records and send official correspondence to:

(1) The registered agent;

(2) A corporate officer; or

(3) The addressee of record reflected in the files of any state Secretary, any Federal or state agency that keeps official records of business entities or corporations, or other appropriate public records for individuals, business entities, and corporations.

(f) The Superintendent and ONRR consider the date of service for official correspondence to be:

(1) Seven calendar days for regular U.S. mail;

(2) The date of receipt for certified mail—return receipt requested and private delivery service; and

(3) The date of delivery for hand delivery.

(g) If, the Superintendent or ONRR serves official correspondence using multiple methods and the dates of receipt differ, the date of the earliest receipt is the date of service.

(h) If, after a reasonable effort, the Superintendent or ONRR are unable to deliver official correspondence to the contact of record, the correspondence will be considered constructively served seven calendar days after the original mailing date. This includes, but is not limited to, situations where delivery does not occur because:

(1) The contact of record moved without filing a forwarding address, Lease Contact of Record form, or ONRR Form-4444;

(2) The forwarding order expired;

(3) Delivery was expressly refused; or

(4) The correspondence was unclaimed and the U.S. Postal Service, a private mailing service, or an individual who attempted to make delivery using a different method of service substantiates the delivery attempt.

§ 226.7 Forms.

Leases, assignments, applications, bonds, affidavits, reports, and other instruments must be on forms approved by the Superintendent or ONRR. Only the official version and current edition of such forms will be accepted.

§ 226.8 Acceptable forms of payment.

All sums due under a lease or the regulations in this part must be paid by electronic funds transfer (EFT), certified check, cashier's check, money order, or commercial or personal check drawn on a solvent bank, otherwise specified herein or notified by the Superintendent or ONRR in writing. Such sums constitute a prior lien on all equipment

and unsold oil located on the lease or unit.

§ 226.9 Environmental reviews and cultural surveys.

Prior to approving leases and permit applications for operations requiring new or additional ground-disturbance, the Superintendent must:

(a) Ensure that environmental review has been conducted in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* the regulations promulgated by the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508, and the Department's regulations implementing NEPA, 43 CFR part 46, and that an environmental record of review (*e.g.,* categorical exclusion checklist, determination of NEPA adequacy), environmental assessment, or environmental impact statement has been prepared, as appropriate.

(b) Ensure that all necessary archeological or cultural surveys are performed, and clearances obtained, in accordance with the National Historic Preservation Act (NHPA), 54 U.S.C. 300101, *et seq.,* the regulations promulgated by the Advisory Council on Historic Preservation, 36 CFR part 800 *et seq.,* and the Archaeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa–470mm, as applicable.

§ 226.10 Information collection.

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0180 (BIA collections) and OMB Control Numbers 1012–0004 and 1012–0006 (ONRR collections). Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB Control Number.

§ 226.11 Public availability of information.

The BIA and ONRR will make all records and information submitted in accordance with the regulations in this part available to the public for inspection, without notification of the submitter, subject to the following exceptions:

(a) Trade secrets;

(b) Privileged or confidential commercial or financial information; and

(c) Information protected from disclosure by the Privacy Act (5 U.S.C. 552a).

Subpart B—Acquiring a Lease

Authorized Procedures

§ 226.12 Procedures the Osage Minerals Council may use to enter into a lease.

The Osage Minerals Council may utilize the following procedures to enter into a lease of the Osage Mineral Estate:

(a) Competitive bidding at an advertised lease sale; or

(b) Negotiation with prospective lessees. The Osage Minerals Council may negotiate directly or request that the Superintendent undertake negotiation on its behalf. Requests that the Superintendent negotiate leases must be submitted in writing together with a resolution authorizing such negotiation.

Competitive Leases

§ 226.13 Advertisement of a lease sale.

(a) The Osage Minerals Council may request that the Superintendent advertise a competitive lease sale. Such requests must be submitted to the Superintendent in writing at least 60 calendar days in advance of the date the Osage Minerals Council would like the Notice of Lease Sale published, together with a resolution authorizing the lease sale. The resolution must identify the:

(1) Location, date, and time of the lease sale; and

(2) Minimum acceptable bid.

(b) Upon receipt of the Osage Minerals Council's written request under paragraph (a) of this section, the Superintendent will publish a Lease Sale Bulletin advertising the lease sale and calling for nominations.

§ 226.14 Nominating lands for a lease sale.

(a) You must submit a nomination letter to the Superintendent to nominate lands for a lease sale. The nomination letter must:

(1) Include the name and address of the person making the nomination;

(2) Identify the legal description of the lands nominated; and

(3) Be legible and signed in ink.

(b) Nomination letters must be submitted to the Superintendent by mail or hand delivery prior to expiration of the nomination period identified in the Lease Sale Bulletin. Nomination letters that do not meet the requirements in paragraph (a) of this section will be rejected.

§ 226.15 Publication of a Notice of Lease Sale.

The Superintendent will publish a Notice of Lease Sale at least 30 calendar days prior to the date of the sale. The Notice of Lease Sale will offer leases for sale to the highest responsible bidder and identify the nominated lands; primary term of each lease offered; location, date, and time of the sale; and method for submitting bids.

§ 226.16 Bidding system.

(a) Leases will be offered for sale by competitive bonus bidding under the terms and conditions specified in the Notice of Lease Sale and in accordance with applicable laws and regulations.

(b) All bids are subject to the Osage Minerals Council's acceptance and the Superintendent's approval. The Superintendent reserves the right to reject any bid and may require any bidder to submit evidence of good faith and ability to comply with the requirements in the Notice of Lease Sale.

(c) A winning bid is the highest bid by a qualified bidder that is equal to, or exceeds, the minimum acceptable bid.

(d) Each successful bidder must deposit 25 percent of the bonus bid with the Superintendent by 4:30 p.m. central standard time on the day of the lease sale. Deposits must be paid by EFT, cashier's check, or money order.

§ 226.17 Award of leases.

(a) A successful bidder must deposit the following with the Superintendent within 20 calendar days of the lease sale:

(1) The balance of the bonus;

(2) An executed Oil and Gas Mining Lease form;

(3) An Evidence of Authority to Execute Papers form; and

(4) A certificate of good standing issued by the Oklahoma Secretary of State.

(b) The Superintendent may extend the time for submitting the executed lease, evidence of authority to execute papers, and certificate of good standing. No extension of time may be granted for depositing the balance of the bonus.

(c) The bonus, or any portion thereof, deposited with the Superintendent will be forfeited for the use and benefit of the Osage Nation if:

(1) A successful bidder fails to pay the bonus in full by the required deadline;

(2) A successful bidder fails to file the items in paragraphs (a)(2) through (4) of this section by the required deadline; or

(3) The Superintendent denies approval of the lease pursuant to paragraph (d) of this section, through no fault of the Osage Minerals Council or BIA.

(d) Competitive leases are subject to the Superintendent's approval. The Superintendent may deny the approval of a lease executed by a successful bidder upon satisfactory evidence of collusion, fraud, or other irregularity.

Non-Competitive Leases

§ 226.18 Submitting an offer to lease.

(a) You may submit non-competitive offers to lease the Osage Mineral Estate to the Osage Minerals Council. Such offers must include the:

(1) Name and address of the offeror;

(2) Legal description of the lands covered by the proposed lease;

(3) Bonus amount; and

(4) Such other information as may be required by the Osage Minerals Council.

(b) Upon receipt of a non-competitive offer to lease, the Osage Minerals Council may accept the offer, reject the offer, or enter negotiations with the offeror directly or through the Superintendent.

§ 226.19 Acceptance of an offer to lease.

(a) A successful offeror must deposit the following with the Superintendent within 20 calendar days of the Osage Minerals Council's acceptance of a non-competitive offer to lease:

(1) The full bonus;

(2) An executed Oil and Gas Mining Lease form;

(3) An Evidence of Authority to Execute Papers form; and

(4) A certificate of good standing issued by the Oklahoma Secretary of State.

(b) Non-competitive leases are subject to the Superintendent's approval.

Lease Terms

§ 226.20 Types of leases.

All leases of the Osage Mineral Estate issued after [effective date of final rule] will be combination oil and gas leases. Oil-only and gas-only leases issued prior to [effective date of final rule] will remain in full force and effect until such time as they terminate or are cancelled but cannot be assigned unless the assignee executes a new combination oil and gas lease covering the subject lands.

§ 226.21 Primary term of leases.

(a) Leases will be for a primary term established by the Osage Minerals Council, subject to the Superintendent's approval, and will continue so long thereafter as oil and/or gas is produced in paying quantities.

(b) The Superintendent may approve an amendment extending the primary term of a lease for up to two years if actual drilling operations commenced prior to expiration of the primary term, operations are being diligently pursued at the end of the primary term, and the parties jointly submit a Lease Amendment form evidencing their agreement. This includes any lease that is part of an approved cooperative agreement where actual drilling operations took place within the unit or area covered by the agreement. The following requirements must be met to qualify for an extension of the primary term:

(1) Actual drilling operations must have been conducted in a manner consistent with serious oil and gas exploration in that area based on existing knowledge of the geology or other pertinent facts and information.

(2) In drilling a new well on a lease, or for the benefit of a lease pursuant to the terms of an approved cooperative agreement, the lessee must take the well to a depth sufficient to penetrate at least one formation recognized as having potential to produce oil or gas.

(3) In the reentry of an existing well, the lessee must take the well to a depth sufficient to penetrate at least one new and deeper formation recognized as having the potential to produce oil or gas.

§ 226.22 Effect of changes in current regulations on existing leases.

Leases issued pursuant to this part are subject to the current regulations, all of which are made a part of such leases. No amendment or change in the regulations after the approval of any lease will operate to affect the primary term, acreage, royalty rate, or rental set forth therein unless the parties jointly submit a Lease Amendment form evidencing their agreement to the amended terms and the Superintendent approves the amendment.

§ 226.23 U.S. Government employees may not acquire leases.

U.S. Government employees are prohibited from acquiring leases of the Osage Mineral Estate or any interests therein.

Subpart C—Cooperative Agreements and Unitization

§ 226.24 Cooperative agreements.

(a) The Osage Minerals Council and lessees may unitize or merge two or more leases into a cooperative agreement to promote the development of any pool, field, or similar area, or any part thereof, subject to the Superintendent's approval.

(b) The Osage Minerals Council and lessees must submit requests for approval of cooperative agreements to the Superintendent at least 90 calendar days prior to the earliest expiration date of any of the leases proposed to be covered by the agreement.

(c) Any agreement by the parties in interest to supplement, modify, amend, or terminate a cooperative agreement as to all the lands covered, or any portion thereof, is subject to the Superintendent's approval. Upon approval of termination, the leases covered by the cooperative agreement will be restored to their original terms.

§ 226.25 Unit development plans.

The Superintendent may, with the consent of the Osage Minerals Council, require all leases issued under this part to join a unit development plan for the purpose of preventing waste and promoting development of the Osage Mineral Estate. Any such plan must adequately protect the rights of all parties in interest.

Subpart D—Transferring a Lease by Assignment

§ 226.26 Assignment of record title interest in a lease.

(a) A lease, or any divided or undivided interest in a lease, may be transferred by assignment subject to the Superintendent's approval. If an assignment will only cover a portion of a lease, the transfer requires both the Osage Minerals Council's consent and the Superintendent's approval. The assignment of a separate zone or deposit, or part of a legal subdivision, is prohibited.

(b) If a lease is divided by the assignment of an entire interest in any part, the assigned and retained portions of the lease are segregated and become separate and distinct leases.

(c) The assignor must submit the Assignment of Record Title Interest form to the Superintendent for approval within 30 calendar days of the date the last party executes the instrument.

§ 226.27 Qualifications of the assignee.

The assignee must be qualified to hold the lease, or interest therein, under the regulations in this part and must furnish a satisfactory bond.

§ 226.28 Effective date of transfer.

The effective date of the transfer is 12:01 a.m. central standard time on the first calendar day following the day the Superintendent approves the assignment.

§ 226.29 Effect of assignment on the assignor's liability under the lease.

(a) The assignor remains liable for the performance of all lease obligations, monetary and non-monetary, that accrue in connection with the lease prior to the effective date of the assignment specified in § 226.28.

(b) After the assignment is approved, the Superintendent and ONRR may require the assignor to bring the lease into compliance if the assignee fails to satisfy an obligation that accrued prior to the effective date of the assignment.

This does not include the obligation to plug and abandon wells the assignee assumed liability for pursuant to the assignment.

§ 226.30 Effect of assignment on the assignee's liability under the lease.

(a) The assignee must comply with the terms and conditions of the lease, any approved permits for wells located thereon, and the regulations in this part as they apply to the rights and obligations acquired.

(b) The assignee is liable for all obligations that accrue after the effective date of the assignment specified in § 226.28 including, but not limited to, properly plugging and abandoning all wells that the assignee drills, operates, or controls following the effective date of the transfer and remediating environmental problems or other lease violations, regardless of whether such problems were identified at the time of the assignment. For purposes of this section, an assignee is considered to ''control'' all unplugged wells located on the lease that are recorded in the Osage Agency's plat book or that a purchaser exercising reasonable diligence could or should have known of at the time of the assignment, except for orphan wells that neither the assignor nor assignee occasioned.

§ 226.31 Overriding royalty agreements.

(a) Agreements creating overriding royalties or payments out of production are not considered an interest in a lease as that term is used in § 226.26.

(b) Agreements creating overriding royalties or payments out of production are hereby authorized and do not require the Superintendent's approval, subject to the condition that nothing in any such agreement will be construed as modifying the lessee's obligations under the terms and conditions of the lease or the regulations in this part. All such obligations remain in full force and effect, the same as if free of any overriding royalties or payments out of production.

(c) The Superintendent will not consider the existence of agreements creating overriding royalties or payments out of production as justification for approving the abandonment of any well, regardless of whether they are actually paid.

(d) The Superintendent will suspend an agreement creating overriding royalties or payments out of production if it is determined that the working interest income of an active producing well is less than or equal to the operational cost of the well.

§ 226.32 Drilling contracts.

The lessee is authorized to enter into drilling contracts with a stipulation that nothing in such contracts may bind the Department or otherwise require the Superintendent's approval of subsequent assignments that may be contemplated by the contract.

Subpart E—Ending a Lease

§ 226.33 Surrender of all or any portion of a lease.

(a) A lessee may surrender all or any portion of a lease at any time by submitting a written request for surrender to the Superintendent. All parties holding record title interests in the lease must sign the request for surrender.

(b) The Superintendent may approve the surrender, or partial surrender, of a lease subject to the following conditions:

(1) All royalties, including minimum and compensatory royalties, rental, interest, late charges, assessments, civil penalties, and other amounts that may be due under the regulations in this part have been paid in full; and

(2) All wells located on the leased lands being surrendered that are no longer capable of producing in paying quantities have been properly plugged and abandoned and the well sites restored.

(c) The Superintendent must obtain the Osage Minerals Council's consent to approve the partial surrender of a lease if the acreage to be retained is less than 160 acres.

(d) The lessee and surety are not relieved of any obligations or liabilities under the lease or the regulations in this part until the Superintendent approves the request for surrender.

(e) If a lease has been recorded, the lessee must execute a release and record it in the proper office upon the Superintendent's approval of the request for surrender.

(f) Surrender or partial surrender of a lease does not entitle the lessee to a refund of advance rental or other sums paid under the lease or the regulations in this part.

§ 226.34 Termination of a lease by operation of law.

(a) If a lessee fails to timely pay advance annual rental in accordance with § 226.35, the lease terminates by operation of law as of the date rental was due.

(b) If a lessee fails to drill a well capable of producing oil or gas in paying quantities during the primary term in accordance with § 226.21, the lease terminates by operation of law as of the date the primary term expires.

(c) Any lease in the extended term upon which there are no wells capable of producing oil or gas in paying quantities terminates by operation of law as of the date production ceases unless the Superintendent approved a request to temporarily abandon the wells on the lease under § 226.72.

(d) When a lease terminates, permanent improvements remain part of the land and become the property of the surface owner unless the lessee and surface owner agree otherwise. The lessee must file a copy of any such agreement with the Superintendent within 15 calendar days of its execution.

(e) The lessee must remove all trash, debris, and personal property from the lease within 90 calendar days of termination. For purposes of this section, personal property includes, but is not limited to, tools, tanks, pumping and drilling equipment, derricks, engines, machinery, tubing, and casings. Upon expiration of the 90-day removal period, the ownership of all casings reverts to the Osage Nation and the ownership of all other personal property transfers to the surface owner.

(f) Nothing in this section relieves the lessee of the responsibility for removing permanent improvements and personal property from the leased lands if the Superintendent orders such removal.

Subpart F—Rental and Royalty

Rental Obligations

§ 226.35 Annual rental requirements.

(a) The annual rental for leases approved after [effective date of final rule] is $8 per acre or fraction thereof.

(b) The lessee must pay advance annual rental for each year of the primary term within 15 calendar days of the Superintendent's approval of the lease. If the lease is amended to extend the primary term, the lessee must pay advance annual rental for each additional year of the primary term within 15 calendar days of the Superintendent's approval of the extension.

(c) Rental must be paid for a full year and may not be prorated, refunded, or credited against production royalty.

(d) Rental payments must be mailed to the Superintendent addressed to: Osage Agency—BIA, Dept. C155, P.O. Box 105533, Atlanta, GA 30348–5533.

Royalty Obligations

§ 226.36 Royalty rate for oil.

The lessee must pay to the Superintendent as royalty no less than 16⅔ percent of the value of all oil produced and removed or sold from the lease. The Osage Minerals Council may,

upon presentation of justifiable economic evidence by a lessee, agree to a lower royalty rate, of no less than 12½ percent of the value of all oil produced and removed or sold from the lease, subject to the Superintendent's approval. The Superintendent may only approve a lower royalty rate if it is determined to be in the best interest of the Osage Nation.

§ 226.37 Calculating the value of oil for royalty purposes.

(a) Unless the Osage Minerals Council elects to take royalty in kind under § 226.42, the value of oil for royalty purposes is the greater of the:

(1) NYMEX Calendar Month Average Price of oil at Cushing, Oklahoma, for the month in which the produced oil was removed or sold from the lease, adjusted for gravity using the scale set forth in § 226.38; or

(2) Actual selling price for the transaction, adjusted for gravity using the scale set forth in § 226.38.

(b) The applicable NYMEX Calendar Month Average Price will be published on ONRR's website at *https://www.onrr.gov*.

§ 226.38 Gravity adjustment for oil.

(a) The gravity adjustment of the NYMEX Calendar Month Average Price of oil at Cushing, Oklahoma under § 226.37(a) is a deduction from the price per barrel, as follows:

If the gravity of the oil is . . .	the rate is . . .	for each . . .
(1) At or between 40.0 and 44.9 degrees	zero	
(2) At or between 35.0 and 39.9 degrees	$0.02	degree or fraction thereof below 40.0.
(3) Below 35.0 degrees	$0.10 plus an additional $0.015	one-tenth of one degree below 35.0.
(4) Above 44.9 degrees	$0.015	for each one-tenth of one degree above 44.9.

(b) The Superintendent may, on or before the fifth calendar day of the month following production, publish a gravity adjustment scale for oil of gravity below 40.0 degrees or above 44.9 degrees that supersedes this section if they determine that such adjustments are warranted based on market conditions.

§ 226.39 Royalty rate for gas.

The lessee must pay to the Superintendent as royalty no less than 16⅔ percent of the value of all gas, including residue gas and gas plant products, produced and removed or sold from the lease. The Osage Minerals Council may, upon presentation of justifiable economic evidence by a lessee, agree to a lower royalty rate, of no less than 12½ percent of the value of all gas, including residue gas and gas plant products, produced and removed or sold from the lease, subject to the Superintendent's approval. The Superintendent will only approve a lower royalty rate if it is determined to be in the best interest of the Osage Nation.

§ 226.40 Calculating the value of gas for royalty purposes.

Unless the Osage Minerals Council elects to take royalty-in-kind under § 226.42, the value of production for royalty purposes is calculated by multiplying the measured volume of gas at the well (Mcf), times the heating value of the gas (MMBtu/Mcf), times the Monthly Index Zone Price of the gas ($/MMBtu) for Oklahoma Zone 1 published by ONRR on its website, *https://www.onrr.gov*. The heating value of the gas must be calculated and reported in accordance with §§ 226.140(a) and (b) and 226.141, respectively. If the Monthly Index Zone Price ceases to be published or is otherwise unavailable, the Superintendent must establish a comparable method for calculating the value of production. No deductions or allowances, whether monetary, volumetric, or otherwise, are allowed.

§ 226.41 Minimum royalty.

(a) If the royalty paid for a producing lease during any year is less than the amount of the annual rental for the lease, the lessee must pay minimum royalty.

(b) Minimum royalty in an amount equal to the annual rental specified for the lease less the amount of the royalty paid on production is due on or before the lease anniversary date.

(c) Failure to timely pay minimum royalty will result in the assessment of interest on all unpaid or underpaid minimum royalty amounts. Interest will be charged at the IRS underpayment rate pursuant to 26 U.S.C. 6621(a)(2), or such other rate as the Superintendent or ONRR may prescribe. The IRS underpayment rate is posted quarterly and is available online at *https://www.irs.gov*. Interest will be charged only for the number of days the payment is late.

(d) Minimum royalty payments must be paid to ONRR in accordance with the requirements set forth in § 226.43.

§ 226.42 Royalty-in-kind.

(a) The Osage Minerals Council may take oil and gas royalty-in-kind on a lease-by-lease basis or for all leases in Osage County.

(b) The Osage Minerals Council must provide the Superintendent and affected lessees with at least 30 calendar days' written notice of its decision to take royalty-in-kind and at least 60 calendar days' written notice of its decision to terminate royalty-in-kind. The Osage Minerals Council must submit resolutions to the Superintendent for its decisions to take and terminate royalty-in-kind.

(c) The Osage Minerals Council must take 100 percent of the daily royalty oil and royalty gas produced from all leases placed in royalty-in-kind status. Royalty oil and royalty gas must be taken in-kind at the wellhead. For purposes of this section, royalty oil and royalty gas mean the daily lease production multiplied by the royalty rate.

(d) Lessees must furnish free storage for royalty oil and royalty gas for 30 calendar days from the date of production. The Osage Minerals Council must negotiate agreements for the storage of royalty oil and royalty gas directly with lessees. The Superintendent will not negotiate, review, or approve royalty-in-kind storage agreements.

(e) All rights, duties, and obligations that exist under the terms and conditions of the lease and the regulations in this part remain in effect when royalty is taken in kind, including the lessee's obligation to pay advance annual rental and minimum royalty.

§ 226.43 Royalty payments.

(a) Royalty payments must be remitted to ONRR. The lessee or purchaser may remit royalty payments in accordance with § 226.44.

(b) Royalty payments are due on or before the last calendar day of the month following the month during which the oil or gas is produced and removed or sold and shall cover all volumes removed or sold for the preceding month. If the last calendar day of the month falls on a weekend or

Federal holiday, payments are due on the first business day of the next month.

(c) All royalty payments must be remitted using one of the forms of payment identified in § 226.8 unless ONRR specifies otherwise. Payment by EFT is preferred.

(d) Non-EFT royalty payments must be made payable to ''DOI–ONRR for BIA Osage Nation.'' Payments mailed via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627. Payments sent via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Entrance N–1, Room 332, 6th Avenue and Kipling Street, Denver, CO 80225.

(e) ONRR must receive royalty payments submitted by EFT in its account on or before the due date. ONRR must receive royalty payments submitted via U.S. Postal Service, courier, or overnight delivery service at the applicable address set forth in paragraph (d) of this section before 4 p.m. mountain time on the due date.

(f) Failure to timely and properly make royalty payments will result in the assessment of interest on all unpaid or underpaid royalty amounts. Interest will be charged at the IRS underpayment rate pursuant to 26 U.S.C. 6621(a)(2), or such other rate as the Superintendent or ONRR may prescribe. The IRS underpayment rate is posted quarterly and is available online at *https://www.irs.gov*. Interest will be charged only for the number of days the payment is late.

(g) A payor may recoup an overpayment through a recoupment on Form ONRR–2014 against the current month's royalties or other revenues owed on the same lease. For any month, a payor may not recoup more than 100 percent of the royalties or other revenues owed in that month. Overpayments subject to recoupment include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by the terms and conditions of the lease, the regulations in this part, orders and notices the Superintendent or ONRR issue, and other applicable law. ONRR may order any payor not to recoup any amount for such reasonable period as may be necessary for ONRR to review the claimed overpayment.

§ 226.44 Royalty payment contracts and division orders.

(a) The lessee may enter into contracts or division orders with purchasers of oil and gas, or derivatives therefrom, that designate the purchaser as the party responsible for remitting royalty payments. The lessee must provide the Superintendent with a copy of the contract or division order evidencing such designation.

(b) A contract or division order does not relieve the lessee from responsibility for the payment of royalty or from responsibility for ensuring the accurate measurement and reporting of all oil and gas removed or sold from the lease. If the purchaser fails to pay or underpays royalty, the lessee is responsible for payment in full of all amounts due and owing, including any interest that may be assessed.

§ 226.45 Royalty reports.

(a) The lessee must submit a certified monthly royalty report to ONRR using Form ONRR–2014, Report of Sales and Royalty Remittance.

(b) ONRR must receive reports by 4 p.m. mountain time on or before the last calendar day of the month that follows the month during which the oil and gas is produced and removed or sold. If the last calendar day of the month falls on a weekend or Federal holiday, the report is due on the first business day of the next month.

(c) The lessee must submit Form ONRR–2014 electronically via ONRR's eCommerce Reporting website, *https://onrrreporting.onrr.gov,* unless they qualify for an exception under paragraph (d) of this section. The lessee must enter royalty data into the system manually or upload data files using the American Standard Code for Information Interchange (ASCII) or Comma Separated Values (CSV) file layout formats specified by ONRR. Detailed information regarding how to complete and submit Form ONRR–2014 is available at *https://www.onrr.gov/ReportPay/royalty-reporting.htm*.

(d) The lessee may submit Form ONRR–2014 manually if they:

(1) Have never reported to ONRR before, in which case they have three months from the date the first royalty report is due to begin reporting electronically;

(2) Are only reporting minimum royalty; or

(3) Are a small business, as defined by the Small Business Administration, and do not own a computer.

(e) Royalty reports submitted manually via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO, 80225–0627. Royalty reports submitted manually via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Entrance N–1, Room 332, 6th Avenue and Kipling Street, Denver, CO 80225. If a lessee who is submitting royalty reports manually has three or more late submissions, ONRR may issue an order requiring the lessee to submit all future royalty reports electronically.

§ 226.46 Requirements for royalty, rental, and payment records.

(a) The lessee must make, retain, and preserve accurate and complete records demonstrating that rental, royalty, and other payments relating to oil and gas leases comply with the terms and conditions of the lease, the regulations in this part, and applicable orders or notices. Such records include, but are not limited to, royalty and production reports; computer programs, automated files, and supporting systems documentation used to produce reports submitted to the Superintendent and ONRR; and relevant statements, receipts, run tickets, QTRs, contracts and agreements.

(b) The lessee must maintain and preserve records under this section for a minimum of six years from the date upon which the relevant transaction was recorded unless the Superintendent or ONRR provides written notice to the lessee that an audit or investigation is being conducted and the records must be maintained for a longer period. If an audit or investigation of the records is being conducted, the lessee must maintain the records until the Superintendent or ONRR issues a written release of such obligation.

(c) The lessee must make records available to the Superintendent and ONRR for inspection upon request. The lessee will be given a reasonable period of time to produce historical records.

§ 226.47 Right of the U.S. Government to purchase oil.

Any of the executive departments of the U.S. Government have the option to purchase all or any part of the oil produced from any lease under this part at no less than the price set forth in § 226.37.

Audits

§ 226.48 Audits and reviews.

ONRR may initiate and conduct audits and reviews relating to the scope, nature, and extent of lessees' and purchasers' compliance with rental, royalty, and other payment and reporting requirements under the terms and conditions of the lease, the regulations in this part, and applicable orders or notices.

Subpart G—Bonds

Lease Bonds

§ 226.49 Grandfathering of existing bonds.

(a) Existing $5,000 lease bonds filed with leases and assignments approved prior to [effective date of final rule] are exempt from §§ 226.51(b) and 226.53(a)(3).

(b) Existing $50,000 collective bonds filed with leases and assignments approved prior to [effective date of final rule] are exempt from §§ 226.52(a) and 226.53(a)(3).

(c) Existing lease and collective bonds will cover all unplugged wells located on the subject lease(s) that the lessee of record drilled and completed, operated, or controlled prior to [effective date of final rule] according to the Osage Agency's records. For purposes of this section, a lessee is considered to ''control'' all unplugged wells located on the lease that are recorded in the Osage Agency's plat book or that a purchaser exercising reasonable diligence could or should have known of at the time the lease or assignment was executed, except for orphan wells.

(d) Lessees with existing lease and collective bonds must file performance bonds that comply with the requirements set forth in this subpart for all wells they propose to drill, reenter, recomplete, and accept via assignment after [effective date of final rule].

(e) Existing lease and collective bonds will be considered an acceptable form of financial security for the lessee of record on [effective date of final rule] only. The right to maintain existing lease and collective bonds cannot be conveyed to any other person through assignment, a transfer of operating rights or working interests, or otherwise. All future lessees, including assignees, of leases with grandfathered lease or collective bonds must file performance bonds that comply with the requirements set forth in this subpart.

§ 226.50 Bond obligations.

(a) The lessee must file a performance bond conditioned upon compliance with the terms and conditions of the lease and the regulations in this part prior to drilling, reentering, and recompleting wells or accepting responsibility for wells through assignment. The lessee must also file a performance bond for all saltwater disposal (SWD) easements.

(b) Performance bonds must be in one of the following forms:

(1) Surety bond issued by a qualified surety company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570);

(2) Certificate of deposit issued by a financial institution, the deposits of which are federally insured, explicitly granting the Superintendent the full authority to demand immediate payment in the event of default;

(3) Cashier's check;

(4) Certified check;

(5) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond and including a proper conveyance to the Superintendent of the full authority to sell such securities in the event of default; or

(6) Irrevocable letter of credit issued by a financial institution, the deposits of which are federally insured, for a specific term, identifying the Superintendent as the sole payee with full authority to demand immediate payment in the event of default and subject to the following requirements:

(i) The letter of credit must be issued by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit must be irrevocable during its term. A letter of credit used as security for any well(s) that have been drilled, but for which final approval of abandonment has not been given, shall be forfeited and collected by the Superintendent if not replaced by a suitable bond or letter of credit at least 30 calendar days before its expiration date;

(iii) The letter of credit must be payable to the Superintendent upon demand, in full or in part, upon receipt of a notice of attachment from the Superintendent stating the basis therefore (*e.g.,* default or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section);

(iv) The initial expiration date of the letter of credit must be at least one year following the date it is filed with the Superintendent; and

(v) The letter of credit must contain a provision for automatic renewal for periods of not less than one year in the absence of notice to the Superintendent at least 90 calendar days prior to the original or extended expiration date.

§ 226.51 Individual well bond requirements.

(a) After [effective date of final rule], individual performance bonds must be filed for:

(1) Each well the lessee proposes to drill, reenter, recomplete, or accept responsibility for through assignment; and

(2) Each SWD well under an approved SWD easement.

(b) Individual well bonds must be in the amount of not less than $6 per foot of the measured well depth for each existing well or the projected well depth for each proposed well.

(c) Individual well bonds must be filed with the permit application, executed assignment, or executed SWD easement.

§ 226.52 Countywide and nationwide bond requirements.

(a) In lieu of an individual well bond, the lessee may file a countywide bond in the amount of not less than $75,000 covering all leases of, and SWD easements within, the Osage Mineral Estate to which the lessee is, or may become, a party. The total lease acreage covered by a single countywide bond cannot exceed 10,240 acres.

(b) In lieu of individual well or countywide bonds, the lessee may file a $150,000 nationwide bond covering all leases to which the lessee is, or may become, a party in the United States and all SWD easements to which the lessee is, or may become, as party within the Osage Mineral Estate.

(c) Countywide and nationwide bonds must be filed with the executed lease, assignment, or SWD easement.

§ 226.53 Authorization to increase the required bond amount.

(a) The Superintendent may require an increase in the amount of any bond, including grandfathered bonds, if the:

(1) The lessee defaults on an obligation incurred under the lease, approved permits, the regulations in this part, or applicable orders and notices;

(2) The lessee is deemed high risk due to a history of lease violations in Osage County; enforcement action by other Federal or state agencies; unpaid royalties, civil penalties, or other amounts due and owing; or other factors; or

(3) The total estimated cost of plugging existing wells exceeds the present bond amount.

(b) The Superintendent may increase the bond amount to any level, but in no circumstances will the bond amount exceed the sum of the amounts owed for prior violations that remain outstanding, the amount of uncollected royalties or other amounts due, and the total estimated costs of plugging.

§ 226.54 Bond forfeiture.

(a) The Superintendent may call for forfeiture of all or part of a performance bond if the lessee defaults on, refuses to comply with, or otherwise fails to satisfy an obligation incurred under a lease, approved permit, the regulations in this part, or applicable notices and orders.

(b) Where the surety makes payment to the Superintendent due to default, the face amount of the bond and the surety's liability thereunder will be reduced by the amount of such payment.

(c) If the value of the bond is reduced due to default, and the obligation in default is less than or equal to the face amount of the bond, the lessee must either restore the existing bond or post a new bond. If the obligation in default exceeds the face amount of the bond, the lessee must make full payment to the BIA for all costs incurred that are in excess of the face amount of the bond and must post a new bond. If the lessee fails to make full payment for all such obligations, the United States or Osage Minerals Council may take action to recover from the lessee all costs in excess of the amount collected under the bond. The United States has sole discretion regarding whether to take action to recover costs and nothing in this section will be construed as imposing an obligation on the United States to take such action.

(d) The lessee must restore the existing bond or post a new bond under paragraph (c) of this section within six months of receiving the notice of default, or such shorter period as the Superintendent may specify.

(e) Failure to restore or replace a deficient bond may subject the lease(s) of, and SWD easements within, the Osage Mineral Estate covered by the bond to cancellation under § 226.165.

§ 226.55 Termination of the period of liability and release of bonds.

(a) The Superintendent will not terminate the period of liability or release a bond unless an acceptable replacement bond has been filed or all obligations incurred under the lease, approved permits, regulations in this part, and applicable notices and orders have been satisfied.

(b) Termination of the period of liability ends the period during which obligations accrue but does not relieve the surety of responsibility for obligations that accrued during the period of liability. Release of the bond relieves the surety of all liability.

Geophysical Exploration Bonds

§ 226.56 Geophysical exploration bond requirements.

(a) Lessees and permittees must file a bond conditioned on compliance with the terms and conditions of the geophysical exploration permit and the regulations in this part prior to commencing exploration operations. The bond must be in one of the forms identified in § 226.50(b).

(b) A lessee holding a valid lease of the Osage Mineral Estate under this part for which the required performance bond has been posted, may conduct geophysical exploration operations on the covered lease without further bonding.

(c) A lessee holding a valid lease of the Osage Mineral Estate for which an individual well bond has been posted who wishes to explore unleased lands, must post a geophysical exploration bond in accordance with paragraph (d) of this section. A lessee holding a valid lease of the Osage Mineral Estate for which a countywide or nationwide bond has been posted who wishes to explore unleased lands, may obtain a bond rider to include geophysical exploration operations.

(d) Individual exploration bonds in the amount of $5,000 must be filed with each geophysical exploration permit. In lieu of individual exploration bonds, lessees and permittees may file a countywide bond in the amount of $25,000 covering all exploration operations within Osage County or a nationwide bond in the amount of $50,000 covering all exploration operations within the United States.

§ 226.57 Bond forfeiture.

The Superintendent may call for forfeiture of all or part of the bond posted for geophysical exploration operations if the lessee or permittee defaults on, refuses to comply with, or otherwise fails to satisfy an obligation incurred under the geophysical exploration permit, the regulations in this part, or applicable notices and orders.

§ 226.58 Termination of the period of liability and release of bonds.

(a) The Superintendent will not terminate the period of liability or release a geophysical exploration bond unless all obligations incurred under the geophysical exploration permit and the regulations in this part have been satisfied.

(b) Terminating the period of liability ends the period during which obligations accrue but does not relieve the surety of responsibility for obligations that accrued during the period of liability. Release of the bond relieves the surety of all liability.

Subpart H—Operations

General Requirements

§ 226.59 Conduct of operations.

(a) Lessees and permittees must comply with the terms and conditions of the lease and approved permits, the regulations in this part, orders and notices the Superintendent issues, and all other applicable laws and regulations in the conduct of all operations.

(b) Lessees and permittees must conduct all exploration, testing, development, production, and other operations in a safe and workmanlike manner that:

(1) Protects the leased or permitted lands and improvements thereon;

(2) Protects natural resources, cultural resources, and environmental quality;

(3) Protects health and safety;

(4) Ensures proper management, measurement, disposition, and security of production; and

(5) Results in the maximum ultimate recovery of oil and gas with minimum waste and minimal adverse effect on the recovery of other mineral resources.

(c) Lessees and permittees must not commit waste on leased or permitted lands, nor allow avoidable nuisance to be maintained thereon.

(d) Lessees and permittees must use and maintain all installations and equipment in a manner that ensures structural and mechanical integrity, proper function, and the safe conduct of operations at the location of the installation or equipment.

(e) Lessees and permittees must comply with the National Electrical Code in the installation, operation, maintenance, and use of all electrical lines.

§ 226.60 Inspection of operations.

(a) The Superintendent has the right to enter or travel across any lands covered by a lease or permit for the purpose of conducting an inspection or investigation.

(b) The Superintendent may conduct inspections and investigations with or without advance notice to the lessee or permittee. Inspections and investigations may take place at any time but will normally be conducted during those hours when responsible persons are expected to be present at the site being inspected or investigated.

(c) Lessees and permittees must allow the Superintendent to inspect and investigate:

(1) Lands covered by the lease or permit;

(2) Operations; and

(3) Improvements, facilities, structures, fixtures, and equipment located on leased or permitted lands and any records of design, construction, maintenance, or repairs relating thereto.

Commencement of Operations

§ 226.61 No operations may commence prior to approval of a lease or geophysical exploration permit.

No operations may commence on any tract of land until the Superintendent

approves a lease or geophysical exploration permit covering such land.

§ 226.62 Prior authorization required to commence operations on trust or restricted lands.

(a) No operations are permitted on trust or restricted lands without the Superintendent's approval.

(b) If an Indian landowner is unwilling to allow the commencement of operations on their lands, the Superintendent will conduct an examination of the lands with the Indian landowner and lessee or permittee. If the Superintendent determines that the interests of the Osage Nation require that the lands be developed or explored, they will instruct the parties to reach an agreement under which operations may be conducted.

(c) If the Indian landowner and lessee or permittee cannot reach an agreement under paragraph (b) of this section, the parties must present the matter to the Osage Minerals Council, which will issue a written recommendation. The Osage Minerals Council's recommendation will be considered final and binding upon the Indian landowner and lessee or permittee. A guardian or authorized representative may represent the Indian landowner before the Osage Minerals Council. If no such guardian or authorized representative exists, or where the Superintendent determines that there is no proper party to speak for an Indian landowner of unsound mind, the Principal Chief of the Osage Nation will represent the Indian landowner.

(d) If the Indian landowner or their guardian or authorized representative fails to appear before the Osage Minerals Council as required, or the Osage Minerals Council fails to act within 10 calendar days after the matter is referred for recommendation, the Superintendent may authorize the lessee or permittee to proceed with operations.

§ 226.63 Notice and information to be given to surface owners prior to commencement of operations.

(a) The lessee or permittee must meet with the surface owner prior to the commencement of any operations on leased or permitted lands, except for archeological or biological surveying and the staking of wells.

(b) For operations other than those identified in paragraph (a) of this section, the lessee or permittee must send the surface owner a written request for a meeting by certified mail. The meeting must be held at least 10 calendar days prior to the commencement of operations unless the Superintendent waives such requirement, or the parties agree otherwise. At the meeting, the lessee or permittee must:

(1) Indicate the location of the well(s), shot holes to be drilled, or seismic survey site;

(2) Arrange for a route of ingress and egress. If the lessee or permittee and surface owner fail to agree on a route of ingress and egress, the Superintendent will set the route; and

(3) Provide the name and address of the representative upon whom the surface owner must serve any claim for damages that may be sustained from operations and the procedure for the settlement of such claims as set forth in § 226.83.

(c) Where operations will occur on trust or restricted land, the lessee or permittee must conduct the meeting required under paragraph (b) of this section with the Superintendent and, if possible, the Indian landowner.

(d) If the surface owner cannot be contacted at their last known address or has not accepted the meeting request within 30 calendar days of receipt thereof, the Superintendent will authorize the lessee or permittee to commence operations.

§ 226.64 Payment of commencement money and tank siting fees to the surface owner.

(a) Prior to commencing drilling, reentry, or geophysical exploration operations, the lessee or permittee must pay the surface owner commencement money in the amount of:

(1) $1,500 per well to be drilled or reentered;

(2) $25 per seismic shot hole; and

(3) $12 per acre, or fraction thereof, occupied by the lessee or permittee while conducting a seismic survey.

(b) The lessee must pay the surface owner $200 per tank for each tank to be sited on the leased lands, except for tanks temporarily set on well sites for drilling, completion, or testing purposes only.

(c) Commencement money and tank siting fees must be paid in full prior to the commencement of operations or siting of tanks on the lease, subject to the exception set forth in paragraph (e) of this section.

(d) Where the surface estate is trust or restricted land, commencement money and tank siting fees must be paid to the Superintendent for the Indian landowner.

(e) Where the surface estate is not trust or restricted land, commencement money and tank siting fees must be paid to the surface owner directly. If the surface owner is not a resident of Osage County, such payment must be sent by certified mail to the surface owner's last known address. If the payment is returned as undeliverable or the surface owner refuses to accept the payment, the commencement money or tank siting fees will be deemed forfeited. Nothing herein affects the surface owner's right to the settlement of surface damages under §§ 226.82 and 226.83.

(f) Commencement money and tank siting fees are a credit toward the settlement of surface damages. The surface owner's acceptance of commencement money and tank siting fees does not affect their right to compensation for damages occasioned by operations. A settlement covering the actual surface damages resulting from drilling, reentry, or geophysical exploration operations does not need to be paid until such operations are complete.

Drilling, Workover, and Well Abandonment Operations

§ 226.65 Use of surface lands and water for operations.

(a) The lessee has the right to use so much of the surface of the leased lands as may be reasonable for the development, extraction, marketing, and sale of oil and gas. The right to use the surface lands includes the right-of-way for ingress and egress to any point of operations. The right to surface lands also includes, but is not limited to, the right to install and maintain pipelines, electric lines, and other necessary equipment and facilities. The Superintendent will determine the routing of pipelines and electric lines, as well as the siting of equipment and facilities of the lessee and surface owner are unable to agree.

(b) Drilling sites must be held to the minimum area essential for operations and must not exceed the acreage set forth in the approved EA unless the Superintendent authorizes such expansion in writing.

(c) The lessee may use water from natural water courses for approved lease operations, provided that such use does not diminish the supply below the requirements of the surface owner from whose land the water is taken.

(d) The lessee may use water from reservoirs formed by the impoundment of water from natural water courses for approved lease operations, provided that such use does not exceed the quantity to which the lessee would originally have been entitled had the reservoirs not been constructed.

(e) The lessee may install necessary lines and other equipment within the

Osage Mineral Estate to obtain water in accordance with paragraphs (c) and (d) of this section. If any such installation will be over or across surface lands that are held in trust or restricted status, the lessee must obtain a right-of-way pursuant to part 169 of this title prior to commencing the necessary installation operations. Any damages resulting from installations to obtain water must be settled as provided in § 226.83.

§ 226.66 Drilling operations.

(a) The lessee must submit an Application for Permit to Drill, together with any required information or documentation, for each well to be drilled or reentered. No drilling or reentry operations, or surface disturbance preliminary thereto, may commence prior to the Superintendent's approval of the permit.

(b) The Superintendent will not accept an application for a permit to drill unless it is administratively complete.

(c) The lessee must notify the Superintendent of planned drilling or reentry operations at least five business days prior to the commencement thereof. The Superintendent may witness such operations without advance notice.

(d) The lessee may not drill, or conduct surface disturbance preliminary to drilling, within 300 feet of the boundary line of leased lands without the Superintendent's approval. The lessee may not locate a well or tank within 200 feet of any Federal, state, county, or municipal road or highway that is owned and maintained for public use; any intermittent, ephemeral, or perennial streams or water sources; or any building used as a residence, granary, or barn without the Superintendent's approval. Failure to obtain such approval will result in the assessment of civil penalties under § 226.161 and the issuance of an order to immediately plug the well or remove the tank(s) and may subject the lease to cancellation under § 226.165.

(e) The lessee must submit a subsequent Well Completion or Reentry Report following drilling and reentry operations in accordance with § 226.74(c) through (g).

§ 226.67 Well control.

(a) *Drilling wells.* The lessee must take the necessary precautions to keep wells under control and must use and maintain materials and equipment necessary to ensure the safety of operating conditions and procedures.

(b) *Vertical drilling.* The lessee must conduct drilling operations in a manner that prevents the completed well from deviating significantly from the vertical unless the Superintendent's prior approval of such deviation is obtained. The lessee must promptly report any well that deviates significantly from the vertical without prior approval to the Superintendent and conduct a directional survey. For purposes of this section, significant deviation means a projected deviation of the well bore from the vertical of 10 degrees or more or a projected bottom hole location that may be less than 300 feet from the lease boundary.

(c) *High pressure or loss of circulation.* The lessee must take immediate steps to maintain or restore control of any well in which the pressure equilibrium becomes unbalanced.

§ 226.68 Use of gas for artificial lifting of oil.

A lessee with an oil-only lease executed prior to [effective date of final rule] is prohibited from using gas from a distinct or separate stratum for the purpose of flowing or lifting oil. A lessee with a combined oil and gas lease may use gas from a distinct or separate stratum for the purpose of flowing or lifting oil subject to the requirements set forth in §§ 226.144 through 226.151.

§ 226.69 Workover operations.

(a) The lessee must submit an Application for Permit to Workover Wells, together with any required information or documentation, for each well to be worked over. The following workover operations, and surface disturbance preliminary thereto, may not commence prior to the Superintendent's approval of the permit:

(1) Recompletion;

(2) Deepening, plugging back, or converting a well;

(3) Formation treatments and acidizing jobs, including acid fracturing;

(4) Hydraulic fracturing; and

(5) Pulling or altering the casing.

(b) The Superintendent will not accept an application for a workover permit unless it is administratively and technically complete.

(c) The lessee must notify the Superintendent of planned recompletion, deepening, and hydraulic fracturing operations at least five business days prior to the commencement thereof. The lessee does not need to provide notice prior to commencement of the other workover operations identified in paragraph (a) of this section. The Superintendent may witness any workover operations without advance notice.

(d) The lessee must submit a subsequent Report of Workover Operations following all workover operations identified in paragraph (a) of this section in accordance with § 226.74(c) through (g).

(e) Prior approval and a subsequent report of operations are not required for well cleanout work, well maintenance, or bottom hole pressure surveys. The operations listed in paragraph (a) of this section do not qualify as well cleanout work or well maintenance.

§ 226.70 Requirements for operations in Hydrogen Sulfide (H_2S) areas.

(a) *Testing requirements.* (1) The lessee must conduct an initial test of the H_2S concentration of the gas stream for each well and production facility completed and make the results of such test(s) available to the Superintendent upon request.

(2) The lessee must determine the radius of exposure for each well and production facility having an H_2S concentration of 100 ppm or more in the gas stream and submit a report of such calculations to the Superintendent. The radius of exposure must be calculated as follows:

(i) For determining the 100-ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X = [(1.589)(H_2S\ Concentration)(Q)]^{(0.6258)}$$

(ii) For determining the 500-ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X = [(0.4546)(H_2S\ Concentration)(Q)]^{(0.6258)}$$

Where:

X = radius of exposure in feet

H_2S Concentration = decimal equivalent of the mole or volume fractions of the H_2S in the gaseous mixture

Q = maximum volume of gas determined to be available for escape, or escape rate, in cubic feet per day (at standard condition of 14.73 psia and 60 °F)

(iii) For determining the 100-ppm or 500-ppm radius of exposure where the H_2S concentration in the gas stream is 10 percent or greater, the lessee must use an air dispersion model approved by the EPA, or such another method the Superintendent approves.

(3) The lessee must calculate the radius of exposure pursuant to paragraph (a)(2) of this section for each well and production facility completed prior to [effective date of final rule] that has a H_2S concentration of 100 ppm or greater in the gas stream and submit a report of such calculations to the Superintendent on or before [six months from effective date of final rule].

(4) If a change in operations or production results in an increase in the H_2S concentration or radius of exposure of five percent or more as calculated pursuant to paragraph (a)(2) of this section, the lessee must notify the Superintendent in writing of such increase within 60 calendar days of identification of the change.

(b) *Public protection.* (1) The lessee must report any release of a potentially hazardous volume of H_2S to the Superintendent as soon as practicable, but not later than 24 hours following identification of the release.

(2) The lessee must submit a Public Protection Plan providing a detailed plan of action for alerting and protecting the public in the event of a release of a potentially hazardous volume of H_2S when any of the following conditions apply:

(i) The 100-ppm radius of exposure is greater than 50 feet and includes any part of a residence, school, church, place of business, or other area the public can reasonably be expected to frequent;

(ii) The 500-ppm radius of exposure is greater than 50 feet and includes any part of a Federal, state, county, or municipal road or highway that is owned and maintained for public use; or

(iii) The 100-ppm radius of exposure is greater than or equal to 3,000 feet.

(3) The details of the Public Protection Plan may vary according to site-specific characteristics expected to be encountered and the proximity and density of the population at risk. All plans must include the following:

(i) The lessee's name and phone number;

(ii) The names, phone numbers, and responsibilities of key personnel;

(iii) The names and phone numbers of residents within the radius of exposure;

(iv) The names and phone numbers of the responsible parties for each of the schools, churches, businesses, roads, highways, or other public areas or facilities within the radius of exposure;

(v) A call list including the Osage Agency, Osage Minerals Council, Federal and state regulatory agencies, local law enforcement, local fire departments, and other public safety personnel;

(vi) Instructions and procedures for notifying the Osage Agency, Osage Minerals Council, and public of an emergency;

(vii) Instructions and procedures for notifying Federal and state regulatory agencies, local law enforcement, local fire departments, and public safety personnel of an emergency and requesting their response;

(viii) A plat showing the location of residences, schools, churches, places of business, roads, highways, or other areas the public may reasonably be expected to frequent within the radius of exposure;

(ix) Advance briefing of residences, schools, and churches within the 100-ppm radius of exposure. Advance briefing may be conducted in-person or by certified letter and must provide:

(A) Information regarding the characteristics and hazards of H_2S and SO_2;

(B) A list of possible sources of H_2S and SO_2 within the radius of exposure;

(C) Detailed instructions for reporting a gas leak to the lessee;

(D) Information regarding the necessity of having an emergency action plan;

(E) The way the public will be notified of an emergency; and

(F) The steps that should be taken in the event of an emergency;

(x) The title(s) or position(s) of the individuals authorized by the lessee to ignite escaping gas, circumstances under which those individuals may ignite escaping gas, and way in which escaping gas will be ignited;

(xi) Procedures for monitoring H_2S and SO_2 levels and wind direction, maintaining site security, controlling access to the affected site, and implementing any other measures necessary to monitor the situation and protect the public until the release is contained; and

(xii) A description of the detection system(s) that will be used to determine the concentration of H_2S released in the event of a release from a production facility.

(4) The Public Protection Plan must be activated immediately upon detection of the release of a potentially hazardous volume of H_2S. The lessee must notify the Superintendent of activation of the Public Protection Plan.

(5) A copy of the Public Protection Plan must be maintained at the well site, production facility, or such other location on the lease that the plan is readily accessible if activation is required.

(6) The lessee must review the Public Protection Plan on an annual basis and submit any revisions to the Superintendent.

(c) *Operating requirements for drilling, completion, and workover operations.* (1) If the lessee encounters zones containing H_2S concentrations in excess of 100 ppm while drilling with air, gas, mist, or other non-mud circulating mediums for aerated mud, the well must be killed with water-based or oil-based drilling mud, and thereafter, mud must be used as the circulating medium for continued drilling.

(2) A flare system meeting the following requirements must be installed to safely gather and burn H_2S-bearing gas:

(i) Flare lines must be located as far from the operating site as feasible and must compensate for changes in wind direction;

(ii) Flare lines must be straight unless targeted with running tees; and

(iii) The flare system must be equipped with a safe means of ignition.

(3) The lessee must check the SO_2 level in the flare impact area using portable detection equipment at any site where SO_2 may be released due to the flaring of H_2S during drilling, completion, or workover operations. The lessee must implement the Public Protection Plan if the flare impact area reaches a sustained ambient threshold of 2 ppm or greater of SO_2 in air and includes any part of a residence, school, church, place of business, or other area the public can reasonably be expected to frequent.

(4) The lessee must install a remote-controlled choke or valve for all H_2S drilling operations and, where feasible, completion operations.

(d) *H_2S training and safety requirements.* (1) The lessee must provide appropriate H_2S training for all personnel including, but not limited to, training regarding:

(i) The hazards and characteristics of H_2S;

(ii) The effect of H_2S on metal components of the well system;

(iii) The operation of safety equipment;

(iv) First aid procedures in the event of exposure; and

(v) Emergency response procedures and evacuation routes if there is a release of a potentially hazardous volume of H_2S.

(2) The lessee must ensure that the following safety equipment is available for use on the lease and maintained in good working condition:

(i) Protective breathing apparatus for personnel;

(ii) Communication devices that can be used with protective breathing apparatus; and

(iii) A flare gun and flares to ignite the well.

(3) Each drilling and well completion site must have an H_2S detection and monitoring system that automatically activates audible and visible alarms when the ambient air concentration of H_2S reaches 10 ppm. The system must have rapid response sensors capable of sensing a minimum of 10 ppm of H_2S

in ambient air, with at least three sensing points located at the shale shaker, rig floor, and bell nipple for a drilling site, and the cellar, rig floor, and circulating tanks or shale shaker for a well completion site. During workover operations, one sensing point must be located as close as possible to the wellbore. The lessee must maintain a record of all tests of the H_2S monitoring system and make such records available to the Superintendent upon request.

(4) The lessee must install at least one wind direction indicator at a location that is visible at all times during drilling, completion, and workover operations.

(5) The lessee must display a red flag at the entrance to the well or production facility site when H_2S is detected in excess of 10 ppm at any detection point.

(6) The lessee must post danger or caution signs on all roads and controlled access routes to the well or production facility site. The lessee must post a danger or caution sign a minimum of 200 feet, but no more than 500 feet, from the well or production facility site at a location that allows vehicles to turn around at a safe distance. Signs must meet the following requirements:

(i) Signs must be prominently displayed, legible, and large enough to be read from the road or entrance to the site;

(ii) Signs must be visible to all personnel and members of the public approaching the site under normal lighting and weather conditions;

(iii) Signs must read ''Danger—Poison Gas—Hydrogen Sulfide'' or ''Caution—Poison Gas May Be Present—H_2S;'' and

(iv) Signs must be painted high-visibility red, white, and black, or yellow and black.

(7) Storage tanks that are utilized as part of production operations and are operated at or near atmospheric pressure, where the vapor accumulation has an H_2S concentration of 500 ppm or greater in the tank, are subject to the following requirements:

(i) All stairs and ladders leading to the top of the storage tank must be chained and marked to restrict entry;

(ii) The lessee must install at least one wind direction indicator at the storage tank site; and

(iii) The lessee must post a danger or caution sign on the storage tank or within 50 feet thereof. The sign must comply with the requirements set forth in paragraphs (c)(6)(i) through (iv) of this section.

(8) Production facilities with a H_2S concentration of 100 ppm or greater in the gas stream are subject to the following requirements:

(i) The lessee must install at least one wind direction indicator at the production facility site. If the production facility and storage tank(s) are located at the same site, only one indicator is required;

(ii) The lessee must post a danger or caution sign within 50 feet of the production facility. The sign must comply with the requirements set forth in paragraphs (c)(6)(i) through (iv) of this section. If the facility is fenced, the sign may be posted on the gate; and

(iii) The lessee must post danger or caution signs at each location where a well flowline or lease gathering line crosses lease or public roads. The signs must be posted on each side of the road, as close to the pipeline as possible, and must contain the name of the lessee and a 24-hour phone number.

(9) The lessee must install automatic safety valves or shutdowns at the wellhead, or other appropriate shut-in controls for wells equipped with artificial lift, where the H_2S 100-ppm radius of exposure includes any part of a residence, school, church, place of business, or other area the public may be reasonably expected to frequent. Such valves must be set to activate upon the release of a potentially hazardous volume of H_2S.

(10) All equipment that has the potential to be exposed to H_2S must be suitable for the H_2S working environment.

§ 226.71 Surveys, samples, and tests.

(a) The Superintendent may require the lessee to conduct tests, run logs, and take any other surveys necessary to determine the following during the drilling and completion of a well:

(1) The presence, quantity, and quality of oil and gas;

(2) The presence and quality of water;

(3) The amount and direction of deviation of any well from the vertical; and

(4) The formations drilled and relevant characteristics of the oil and gas reservoirs penetrated.

(b) After a well is completed, the lessee must conduct periodic well tests to determine the quality and quantity of the oil, gas, and water. The Superintendent may determine the method and frequency of such tests.

(c) The Superintendent may require the lessee to conduct reasonable tests of the mechanical integrity of downhole equipment.

§ 226.72 Temporary abandonment.

A lessee may not temporarily abandon, shut down, or otherwise discontinue the use or operation of any producing well for more than 30 calendar days without the Superintendent's prior approval. The lessee must submit a request for temporary abandonment to the Superintendent in writing, together with any relevant supporting documentation, for each well to be temporarily abandoned. Wells cannot be temporarily abandoned prior to the Superintendent's approval of such request.

§ 226.73 Permanent plugging and abandonment operations.

(a) A lessee may not permanently abandon a newly completed or recompleted well unless oil and gas is not encountered in paying quantities.

(b) A lessee may not permanently abandon a producing well without the Superintendent's approval.

(c) The lessee must promptly plug dry and permanently abandoned wells in a manner that protects formations bearing fresh water, saltwater, oil, gas, and other minerals.

(d) The lessee must submit an Application for Permit to Plug Wells, together with evidence that the well is no longer capable of producing in paying quantities, proposed plugging instructions, and any other required information or documents, for each well to be permanently plugged and abandoned. No plugging and abandonment operations may commence prior to the Superintendent's approval of the permit.

(e) The Superintendent will not accept an application for a plugging permit unless it is administratively and technically complete.

(f) The lessee must notify the Superintendent of planned plugging operations at least five business days prior to the commencement thereof. The Superintendent may witness such operations without advance notice.

(g) The lessee must submit a subsequent Report of Plugging Operations in accordance with § 226.74(c) through (g).

(h) Upon written agreement with the surface owner, the lessee may condition a well that is being plugged and abandoned for use as a fresh water supply source for the surface owner. The lessee must file a copy of any such agreement with the Superintendent. The surface owner assumes all risk for the use of a reconditioned well as a fresh water supply source.

§ 226.74 Well records and reports.

(a) The lessee must keep accurate and complete records for all lease operations and submit reports thereof as required by the Superintendent and the regulations in this part. The lessee must make all books and records available to

the Superintendent for inspection upon request.

(b) Records for operations including, but not limited to, the drilling, reentry, recompletion, deepening, repair, conversion, plugging and abandonment of all wells must show:

(1) All formations penetrated, the content and character of the oil, gas, and water in each formation, and the kind, weight, size, landed depth, and cement record of casing used;

(2) The record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, or reports;

(3) The materials and procedures used in the treating or plugging of wells or the preparation of wells for temporary abandonment; and

(4) Any other information obtained during well operations.

(c) The lessee must submit the following to the Superintendent within 10 calendar days after the completion of operations on any well, or any required sampling, testing, or surveying thereof:

(1) A subsequent report of operations on the required form;

(2) A copy of the results of all samples, tests, and surveys required under this subpart;

(3) A copy of the electrical, mechanical, and radioactive logs or any other surveys of the well bore; and

(4) The core analysis obtained from the well, if available.

(d) For plugging operations, the lessee must submit copies of all cementing service tickets together with the subsequent report of operations.

(e) For hydraulic fracturing operations, the lessee must submit the following information together with the subsequent report of operations:

(1) The total volume of water used;

(2) The total volume of base fluid used;

(3) The type of base fluid used;

(4) The trade name, supplier, general purpose, ingredients, Chemical Abstract Service (CAS) Number, and maximum ingredient concentration in the hydraulic fracturing fluid (percent by mass), for each chemical additive or other substance added to the base fluid or, if such chemical identity information is withheld under paragraph (f) of this section, the generic chemical name or a similar descriptor for the chemical;

(5) The actual, estimated, or calculated fracture length, height, and direction;

(6) The actual measured depth of perforations and shots per foot or the open-hole interval; and

(7) The total volume of fluid recovered between completion of the last stage of the hydraulic fracturing operation and the point at which the lessee begins reporting water produced from the well to ONRR.

(f) If the lessee or owner of the information claims that any information that must be reported under paragraph (e) of this section is exempt from public disclosure, the information may be withheld. If information is withheld, the lessee must submit a Withholding of Proprietary Hydraulic Fracturing Information form with the report.

(g) The Superintendent may require a lessee to submit any information withheld under paragraph (f) of this section. The Superintendent will maintain the confidentiality of the information unless they determine that the information is not exempt from public disclosure. The Superintendent will provide the lessee with written notice of any such determination.

(h) The lessee must maintain and preserve records and reports required under this section for six years from the date they were generated, unless the Superintendent provides written notice to the lessee that an audit or investigation is being conducted and the records must be maintained for a longer period. If an audit or investigation of the records is being conducted, the lessee must maintain the records until the Superintendent issues a written release of such obligation.

§ 226.75 Well and facility identification.

(a) The lessee must properly identify each well located on the lease, excluding those wells that have been permanently abandoned, by a sign placed in a conspicuous location. The well sign must include the well number, lessee's name, lease name, lease number, and legal description.

(b) The lessee must mark each permanently abandoned well located on the lease with a permanent monument containing the information required under paragraph (a) of this section. The Superintendent reserves the right to waive the requirement for a permanent monument.

(c) The lessee must properly identify all facilities at which oil and gas produced from a lease is stored, measured, or processed by a sign placed in a conspicuous location. The sign must include the lessee's name, lease name, lease number, and legal description.

(d) All signs required by this section must be maintained in legible condition.

§ 226.76 Pollution prevention.

The lessee or permittee must take measures to prevent the unauthorized discharge of pollutants and migration of oil, gas, saltwater, or other deleterious substances to fresh water or other mineral bearing formations during the exploration, development, production, and transportation of oil and gas. The lessee or permittee must conduct tests and surveys of the effectiveness of the measures taken to ensure the protection of fresh water and mineral bearing formations and make the results of such tests available to the Superintendent upon request.

§ 226.77 Storage and disposal of fluids.

(a) Pits for drilling mud and deleterious substances used in the drilling, completion, recompletion, workover, or plugging of any well must be constructed and maintained to prevent the pollution of surface and subsurface fresh water. The lessee must routinely inspect and maintain pits to ensure that there is no fluid leakage into the environment.

(b) Pits constructed after [effective date of final rule] may not be located:

(1) In areas subject to frequent flooding according to the USDA Natural Resources Conservation Service (NCRS) Soil Survey;

(2) Within 300 feet of intermittent or ephemeral streams or water sources; or

(3) Within 500 feet of perennial streams, springs, fresh water sources, or wetlands.

(c) Pits may not be constructed, utilized, enlarged, or relocated without the Superintendent's prior approval.

(d) Immediately after the completion of operations, pits must be emptied and leveled as the Superintendent directs or as provided by written agreement with the surface owner. The lessee must file a copy of any surface owner agreement with the Superintendent.

(e) All produced water must be disposed of by injection into the subsurface, collection in approved pits, or other methods the Superintendent authorizes.

(f) Land application of water-based fluids from pits, tanks, and containment vessels; waste oil; waste oil residue; crude oil contaminated soil; freshwater drill cuttings; drilling mud; and other deleterious substances is not permitted upon any lease without the Superintendent's prior approval.

§ 226.78 Removal of fire hazards.

Any material that may constitute a fire hazard must be moved to a safe distance from the well site, tanks, and other surface facilities. Waste oil must be burned or disposed of in a matter that prevents creation of a fire hazard.

Geophysical Exploration Operations

§ 226.79 Applying for a geophysical exploration permit.

(a) Any party wishing to conduct oil and gas geophysical exploration activities on leased or unleased tracts of the Osage Mineral Estate must submit an Application for Oil and Gas Geophysical Exploration Permit and obtain the Superintendent's approval thereof prior to commencing exploratory operations or any surface disturbance preliminary thereto.

(b) Upon approval of an application, the Superintendent will issue a geophysical exploration permit that includes the terms and conditions deemed necessary to protect mineral resources and other resource values. The permit does not grant the permittee any option or preference rights to a lease of the subject lands or authorize the production, extraction, removal, or sale of oil, gas, or other mineral resources therefrom.

§ 226.80 Commencement of operations.

Permittees must notify the Superintendent of planned geophysical exploration operations at least five business days prior to the commencement thereof. The Superintendent may witness any such activities without advance notice.

§ 226.81 Records and reports.

Within 30 calendar days after the completion of geophysical exploration operations, the permittee must submit a subsequent Oil and Gas Geophysical Exploration Report.

Settlement of Surface Damages

§ 226.82 Lessee or permittee required to settle surface damages.

(a) The lessee or permittee must pay for damages to growing crops, improvements on the land, and all other surface damages occasioned by operations.

(b) In the settlement of surface damages on unrestricted lands, all sums due and payable must be paid to the surface owner. The surface owner must apportion damages among the parties having legal interests in the surface as the parties mutually agree or as their interests dictate. Parties having legal interests in the surface include, but are not limited to, owners, tenants, and surface lessees.

(c) In the settlement of damages on restricted lands, all sums due and payable must be paid to the Superintendent. The Superintendent will apportion damages among the surface owner, tenants, and surface lessees of record and credit the surface owner's account with the amount of damages apportioned.

(d) Any person claiming an interest in leased trust or restricted lands and damages thereto must notify the Superintendent, in writing, of the interest claimed and provide any documentation the Superintendent requests in support thereof. Failure to submit a written statement or the required supporting documentation to the Superintendent constitutes a waiver of notice and bars that person from asserting a claim for any portion of surface damages after such damages have been disbursed.

§ 226.83 Procedure for settlement of surface damages.

If a surface owner, tenant, or surface lessee suffers damages due to oil and gas exploration or development operations, the procedure for recovery is as follows:

(a) The aggrieved party or parties must serve written notice upon the lessee or permittee as soon as possible after the discovery of any damages. The written notice must describe the nature and location of the alleged damages, date of occurrence, name of the party or parties that caused the damages, and amount of the damages. This requirement does not limit the time within which any action must be brought in a court of competent jurisdiction to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time that written notice is served, the lessee or permittee must try to adjust the claim with the aggrieved party or parties within 20 calendar days of receipt of such notice.

(c) If the parties fail to adjust the claim within 20 calendar days as specified in paragraph (b) of this section, each party has 10 calendar days to appoint an arbitrator. Immediately upon their appointment, the two arbitrators must agree upon a third arbitrator. If the two arbitrators fail to agree upon a third arbitrator within 10 calendar days of their appointment, they must immediately notify the parties. If the parties cannot agree upon a third arbitrator within five calendar days after receipt of such notice, the Superintendent must appoint the third arbitrator.

(1) All arbitrators must be disinterested persons.

(2) Where both a surface owner and their tenant(s) or surface lessee(s) are injured, the aggrieved parties must join in the appointment of an arbitrator. Where an injury is chargeable to more than one lessee or permittee, all chargeable lessees or permittees must join in the appointment of an arbitrator.

(3) Each claimant and lessee or permittee must pay the fees and expenses for the arbitrator they appoint. The fees and expenses of the third arbitrator must be borne equally by the claimant(s) and lessee(s) or permittee(s).

(d) Immediately following the appointment of the third arbitrator, the arbitrators must meet, hear the evidence and arguments of the parties, and examine the crops, improvements, lands, or other property allegedly damaged. Within 10 calendar days thereafter, the arbitrators must issue a written decision regarding the amount of damages due and serve the decision upon all interested parties. Any two of the arbitrators may render the decision as to the amount of damages due.

(e) Each party has 90 calendar days from the date the arbitrators' decision is served to file an action in a court of competent jurisdiction challenging the decision. If no such action is filed and the arbitration resulted in a decision finding the lessee or permittee liable for surface damages, the lessee or permittee must pay all damages together with interest assessed from the date of the award at the IRS underpayment rate pursuant to 26 U.S.C. 6621(a)(2) within 10 calendar days after expiration of the period for filing an action in court. The IRS underpayment rate is posted quarterly and is available online at *https://www.irs.gov.*

(f) If the claimant is an Indian landowner, the lessee or permittee must submit any surface damages settlement agreement to the Superintendent for approval. The settlement agreement must describe the nature and location of the damages, date(s) of occurrence, settlement amount, and any other pertinent information.

Subpart I—Production and Site Security

General Requirements

§ 226.84 Production obligations.

(a) The Superintendent may order a lessee to promptly drill and produce wells on any lease acreage regardless of whether the lessee has drilled and paid rental if, in their opinion:

(1) A prudent lessee would conduct further development; or

(2) Such drilling is necessary to ensure that the lease is properly and timely developed in accordance with sound economic operating practices.

(b) Failure to develop a lease in compliance with the Superintendent's order is a violation of the terms and conditions of the lease and results in

termination of the lease by operation of law as to the acreage the lessee was ordered to develop.

(c) The lessee must put all oil and gas produced from the lease into marketable condition at no cost to the Osage Nation.

(d) Where oil accumulates in a pit, such oil must either be recirculated through the regular treating system and returned to the stock tanks for sale or pumped into a stock tank without treatment and measured for sale in the same manner as from any sales tank under the regulations in this part.

(e) Except in an emergency, no oil may be pumped into a pit without the Superintendent's prior approval. Each such pumping occurrence must be reported to the Superintendent immediately, but not later than the next business day, and the oil promptly recovered in accordance with applicable orders and notices.

§ 226.85 Production reporting.

(a) The lessee must submit certified monthly production reports to ONRR using Form ONRR–4054, Oil and Gas Operations Report, regardless of whether there was production during the reporting period, if the lessee operates a lease or cooperative agreement upon which one or more wells are not permanently plugged and abandoned.

(b) The lessee must submit Form ONRR–4054 for each well every month beginning with the month in which drilling is completed or, if production testing is conducted during drilling operations, beginning with the month in which testing occurs. Such reporting must continue until the lease or cooperative agreement terminates or is cancelled and the Superintendent determines that all wells have been permanently plugged and abandoned.

(c) Reports must be received by 4 p.m. mountain time on or before the 15th day of the second month following the production month.

(d) The lessee must submit Form ONRR–4054 electronically via ONRR's eCommerce Reporting website, *https://onrrreporting.onrr.gov,* unless they qualify for an exception under paragraph (e) of this section. The lessee must enter production data into the system manually or upload data files in American Standard Code for Information Exchange (ASCII) or Comma Separated Values (.csv) file formats that ONRR specifies. Information regarding how to complete and submit Form ONRR–4054 is available at *https://www.onrr.gov/ReportPay/royalty-reporting.htm.*

(e) The lessee may submit Form ONRR–4054 manually if they:

(1) Have never reported to ONRR before. In such instance, they have three months from the date the first production report is due to begin reporting electronically; or

(2) Have a small business, as defined by the Small Business Administration, and do not own a computer.

(f) Production reports submitted manually via U.S. Postal Service must be addressed to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225–0627. Production reports submitted manually via courier or overnight delivery service must be addressed to: Office of Natural Resources Revenue, Denver Federal Center, Building 85, Room A–614, 6th Avenue and Kipling Street, Denver, CO 80225.

§ 226.86 Site facility diagrams.

(a) A site facility diagram is required for all permanent facilities. A site facility diagram is not required for temporary measurement facilities used during well testing operations. No format is prescribed for site facility diagrams. The diagram should be formatted to fit on an 8½ x 11-inch sheet of paper, if possible, and must be legible and comprehensible to an individual with an ordinary working knowledge of oil and gas field operations. If more than one page is required, each page must be numbered using the format ''N of X pages.'' The diagram does not need to be to scale. Sample site facility diagrams are available at *https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency.*

(b) The site facility diagram must:

(1) Clearly identify the name of the lessee, lease(s) the diagram applies to, and facility location. Facility location must include both GPS coordinates and the legal description;

(2) Reflect the position of the production and water recovery equipment, piping for oil, gas, and water, and metering or other measuring systems in relation to each other;

(3) Commencing with the header, identify all equipment including, but not limited to, the header, wellhead, piping, tanks, metering systems located on the site, appropriate valves, and any other equipment used in the handling, conditioning, or disposal of production and water, and must indicate the direction or flow;

(4) Identify the wells flowing into headers by US Well Number;

(5) Indicate which valve(s) must be sealed and in what position during the production phase, sales phase, and during other production activities (*e.g.,* circulating tanks or drawing off water), which may be shown by an attachment, if necessary;

(6) Clearly identify all meters and measurement equipment on the diagram or in an attachment to the diagram; and

(7) Clearly identify the FMP(s) for each measurement facility where the measurement affects calculation of the volume or quality of oil and gas production upon which royalty is owed. Where production from more than one well will flow into the FMP(s), the lessee must list all US Well Numbers associated with each FMP.

(c) For new, permanent facilities that become operational after [effective date of final rule], a site facility diagram must be filed within 60 calendar days after the facilities become operational.

(d) For facilities that are in service on or before [effective date of final rule], a site facility diagram identifying FMPs, as required by paragraph (b)(7) of this section, must be filed by [120 days after effective date of final rule] or such longer period as the Superintendent may authorize.

(e) After a site facility diagram is submitted pursuant to this section, the lessee has an ongoing obligation to amend the diagram within 60 calendar days after any facilities are modified.

§ 226.87 Assignment of facility measurement point (FMP) numbers.

The BIA will assign a unique FMP number to each oil and gas FMP identified on the site facility diagram submitted under § 226.85.

(a) For a new facility in service after [effective date of final rule], the lessee must start using FMP numbers for reporting to ONRR the first production month after the BIA assigns the FMP numbers and every month thereafter.

(b) For an existing facility in service on or before [effective date of final rule], the lessee must start using FMP numbers for reporting to ONRR the third production month after the BIA assigns the FMP numbers and every month thereafter.

§ 226.88 Requirements for production records.

(a) Lessees, purchasers, transporters, and other persons involved in producing, transporting, purchasing, selling, or measuring oil and gas through the point of royalty measurement or point of first sale, whichever is later, must retain all records, including source records, relevant to determining the quality, quantity, disposition, and verification of production attributable to the subject lease. This applies to all records generated during, or for, the period the lessee has an interest in, or conducts

operations on, the lease or the period in which a purchaser, transporter, or other persons are involved in transporting, purchasing, or selling production therefrom.

(b) Records that are created after [effective date of final rule] must be legible and include the following:

(1) The FMP, lease, or unit number;

(2) A unique equipment identifier (*e.g.,* a unique tank or meter station number);

(3) The name of the person who created the record; and

(4) The signor's printed name, for any records requiring a signature.

(c) Records under this section must be maintained and preserved for a minimum of six years from the date upon which the relevant transaction was recorded unless the Superintendent or ONRR provides written notice to the lessee that an audit or investigation is being conducted and the records must be maintained for a longer period. If an audit or investigation of the records is being conducted, the lessee must maintain the records until the Superintendent or ONRR issues a written release of such obligation.

(d) Records under this section must be made available to the Superintendent or ONRR for inspection upon request. A reasonable period of time will be provided to produce historical records.

§ 226.89 Easements for access to wells located off-lease.

(a) The Superintendent may grant commercial and non-commercial SWD easements for access to existing wells located off-lease on trust or restricted Indian lands in accordance with the regulations in part 169 of this title.

(b) The grantee must post a performance bond for all SWD easements in accordance with the requirements in subpart G.

(c) The lessee is responsible for all surface damages resulting from use of the easement and must settle such damages as provided in § 226.83.

Waste Prevention

§ 226.90 Prevention of waste.

(a) A lessee must conduct all operations in a manner that prevents the waste of oil and gas and must not use oil and gas in a wasteful manner.

(b) The Superintendent has authority to impose requirements deemed necessary to prevent the waste of oil and gas and promote the maximum ultimate economic recovery thereof, consistent with conservation of the resources.

(c) For purposes of this section, waste includes, but is not limited to, inefficient, excessive, or improper use or dissipation of reservoir energy resulting in a reasonable reduction in the quality of oil and gas that may be produced or the unnecessary or excessive surface loss or destruction of oil and gas without beneficial use.

§ 226.91 Royalty on lost or wasted production.

(a) Royalty is due on all oil and gas avoidably lost or wasted. The Superintendent and ONRR will determine the volume and quality of lost or wasted production. Royalty is not due on oil and gas that is unavoidably lost.

(b) The following qualify as avoidably lost production:

(1) Gas that is vented or flared without the Superintendent's prior approval; and

(2) Produced oil or gas that the Superintendent determines was lost because of the lessee's:

(i) Negligence;

(ii) Failure to take all reasonable measures to prevent or control the loss; or

(iii) Failure to comply with applicable lease and permit terms and conditions, the regulations in this part, or applicable orders and notices.

(c) The following qualify as unavoidably lost production:

(1) Oil or gas that is lost because of line failures, equipment malfunctions, blowouts, fires, or other similar circumstances, except where the Superintendent determines that the loss was avoidable pursuant to paragraph (b)(2) of this section;

(2) Oil or gas that is lost during the following operations, and from the following sources, except where the Superintendent determines that the loss was avoidable pursuant to paragraph (b)(2) of this section:

(i) Well drilling;

(ii) Well completion and related operations;

(iii)Initial production tests, subject to the limitations in § 226.156(a);

(iv) Subsequent well tests, subject to the limitations in § 226.156(b);

(v) Exploratory coalbed methane well dewatering;

(vi) Normal gas vapor losses from a storage tank or other low-pressure vessel, unless the Superintendent determines that recovery of the gas vapors is warranted;

(vii) Well venting during downhole well maintenance or liquids unloading, performed in compliance with § 226.156(c);

(viii) Facility and pipeline maintenance, such as when the lessee must blow-down and depressurize equipment to perform maintenance or repairs; and

(ix) Emergencies, subject to the limitations in § 226.156(d).

(3) Produced gas that is vented or flared with the Superintendent's approval.

Drainage Obligations

§ 226.92 Prevention of drainage.

(a) Where any lease is being drained of oil and gas by wells on an adjacent lease issued at a lower royalty rate, the Superintendent may require the lessee being drained to:

(1) Drill or modify and produce all wells necessary to protect the lease from drainage;

(2) Enter into a cooperative agreement with the lease upon which the draining well is located; or

(3) Pay compensatory royalties for drainage that has occurred and continues to occur.

(b) The Superintendent may, in their discretion, approve alternative, equivalent protective measures outside of those set forth in paragraph (a) of this section.

(c) The lessee must take protective action within a reasonable time after they first knew, or had constructive notice, that drainage may be occurring. For purposes of this section, a lessee is considered to have constructive notice of drainage if they operate or own any interest in the draining lease or well.

(d) If the Superintendent has reason to believe that drainage is occurring, they will notify the lessee in writing. Such notification does not alleviate the lessee's responsibility to take protective action when they first knew, or had constructive notice, that drainage may be occurring, which date may precede the receipt of notice from the Superintendent.

(e) The Superintendent will determine whether a lessee took protective action within a reasonable time on a case-by-case basis taking into consideration the time required to evaluate the characteristics and performance of the draining well; rig availability; well depth; the need for environmental analysis; weather conditions; and other relevant factors.

(f) The lessee is not required to take any of the protective actions listed in paragraph (a) of this section if they can prove, to the Superintendent's satisfaction, that when they first knew, or had constructive notice, of drainage, a sufficient quantity of oil or gas could not be produced from a protective well for a reasonable profit above the cost of drilling, completing, and operating the protective well.

§ 226.93 Compensatory royalty for drainage.

(a) If the Superintendent determines that a lessee was required to take protective action to prevent drainage under § 226.92 and failed to take such action within a reasonable time, the lessee must pay compensatory royalty for the period of the delay.

(b) The Superintendent will assess compensatory royalty beginning on the first calendar day of the month following the earliest reasonable time the lessee should have taken protective action and continuing until:

(1) The lessee drills adequate economic protective wells, and such wells remain in continuous production;

(2) The Superintendent approves a cooperative agreement that covers the mineral resources being drained or alternative protective measures;

(3) The draining well stops producing; or

(4) The lessee relinquishes their interest in the lease through an assignment.

(c) If a lessee assigns their interest in a lease, they are not liable for drainage that occurs after the effective date of the assignment.

(d) An assignee is liable for all drainage obligations that accrue after the effective date of the assignment.

Site Security

§ 226.94 Storage and sales facilities—seals.

(a) All lines entering or leaving any oil storage tank must have valves capable of being effectively sealed during the production and sales phases unless otherwise provided by the regulations in this part. Existing valves may be modified so that they are capable of being effectively sealed. Appropriate valves must be in an operable condition and accurately reflect whether the valve is open or closed.

(1) During the production phase, all appropriate valves that allow unmeasured production to be removed from storage must be effectively sealed in the closed position. During any other phase (*e.g.,* sales, water draining, hot oiling), and prior to taking the top tank gauge measurement, all appropriate vales that allow unmeasured production to enter or leave the sales tank must be effectively sealed in the closed position.

(2) Each unsealed or ineffectively sealed valve is a separate violation.

(b) Valves, or combinations of valves and tanks, that provide access to production before it is measured for sale are considered appropriate valves and are subject to the seal requirements in this part. If there is more than one valve on a line from a tank, the valve closest to the tank must be sealed.

(c) All appropriate valves must be in operable condition and accurately reflect whether the valve is open or closed.

(d) The following are not considered appropriate valves and, therefore, are not subject to the seal requirements in this part:

(1) Valves on production equipment (*e.g.,* dehydrator, gun barrel, or wash tank);

(2) Valves on water tanks, provided that the possibility of access to production in the sales and storage tanks does not exist through a common circulating drain, overflow, or equalizer system;

(3) Valves on tanks that contain what the Superintendent determines to be slop or waste oil;

(4) Sample cock valves used on piping or tanks with a Nominal Pipe Size of one inch or less in diameter;

(5) Fill-line valves during shipment when a single tank with a nominal capacity of 500 bbl or less is used for collecting marginal production of oil produced from a single well (*i.e.,* production that is less than three bbl per day). All other seal requirements apply;

(6) Gas line valves used on piping with a Nominal Pipe Size of one inch or less used as tank bottom ''roll'' lines, provided that there is no access to the contents of the storage tank and the roll lines cannot be used as equalizer lines;

(7) Valves on tank heating systems that use a fluid other than the contents of the storage tank (*i.e.,* steam, water, glycol);

(8) Valves used on piping with a Nominal Pipe Size of one inch or less, connected directly to the pump body or used on pump bleed off lines;

(9) Tank vent-line valves; and

(10) Sales, equalizer, or fill-line valves on systems where production may be removed only through approved oil metering systems (*e.g.,* LACT or CMS). Any valve that allows access for removal of oil before it is measured through the metering system must be effectively sealed.

(e) Tampering with any appropriate valve is prohibited.

§ 226.95 Oil measurement system components—seals.

(a) Components used for determining the quality or quantity of oil must be effectively sealed to indicate tampering. Such components include, but are not limited to, the following components of LACT meters and CMSs:

(1) The sampler volume control;

(2) All valves on lines entering or leaving the sample container, excluding the safety pop-off valve, if so equipped. Each valve must be sealed in the open or closed position, as appropriate;

(3) The mechanical counter head (totalizer) and meter head;

(4) The stand-alone temperature averager monitor;

(5) The non-automatic adjusting, fixed back-pressure valve pressure adjustment downstream of the meter;

(6) Any drain valves larger than one inch in nominal diameter; and

(7) The right-angle drive.

(b) Each missing or ineffectively sealed component is a separate violation.

§ 226.96 Removing production from tanks for sale and transportation by truck.

(a) When a single truckload constitutes a completed sale, the driver must possess the documentation required in § 226.114.

(b) When multiple trucks are involved in a sale and the oil measurement method is based on the difference between the opening and closing gauges, the driver of the last truck must possess the documentation required in § 226.114. All other drivers involved in the sale must possess a trip log or manifest.

(c) After the seals have been broken, the purchaser or transporter is responsible for the entire contents of the tank until it is resealed. When a single truck is involved in a sale with multiple truckloads, the purchaser or transporter must seal the tank in between each individual truckload.

§ 226.97 Documentation required for transportation of oil and gas.

(a) Any person engaged in transporting by motor vehicle any oil produced from or allocated to any lease, must carry on their person, in their vehicle, or have in their immediate control, documentation showing the amount, origin, and intended first purchaser of the oil.

(b) Any person engaged in transporting any oil or gas produced from or allocated to any lease by pipeline, must maintain documentation showing the amount, origin, and intended first purchaser of the oil or gas.

(c) Any properly identified authorized representative of the Superintendent may stop and inspect any motor vehicle on a lease if they have probable cause to believe the vehicle is carrying oil produced from or allocated to the lease, to determine whether the driver possesses proper documentation for the load of oil.

(d) Any appropriate law enforcement officer or properly identified authorized representative of the Superintendent

accompanied by an appropriate law enforcement officer, may stop and inspect any motor vehicle that is off lease, if there is probable cause to believe the vehicle is carrying oil produced from or allocated to a lease, to determine whether the driver possesses proper documentation for the load of oil.

§ 226.98 Water draining operations.

When water is drained from a production storage tank, the lessee, purchaser, or transporter must document the following information:

(a) The lease number;

(b) The tank location using both GPS coordinates and legal description;

(c) The unique tank number and nominal capacity;

(d) The date of the opening gauge;

(e) The opening gauge (gauged manually or automatically), TOV, and free water measurements, all to the nearest ½ inch;

(f) The unique identifying number of each seal removed;

(g) The closing gauge (gauged manually or automatically) and TOV measurement to the nearest ½ inch; and

(h) The unique identifying number of each seal installed.

§ 226.99 Hot oiling, clean-up, and completion operations.

(a) During hot oil, clean-up, completion operations, or any other situation where the lessee removes oil from storage, temporarily uses it for operational purposes, and then returns it to storage, they must document the following information:

(1) The lease number;

(2) The tank location using both GPS coordinates and legal description;

(3) The unique tank number and nominal capacity;

(4) The date of the opening gauge;

(5) The opening gauge measurement (gauged manually or automatically) to the nearest ½ inch;

(6) The unique identifying number of each seal removed;

(7) The closing gauge measurement (gauged manually or automatically) to the nearest ½ inch;

(8) The unique identifying number of each seal installed;

(9) How the oil was used; and

(10) Where the oil was used (*e.g.,* well or facility name and number).

(b) During hot oiling, line flushing, or completion operations of any other kind where the lessee removes production from storage for use on a different lease, the production is considered sold and must be measured in accordance with the requirements in the regulations in this part and reported to ONRR for the period covering the production in question.

§ 226.100 Seal records.

For each seal, the lessee must maintain a record that includes the:

(a) Unique identifying number of each seal and the valve or meter component on which the seal is, or was, used;

(b) Date of installation or removal of each seal;

(c) Position in which the valve was sealed (*e.g.,* open or closed); and

(d) Reason the seal was removed.

§ 226.101 Requirements for off-lease measurement of production.

(a) The lessee must submit a request, in writing, for off-lease measurement of production and obtain the Superintendent's approval thereof. The request must include the following information:

(1) The lessee's name;

(2) The lease number for which the lessee is requesting off-lease measurement;

(3) The US Well Number(s) and GPS coordinates for each well included in the off-lease measurement proposal; and

(4) The lease number and legal description for the existing or proposed off-lease FMP.

(b) Off-lease measurement of production must occur at an identified FMP unless the Superintendent authorizes otherwise.

§ 226.102 Report of spills, theft, mishandling of production, accidents, or fires.

(a) Lessees must report the following to the Superintendent and surface owner(s) immediately upon discovery, but not later than the calendar day following discovery:

(1) All spills or releases of oil, gas, produced water, toxic liquids, deleterious substances, or waste materials;

(2) Theft of equipment or production;

(3) Blowouts;

(4) Fires;

(5) Mishandling of production; and

(6) Accidents on the lease that resulted in the loss of production or damage to measurement equipment.

(b) In addition to providing emergency notification by phone or in person, the lessee must also send written notice of the incidents identified in paragraphs (a)(1) through (4) of this section to surface owner(s) by certified mail—return receipt requested.

(c) The lessee must submit a Spill and Remediation Report for all spills and releases, and a written report of all other incidents, to the Superintendent within five business days of any incident identified in paragraph (a) of this section, together with a proposed contingency or remediation plan that describes the procedures being implemented to restore resource values and protect life, property, and the environment.

(d) The lessee must exercise due diligence in taking necessary measures to control and remove pollutants and extinguish fires.

(e) Compliance with the requirements set forth in the regulations in this part does not relieve the lessee of the obligation to comply with all other applicable laws and regulations.

Subpart J—Oil Measurement

§ 226.103 General requirements.

(a) Oil must be measured on the lease or unit area from which it is produced unless approval for off-lease measurement of production is obtained in accordance with § 226.101.

(b) All bypasses of meters are prohibited.

(c) Tampering with any measurement device, component of a measurement device, or measurement process is prohibited.

(d) Violation of the prohibitions set forth in paragraphs (b) and (c) of this section will result in assessment of the maximum penalty available under § 226.162(c).

§ 226.104 Timeframes for compliance.

(a) All equipment and procedures used to measure the volume of oil for royalty purposes after [effective date of final rule] must comply with the requirements in this subpart.

(b) All equipment and procedures used to measure the volume of oil for royalty purposes installed or in-use on leases approved prior to [effective date of final rule] must comply with the requirements in this subpart by [one year from effective date of final rule]. Prior to that date, the equipment and procedures used to measure oil for royalty purposes must continue to comply with § 226.38, as it appears in 25 CFR part 226 (April 1, 2017, edition) and any applicable orders or notices.

§ 226.105 [Reserved]

§ 226.106 Specific measurement performance requirements.

(a) *Volume measurement uncertainty levels.* (1) The FMP must achieve the following volume measurement uncertainty levels, calculated in accordance with the statistical methodologies set forth in API 13.3 and the quadrature sum method set forth in Subsection 12.3 of API 14.3.1 (both incorporated by reference, see § 226.0):

TABLE 1 TO PARAGRAPH (a)(1)—VOLUME MEASUREMENT UNCERTAINTY LEVELS

If the averaging period volume is:	The overall volume measurement uncertainty level must be within:
1. Greater than or equal to 30,000 bbl/month.	+/−0.50 percent.
2. Less than 30,000 bbl/month.	+/−1.50 percent.

(2) The Superintendent may grant an exception to the uncertainty levels in paragraph (a) of this section only upon the lessee's showing that meeting the required uncertainty level would involve extraordinary cost or unacceptable adverse environmental effects.

(b) *Bias.* The measurement equipment used for volume determinations must achieve measurement without statistically significant bias.

(c) *Verifiability.* All FMP equipment must be susceptible to the BIA's independent verification of the accuracy and validity of all inputs, factors, and equations used to determine quality or quantity. Verifiability includes the ability to independently recalculate the volume and quality of oil based on source records.

§ 226.107 Tank gauging—general requirements.

(a) Oil measurement by tank gauging must be performed using the procedures set forth in § 226.108 and accurately compute the total net standard volume of oil withdrawn from a properly calibrated sales tank.

(b) Each tank used for oil storage must comply with the recommended practices in Subsection 4 of API RP 12R1 (incorporated by reference, see § 226.0) and must be connected, maintained, and operated in compliance with §§ 226.94, 226.98, and 226.99.

(c) All oil storage tanks must be clearly identified and have a unique number the lessee generated stenciled on the tank and maintained in a legible condition.

(d) Each oil storage tank that has a tank gauging system and is associated with an FMP must be set and maintained on a level plane.

(e) Each oil storage tank that has a tank gauging system and is associated with an FMP must be gauged using a gauging reference point located at 180 degrees (6:00 o'clock) when the individual performing the gauging is facing the tank hatch unless the Superintendent approves an alternative method.

(f) The lessee must accurately calibrate each oil storage tank that has a tank gauging system and is associated with an FMP using either API 2.2A, API 2.2B, or API 2.2C and API RP 2556 (all incorporated by reference, see § 226.0) and:

(1) Determine sales tank capacities by tank calibration using actual tank measurements, with unit volume in bbl and incremental height measurements that match the gauging increment specified in § 226.108(b)(5)(i)(d);

(2) Recalibrate the sales tank if there is a change in purchaser, the tank is relocated or repaired, or the capacity of the tank changes due to denting, damage, installation, removal of interior components, or other alterations; and

(3) Submit sales tank tables to the Superintendent within 45 calendar days after calibration or recalculation of the tables.

§ 226.108 Tank gauging—procedures.

(a) The lessee may use manual or automatic tank gauging to determine the quality and quantity of oil measured under field conditions at an FMP. The Superintendent's prior approval is required for all automatic tank gauging. Requests for authorization to use automatic tank gauging must be submitted to the Superintendent in writing and include the make and model of the automatic tank gauge (ATG) the lessee proposes to use.

(b) The lessee must comply with the following procedures to determine the quality and quantity of oil measured:

(1) *Isolate tank.* Isolate the tank for at least 30 minutes to allow the contents to settle before conducting tank gauging operations. Tank isolating valves must be closed and sealed in accordance with § 226.94.

(2) *Determine opening oil temperature.* Determine the temperature of oil contained in the sales tank in accordance with API 7.1 or API 7.2 (both incorporated by reference, see § 226.0) and the following requirements:

(i) A single temperature measurement at the middle of the liquid may be used for tanks with less than 5,000 bbls nominal capacity;

(ii) Glass thermometers must be clean, free of fluid separation, and have a minimum graduation of 1.0 °F and an accuracy of +/−0.5 °F; and

(iii) Electronic thermometers must have a minimum graduation of 1.0 °F and an accuracy of +/−0.5 °F.

(3) *Take oil samples.* The lessee must conduct sampling operations prior to taking the opening gauge unless automatic sampling methods are used. Sampling of oil removed from an FMP tank must yield a representative sample of the oil and its physical properties and comply with the requirements in API 8.1 (incorporated by reference, see § 226.0).

(4) *Determine observed oil gravity.* The lessee must conduct tests for oil gravity in accordance with API 9.1, API 9.2, or API 9.3 (all incorporated by reference, see § 226.0) and the following requirements:

(i) The hydrometer or thermohydrometer must be clean with a clear, legible oil gravity scale and no loose shot weights and must be calibrated for an oil gravity range that includes the observed gravity of the oil sample being tested;

(ii) The lessee must allow the temperature to stabilize for a minimum of five minutes prior to reading the hydrometer or thermohydrometer; and

(iii) The lessee must read and record the observed API oil gravity to the nearest 0.1 degree and the temperature to the nearest 1.0 °F.

(5) *Measure opening tank fluid level.* The lessee must take and record the opening gauge only after samples have been taken.

(i) The lessee must conduct manual gauging in accordance with API 3.1A and API 18.1 (both incorporated by reference, see § 226.0) subject to the following exceptions, additions, and clarifications:

(A) The proper innage-gauging bob for the measurement method must be used;

(B) A gauging tape must be used. The tape must be made of steel or corrosion-resistant material with graduation clearly legible and must not be kinked or spliced;

(C) A suitable product-indicating paste must be used on the gauging tape to facilitate the reading. The use of chalk or talcum powder is prohibited; and

(D) The lessee must obtain two consecutive gauging measurements that are within ¼ inch of each other for any tank regardless of size.

(ii) The lessee must conduct automatic tank gauging in accordance with API 3.1B, and API 3.6 (both incorporated by reference, see § 226.0) and the following requirements:

(A) The ATG must be inspected, and its accuracy verified to within +/− ¼ inch, in accordance with the procedures in Subsection 9 of API 3.1B (incorporated by reference, see § 226.0) prior to sales and upon the Superintendent's request. If the ATG is found to be out of the manufacturer's tolerance, the lessee will be required to calibrate the ATG prior to sales; and

(B) The lessee must make a detailed log of ATG field verifications available to the Superintendent upon request.

(6) *Determine S&W content.* Determine the S&W content of the oil in the sales tanks in accordance with API 10.4 (incorporated by reference, see § 226.0) using the oil samples obtained pursuant to paragraph (d) of this section.

(7) *Transfer oil.* Break the tank load valve seal and transfer the oil to the tanker truck. After the transfer is complete, close and seal the tank valve in accordance with §§ 226.94 and 226.96.

(8) *Determine closing oil temperature.* Determine the closing oil temperature using the procedures set forth in paragraph (b)(2) of this section.

(9) *Take closing tank gauge.* Take the closing tank gauge using the procedures set forth in paragraph (b)(5) of this section.

(10) *Complete run ticket.* Complete the run ticket in accordance with § 226.114.

§ 226.109 LACT system—general requirements.

(a) LACT systems must meet the construction and operation requirements and minimum standards set forth in this section and §§ 226.103 and 226.110.

(b) LACT systems must be proven as set forth in § 226.113.

(c) Run tickets must be completed as set forth in § 226.114.

(d) All components of LACT systems must be accessible for inspection.

(e) The lessee must notify the Superintendent, in writing, of any LACT system failure or equipment malfunction that may have resulted in measurement error within 15 calendar days of discovering the failure.

(f) Any tests conducted on oil samples extracted from LACT system samplers for determination of S&W content and observed oil gravity must meet the requirements and minimum standards set forth in § 226.108(b)(2), (4), and (6).

(g) The average temperature for the run ticket must be calculated for the measurement period covered by the run ticket and must be the temperature used to calculate the CTL correction factor using API 11.1 (incorporated by reference, see § 226.0).

§ 226.110 LACT system—components and operating requirements.

(a) Each LACT system must include all equipment listed in API 6.1 (incorporated by reference, see § 226.0), subject to the following exceptions:

(1) The LACT meter must be a positive displacement or Coriolis meter;

(2) An electronic temperature averaging device must be installed; and

(3) Meter back-pressure must be applied by a back-pressure valve or other controllable means of applying back-pressure. Back-pressure may be maintained by an automatic-adjusting back-pressure control to adjust for changing flow conditions. Back-pressure control must maintain a pressure that is above the bubble point of the liquid to prevent the formation of vapor, ensuring single-phase flow.

(b) All LACT system components must be operated in accordance with API 6.1 (incorporated by reference, see § 226.0) and the following requirements:

(1) Sampling and mixing must be conducted in accordance with API 8.2 and API 8.3 (both incorporated by reference, see § 226.0), and the sample exactor probe must be inserted in the center half of the flowing stream, horizontally oriented, and have external markings that show the orientation of the probe in relation to the direction of flow.

(2) All tests conducted on oil samples extracted from LACT system samplers for determination of oil gravity must be conducted in accordance with API 9.1, API 9.2, or API 9.3 (all incorporated by reference, see § 226.0). All tests for the determination of S&W content must be conducted in accordance with API 10.4 (incorporated by reference, see § 226.0).

(3) The composite sample container must be emptied and cleaned upon completion of the sample withdrawal.

(4) The positive displacement or Coriolis meter must be equipped with a non-resettable totalizer. The non-resettable totalizer display may reside in an electronic flow computer. The meter must include or allow for the attachment of a device that generates at least 8,400 pulses per bbl of registered volume.

(5) The pressure-indicating device must be located downstream of the meter, but upstream of the first valve of the prover connections. The pressure-indicating device must be capable of providing pressure data to calculate the CPL correction factor.

(6) The electronic temperature averaging device may be a stand-alone device or a function of a flow computer and must be installed, operated, and maintained as follows:

(i) The temperature thermowell and transducer must be installed as set forth in Subsections 6.3 and 7.2 of API 7.4 (incorporated by reference, see § 226.0);

(ii) The electronic temperature averaging device must be volume-weighted and take a temperature reading as set forth in Subsection 9.2.8 of API 21.2 (incorporated by reference, see § 226.0);

(iii) The average temperature for the run ticket must be calculated using the volumetric averaging method set forth in Subsection 9.2.13.2a of API 21.2 (incorporated by reference, see § 226.0);

(iv) The temperature averaging device must have a reference accuracy of +/ −0.5 °F or better and a minimum graduation of 0.1 °F.

(v) The temperature averaging device must include a display of the instantaneous temperature and average temperature calculated since the run ticket was opened. The display may be a function of an electronic flow computer; and

(vi) The average temperature calculated since the run ticket was opened must be used to calculate the CTL correction factor.

(7) The net standard volume must be calculated at the close of each run ticket in accordance with the guidelines set forth in API 11.1 and API 12.2.2 (both incorporated by reference, see § 226.0).

§ 226.111 Coriolis measurement systems (CMS)—general requirements and components.

This section applies to Coriolis measurement applications that are independent of LACT systems.

(a) A CMS must meet the requirements and minimum standards set forth in this section and §§ 226.106 and 226.112.

(b) A CMS must be proven as set forth in § 226.113.

(c) Run tickets must be completed as set forth in § 226.114.

(d) A CMS at an FMP must be installed with the components listed in API 5.6 (incorporated by reference, see § 226.0) and in accordance with the following requirements:

(1) The pressure transducer must meet the requirements set forth in § 226.110(b)(5);

(2) The temperature determination must meet the requirements set forth in § 226.110(b)(6);

(3) The sampling system must meet the requirements set forth in § 226.110(b)(1) through (3) if nonzero S&W content is to be used in determining net oil volume. If no sampling system is used, or the sampling system does not meet the requirements in § 226.110(b)(1) through (3), the S&W content must be reported as zero.

(4) Sufficient back-pressure must be applied to ensure single-phase flow through the meter.

(e) The API oil gravity reported for the run ticket period must be:

(1) Determined from a composite sample taken in accordance with § 226.110(b)(1) through (3); or

(2) Calculated from the average density as measured by the CMS over the run ticket period in accordance with

Subsection 9.2.13.2a of API 21.2 (incorporated by reference, see § 226.0). Density must be corrected to base temperature and pressure in accordance with API 11.1 (incorporated by reference, see § 226.0).

§ 226.112 Coriolis meter—operating requirements.

(a) *Minimum electronic pulse level.* The Coriolis meter must register the volume of oil passing through the meter as determined by a system that constantly emits electronic pulse signals representing the indicated volume measured. The pulse per unit volume must be set at a minimum of 8,400 pulses per bbl.

(b) *Meter specifications.* The Coriolis meter specifications must identify the make and model of the meter they apply to and include the following:

(1) The reference accuracy for both mass flow rate and density, stated in percent of reading, percent of full scale, or units of measure;

(2) The effect of changes in temperature and pressure on both mass flow and fluid density readings, and the effect of flow rate on density readings, stated in percent of reading, percent of full scale, or units of measure over a stated amount of change in temperature, pressure, or flow rate (*e.g.,* +/−0.1 percent of reading per 20 psi);

(3) The stability of the zero reading for volumetric flow rate, stated in percent of reading, percent of full scale, or units of measure;

(4) The design limits for flow rate and pressure; and

(5) The pressure drop through the meter as a function of flow rate and fluid viscosity.

(c) *Submission of meter specifications.* The lessee must submit Coriolis meter specifications to the Superintendent upon request.

(d) *Non-resettable totalizer.* The Coriolis meter must have a non-resettable internal totalizer for indicated volume.

(e) *Verification of meter zero-value using the manufacturer's specifications.* If the indicated flow rate is within the manufacturer's specifications for zero stability, no adjustments are required. If the indicated flow rate is outside such specifications, the meter's zero reading must be adjusted. After the meter's zero has been adjusted, the meter must be proven as set forth in § 226.113. A copy of the zero-value verification procedure must be provided to the Superintendent upon request.

(f) *Required on-site information.*

(1) The Coriolis meter display must be readable without using data collection units, laptop computers, or any special equipment and must be on-site and accessible to the Superintendent.

(2) The following values and corresponding units of measurement must be displayed for each Coriolis meter:

(i) The instantaneous display of liquid density (pounds/bbl, pounds/gal, or degrees API);

(ii) The instantaneous indicated volumetric flow rate through the meter (bbl/day);

(iii) The meter factor;

(iv) The instantaneous pressure (psi);

(v) The instantaneous temperature (°F);

(vi) The cumulative gross standard volume through the meter (non-resettable totalizer) (bbl); and

(vii) The previous day's gross standard volume through the meter (bbl).

(3) The following information must be correct, maintained in legible condition, and accessible to the Superintendent at the FMP without the use of data collection equipment, laptop computers, or any other special equipment:

(i) The make, model, and size of each sensor; and

(ii) The make, model, range, and calibrated span of the pressure and temperature transducer used to determine gross standard volume.

(4) The lessee must maintain a log of all meter factors, zero verifications, and zero adjustments. For zero adjustments, the log must include the zero value after adjustment. The log must be made available to the Superintendent upon request.

(g) *Audit trail requirements.* The information identified in paragraphs (g)(1) through (4) of this section must be recorded and maintained by the lessee for six years from the date it was generated unless the Superintendent provides written notice to the lessee that an audit or investigation is being conducted and the records must be maintained for a longer period. If an audit or investigation of the records is being conducted, the lessee must maintain the records until the Superintendent issues a written release of such obligation. Audit trail requirements must follow Subsection 10 of API 21.2 (incorporated by reference, see § 226.0). All data and records must be provided to the Superintendent upon request.

(1) *Quantity transaction record (QTR).* The QTR must comply with the requirements for run tickets set forth in § 226.114.

(2) *Configuration log.* The configuration log must comply with the requirements set forth in Subsection 10.2 of API 21.2 (incorporated by reference, see § 226.0), and identify all constant flow parameters used in generating the QTR.

(3) *Event log.* The event log must comply with the requirements set forth in Subsection 10.6 of API 21.2 (incorporated by reference, see § 226.0).

(4) *Alarm log.* The alarm log must record the type and duration of density deviations from acceptable parameters and instances in which the flow rate exceeded the manufacturer's maximum recommended flow rate or was below the manufacturer's minimum recommended flow rate.

(h) *Data protection.* To ensure that audit trail requirements under paragraph (g) of this section are met, each Coriolis meter must have a backup power supply installed and maintained in operable condition or a non-volatile memory capable of retaining all data in the unit's memory.

§ 226.113 Meter proving requirements.

(a) This section specifies the minimum requirements for conducting volumetric meter proving for all FMP meters.

(b) *Meter prover.* The only acceptable provers are positive displacement master meters, Coriolis master meters, and displacement provers. The lessee must ensure that the meter prover used to determine the meter factor has a valid certificate of calibration, identifying the prover by serial number, on site and available for the Superintendent's review. The certificate must show that the prover was calibrated as follows:

(1) Master meters must have a meter factor within 0.9900 to 1.0100 determined by a minimum of five consecutive prover runs within 0.0005 (0.05 percent repeatability) as set forth in Subsection 6.5, Table 2 of API 4.5 (incorporated by reference, see § 226.0). The master meter must not be mechanically compensated for oil gravity or temperature; its readout must indicate units of volume without corrections.

(2) The meter factor must be documented on the calibration certificate and must be calibrated at least once every 12 months. New master meters must be calibrated immediately and recalibrated three months thereafter. Master meters that have undergone mechanical repairs, alterations, or changes that affect the calibration must be calibrated immediately upon the completion of this work and recalibrated three months thereafter in accordance with Annex B of API 4.8 (incorporated by reference, see § 226.0).

(3) Displacement provers must meet the requirements set forth in API 4.2

and be calibrated using the water-draw method set forth in API 4.9.2 at the calibration frequencies specified in Subsection 10.1(b) of API 4.8 (all incorporated by reference, see § 226.0).

(4) The base prover volume of a displacement prover must be calculated in accordance with API 12.2.4 (incorporated by reference, see § 226.0).

(5) Displacement provers must be sized to obtain a displacer velocity through the prover that is within the appropriate range during proving in accordance with Subsections 4.3.4.1 and 4.3.4.2 of API 4.2 (incorporated by reference, see § 226.0).

(6) Fluid velocity is calculated using Subsection 4.3.4.3, Equation 12 of API 4.2 (incorporated by reference, see § 226.0).

(c) *Meter proving runs.* Meter proving must comply with the applicable section(s) of API 4.1 (incorporated by reference, see § 226.0) and the following requirements:

(1) Meter proving must be performed under normal operating conditions. The normal operating conditions will be established by the flow rate, fluid pressure, fluid temperature, and fluid gravity at the time of proving. These established conditions will be in effect until the next proving.

(i) The oil flow rate through the LACT or CMS during proving must be within 10 percent of the normal flow rate;

(ii) The pressure as measured by the LACT or CMS during proving must be within 10 percent of the normal flow rate;

(iii) The temperature as measured by the LACT or CMS during the proving must be within 10 °F of the normal operating temperature;

(iv) The gravity of the oil during proving must be within 5° API of the normal oil gravity; and

(v) If the normal flow rate, pressure, temperature, or oil gravity vary by more than the limits defined in paragraphs (c)(1) through (4) of this section, meter provings must be conducted at the upper, lower, and midpoint limits of normal operating conditions.

(2) If each proving run is not of sufficient volume to generate at least 10,000 pulses from the positive displacement meter or the Coriolis meter as specified in Subsection 4.3.2.1 of API 4.2, then pulse interpolation must be used in accordance with API 4.6 (both incorporated by reference, see § 226.0).

(3) Proving runs must be made until the calculated meter factor or meter-generated pulses from five consecutive runs match within a tolerance of 0.0005 (0.05 percent) between the highest and lowest value in accordance with Subsection 9 of API 12.2.3 (incorporated by reference, see § 226.0).

(4) The new meter factor is the arithmetic average of the meter-generated pulses or intermediate meter factors calculated from the five consecutive runs in accordance with Subsection 9 of API 12.2.3 (incorporated by reference, see § 226.0).

(5) Meter factor computations must follow the sequence set forth in Subsection 12 of API 12.2.3 (incorporated by reference, see § 226.0).

(6) If multiple meter factors are determined over a range of normal operating conditions, then:

(i) If all the meter factors determined over a range of conditions fall within 0.0020 of each other, a single meter factor may be calculated for that range as the arithmetic average of all the meter factors within that range. The full range of normal operating conditions may be divided into segments such that all the meter factors within each segment fall within a range of 0.0020. In such case, a single meter factor for each segment may be calculated as the arithmetic average of the meter factors within that segment; or

(ii) The metering system may apply a dynamic meter factor derived (using linear interpolation, polynomial fit, etc.) from the series of meter factors determined over the range of normal operating conditions, so long as no two neighboring meter factors differ by more than 0.0020.

(7) The meter factor must be at least 0.9900 and no more than 1.0100.

(8) The initial meter factor for a new or repaired meter must be at least 0.9950 and no more than 1.0050.

(9) For positive displacement meters, the back-pressure valve may be adjusted after proving only within the normal operating fluid flow rate and fluid pressure as described in paragraph (c)(1) of this section. If the back-pressure valve is adjusted after proving, the lessee must document the as-left fluid flow rate and fluid pressure on the proving report.

(10) If a composite meter factor is calculated, the CPL value must be calculated from the pressure setting of the back-pressure valve or the normal operating pressure at the meter. Composite meter factors must not be used with a Coriolis meter.

(d) *Minimum proving frequency.* The lessee must prove all FMP meters every three months (quarterly) or each time the registered volume flowing through the meter, as measured on the non-resettable totalizer from the last proving, increases by 75,000 bbls, whichever occurs first, but not more frequently than monthly.

(e) *Events triggering proving.* The lessee must prove all FMP meters before the removal or sale of production after any of the following events occur:

(1) Initial meter installation;

(2) Meter zeroing (Coriolis meter);

(3) Modification of mounting conditions;

(4) A change in fluid temperature that exceeds the transducer's calibrated span;

(5) A change in the flow rate, pressure, temperature, or gravity that exceeds the normal operating conditions as set forth in paragraph (c)(1) of this section;

(6) The mechanical or electrical components of the meter are changed, repaired, or removed;

(7) Internal calibration factors are changed or reprogrammed; or

(8) The Superintendent requests proving.

(f) *Excessive meter factor deviation.* If the difference between meter factors established in two successive provings exceeds +/−0.0025, the meter must be immediately removed from service, checked for damage or wear, adjusted or repaired, and reproved before being returned to service.

(1) The arithmetic average of the two successive meter factors must be applied to the production measured through the meter between the date of the previous meter proving and the date of the most recent meter proving.

(2) The proving report must clearly show the most recent meter factor and describe all subsequent adjustments or repairs.

(g) *Verification of the temperature transducer.* As part of each required meter proving and upon replacement, the temperature averager for a LACT system and temperature transducer used in conjunction with a CMS must be verified against a known standard in accordance with the following requirements:

(1) The temperature averager or temperature transducer must be compared with a test thermometer traceable to NIST and having a stated accuracy of +/−0.25° or better; and

(2) The temperature reading displayed on the temperature averager or temperature transducer must be compared with the reading of the test thermometer using one of the following methods:

(i) The test thermometer must be placed in a test thermometer well located not more than 12 inches from the probe of the temperature averager or temperature transducer; or

(ii) Both the test thermometer and probe of the temperature averager or temperature transducer must be placed

in an insulated water bath. The water bath temperature must be within 20 °F of the normal flowing temperature of the oil.

(3) The displayed reading of instantaneous temperature from the temperature averager or temperature transducer must be compared with the reading from the test thermometer. If the readings differ by more than 0.5 °F, the difference must be noted on the meter proving report and the temperature average or temperature transducer must be:

(i) Adjusted to match the reading of the test thermometer; or

(ii) Recalibrated, repaired, or replaced.

(h) *Verification of the pressure transducer (if applicable).* As part of each required meter proving and upon replacement, the pressure transducer must be compared with a test pressure device (dead weight or pressure gauge) traceable to NIST and having a stated maximum uncertainty of no more than one-half of the accuracy required from the transducer being verified.

(1) The pressure reading displayed on the pressure transducer must be compared with the reading of the test pressure device.

(2) The pressure transducer must be tested at the following three points:

(i) Zero (atmospheric pressure);

(ii) 100 percent of the calibrated span of the pressure transducer; and

(iii) A point that represents the normal flowing pressure through the Coriolis meter.

(3) If the pressure applied by the test pressure device and the pressure displayed on the pressure transducer vary by more than the required accuracy of the pressure transducer, the pressure transducer must be adjusted to read within the stated accuracy of the test pressure device.

(i) *Density verification (if applicable).* If the API gravity of oil is determined from the average density measured by the Coriolis meter (rather than from a composite sample), then during each proving of the Coriolis meter, the instantaneous flowing density determined by the Coriolis meter must be verified by comparing it with an independent density measurement as set forth in Subsection 9.1.2.1 of API 5.6 (incorporated by reference, see § 226.0). The difference between the indicated density determined from the Coriolis meter and the independently determined density must be within the density reference accuracy specification of the Coriolis meter. Sampling must be performed in accordance with API 8.1, API 8.2, or API 8.3, as appropriate, (all incorporated by reference, see § 226.0).

(j) *Reporting requirements for meter proving.* The lessee must report all meter proving and volume adjustments following any LACT system or CMS malfunction, including excessive meter-factor deviation, to the Superintendent within 14 calendar days after proving. Meter proving reports may use the forms in Subsection 13 of API 12.2.3 or Appendix C of API 5.6 (see § 226.0 for availability information) or any other format containing the same information as the API forms, provided that the calculation of meter factors maintains the proper calculation sequence and rounding.

(k) *Edits and adjustments to reported volume.* (1) If there are measurement errors stemming from an equipment malfunction that results in discrepancies to the calculated volume, the lessee must estimate the volume reported during the period in which the error occurred.

(2) All edits made to the data before submission of the report to ONRR must be documented and include verifiable justifications of the edits made. Such documentation must be made available to the Superintendent and ONRR upon request.

(3) All values on QTRs that have been changed or edited must be clearly identified and cross-referenced to the justification required in paragraph (k)(2) of this section.

(4) The volumes reported to ONRR must be corrected beginning with the date that the inaccuracy occurred. If the date is unknown, the volumes must be corrected beginning with the production month that includes the date that is halfway between the date of the previous and most recent verifications.

§ 226.114 Run tickets.

(a) *Tank gauging.* After oil is measured by tank gauging, the lessee, purchaser, or transporter, as appropriate, must complete a uniquely numbered run ticket containing the following information:

(1) The lessee's name;

(2) The lease number;

(3) The name of the individual that performed the tank gauging;

(4) The unique tank number and nominal tank capacity;

(5) The opening and closing dates and times;

(6) The open and closing gauges and observed temperatures in °F;

(7) The observed volume for opening and closing gauge using tank-specific calibration charts (see § 226.107(f));

(8) The total net standard volume removed from the tank following API 11.1 (incorporated by reference, see § 226.0);

(9) The observed API oil gravity and temperature in °F;

(10) The API oil gravity at 60 °F, following API 11.1 (incorporated by reference, see § 226.0);

(11) The S&W content percentage; and

(12) The unique numbering of each seal removed and installed.

(b) *LACT system and CMS.* Unless the lessee is using a flow computer, at the beginning of every month, before conducting proving operations on a LACT system, the lessee, purchaser, or transporter, as appropriate, must complete a uniquely numbered run ticket containing the following information:

(1) The lessee's name;

(2) The name of the purchaser's representative;

(3) The lease number;

(4) The unique meter ID number;

(5) The opening and closing dates and times;

(6) The opening and closing totalizer readings of the indicated volume;

(7) The meter factor, indicating whether it is a composite meter factor;

(8) The total gross standard volume removed through the LACT system or CMS;

(9) The API oil gravity;

(i) For API oil gravity determined from a composite sample, the observed API oil gravity and temperature must be indicated in °F and the API oil gravity must be indicated at 60 °F;

(ii) For API oil gravity determined from average density (CMS only), the CMS must determine the average uncorrected density;

(10) The average temperature for the measurement period in °F;

(11) The average flowing pressure for the measurement period in psia;

(12) The S&W content percent; and

(13) The unique number of each seal removed and installed.

(c) Any accumulators used in the determination of average pressure, average temperature, and average density for the measurement period must be reset to zero whenever a new run ticket is opened.

(d) Run tickets must be submitted to the Superintendent on or before the last calendar day of the month following the production month.

§ 226.115 Oil measurement by alternate methods.

Any method of oil measurement at an FMP, other than tank gauging, LACT system, or CMS, requires the Superintendent's prior approval.

§ 226.116 Determination of oil volumes by methods other than measurement.

(a) When production cannot be measured due to a spill or leak, the

amount of production will be determined using the method the Superintendent requires. This category of production includes, but is not limited to, oil classified as slop or waste oil.

(b) No oil may be classified or disposed of as waste oil unless the lessee demonstrates to the Superintendent's satisfaction that it is not economically feasible to put such oil into marketable condition.

(c) The lessee must not sell or otherwise dispose of slop oil without prior approval from the Superintendent. The sale or disposal of slop oil must be reported to ONRR in accordance with the requirements set forth in §§ 226.45 and 226.87.

Subpart K—Gas Measurement

§ 226.117 General requirements.

(a) Gas must be measured on the lease or cooperative agreement unit area from which it is produced unless approval for off-lease measurement is obtained pursuant to § 226.101.

(b) All bypasses of meters are prohibited.

(c) Tampering with any measurement device, component of a measurement device, or measurement process is prohibited. Violation of this prohibition will result in the assessment of the maximum penalty available under § 226.162(c).

§ 226.118 Timeframes for compliance.

(a) All equipment and procedures used to measure the volume of gas for royalty purposes after [effective date of final rule] must comply with the requirements in this subpart.

(b) All equipment and procedures used to measure the volume of gas for royalty purposes in use on [effective date of final rule] must comply with the requirements in this subpart by [one year from effective date of final rule]. Prior to that date, the equipment and procedures used to measure gas for royalty purposes must continue to comply with § 226.39, as it appears in 25 CFR part 226 (April 1, 2017, edition) and any applicable orders or notices.

§ 226.119 [Reserved]

§ 226.120 Specific performance requirements.

(a) *Flow rate measurement uncertainty levels.* (1) For high-volume FMPs, the measuring equipment must achieve an overall flow rate measurement uncertainty within +/− 3 percent.

(2) For very-high-volume FMPs, the measuring equipment must achieve an overall flow rate measurement uncertainty within +/− 2 percent.

(3) There are no measurement uncertainty requirements for low- and very-low-volume FMPs.

(4) The measurement uncertainty is based on the values of flowing parameters (*e.g.,* differential pressure, static pressure, and flowing temperature for differential meters or velocity, mass flow rate, and volumetric flow rate for linear meters) determined as follows, listed in order of priority:

(i) The average flowing parameters listed on the most recent daily QTR, if available to the Superintendent at the time of the uncertainty determination; or

(ii) The average flowing parameters from the previous day, as required under § 226.125(d)(4)(i) through (iii) (for differential meters).

(5) The uncertainty must be calculated in accordance with Section 12 of API 14.3.1 (incorporated by reference, see § 226.0) or other methods the Superintendent approves.

(b) *Heating value uncertainty levels.* (1) For high-volume FMPs, the measuring equipment must achieve an annual average heating value uncertainty within +/− 3 percent.

(2) For very-high-volume FMPs, the measuring equipment must achieve an annual average heating value uncertainty within +/− 2 percent.

(3) There are no heating value uncertainty requirements for low- and very-low-volume FMPs.

(4) Unless otherwise approved by the Superintendent, the average annual heating value uncertainty must be determined as follows:

$$U_{\overline{HV}} = 0.951 \times V_{95\%} \sqrt{\frac{1}{N}}$$

Where:

$U_{\overline{HV}}$ = average annual heating value uncertainty

$V_{95\%}$ = $h$eating value variability

N = number of samples taken per year ($N = 1, 2, 4, 6, 12,$ or 26)

(c) *Bias.* For low-, high-, and very-high-volume FMPs, the measuring equipment used for either the flow rate or heating value determination must achieve measurement without statistically significant bias.

(d) *Verifiability.* The lessee must not use measurement equipment for which the Superintendent cannot independently verify the accuracy and validity of any input, factor, or equation used by the measuring equipment to determine quantity, rate, or heating value. Verifiability includes the ability to independently recalculate the volume, rate, and heating value based on source records and field observations.

§ 226.121 Flange-tapped orifice plate (primary devices).

(a) *Exemptions from requirements.* The standards and requirements in this section apply to all flange-tapped orifice plates subject to the following exceptions:

(1) Low-volume FMPs are exempt from the standards in paragraph (b) of this section; and

(2) Very-low-volume FMPs are exempt from the standards and requirements in paragraphs (b), (c), (f) and (l) of this section.

(b) *Orifice plate specifications.* Orifice plates must meet the requirements set forth in Section 4 of API 14.3.2 (incorporated by reference, see § 226.0) and the:

(1) Beta ratio must be no less than 0.10 and no greater than 0.75; and

(2) Orifice bore diameter must be no less than 0.45 inches.

(c) *Initial orifice plate inspection.* If an FMP measures oil from wells first coming into production or existing wells that have been re-fractured, the lessee must inspect the orifice plate upon installation and every two weeks thereafter until the production of particulate matter from the wells subsides. If the orifice plate does not comply with the requirements set forth in Subsection 4 of API 14.3.2 (incorporated by reference, see § 226.0), the lessee must replace it. Once the orifice plate complies with API 14.3.2, Subsection 4, the lessee must conduct inspections as set forth in paragraph (d) of this section.

(d) *Routine orifice plate inspection.* (1) Lessees must pull and inspect the orifice plate as follows:

(i) Once every 12 months for very-low-volume FMPs;

(ii) Once every 6 months for low-volume FMPs;

(iii) Once every 3 months for high-volume FMPs; and

(iv) Once a month for very-high-volume FMPs.

(2) If a routine inspection reveals that an orifice plate does not comply with Section 4 of API 14.3.2 (incorporated by reference, see § 226.0), the lessee must replace it.

(e) *Documentation of orifice plate inspections.* The lessee must document each orifice plate inspection and include that documentation as part of the verification report submitted in accordance with §§ 226.123 or 226.126. The documentation must include:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) The plate orientation (bevel upstream or downstream);

(5) The measured orifice bore diameter;

(6) The plate condition (documenting compliance with Section 4 of API 14.3.2 (incorporated by reference, see § 226.0);

(7) The presence of oil, grease, paraffin, scale, or other contaminants on the plate;

(8) The date and time of inspection; and

(9) Whether the plate was replaced.

(f) *Meter tube specifications.*

(1) Meter tubes must meet the requirements set forth in Subsections 5.1 through 5.4 of API 14.3.2 (incorporated by reference, see § 226.0). If flow conditioners are used, they must be isolating flow conditioners or 19-tube bundle flow straighteners constructed in compliance with Subsections 5.5.2 through 5.5.4 of API 14.3.2 and located in compliance with Subsection 6.3 of API 14.3.2 (all incorporated by reference, see § 226.0).

(2) Meter tube lengths and the location of 19-tube bundle flow straighteners, if applicable, must comply with the requirements set forth in Subsection 6.3 of API 14.3.2 (incorporated by reference, see § 226.0). If the diameter ratio falls between the values set forth in Subsection 6.3, Tables 7, 8a, or 8b of API 14.3.2 (incorporated by reference, see § 226.0), the length identified for the larger diameter ratio in the appropriate table is the minimum requirement for meter tube length and determines the location of the end of the 19-tube bundle flow straightener that is closest to the orifice plate.

(g) *Basic meter tube inspection.* The lessee must perform a basic inspection of meter tubes that can identify obstructions, pitting, and buildup of foreign substances within the following timeframe:

(1) *Frequency.* (i) Once every 10 years for low-volume and very-low-volume FMPs; and

(ii) Once every 5 years for high-volume and very-high-volume FMPs.

(2) *Corrective action.* If the basic meter tube inspection identifies obstructions, pitting, or buildup of foreign substances, the lessee must take one of the following corrective actions within 30 calendar days:

(i) For all FMPs, if the inspection only identifies the presence of an obstruction (such as debris in front of the flow conditioner), the lessee must remove the obstruction. If the inspection only identifies pitting, no corrective action is required;

(ii) For low- and very-low volume FMPs, if the inspection identifies the buildup of foreign substances, the lessee must clean the meter tube of such buildup; and

(iii) For high- and very-high-volume FMPs, if the inspection indicates pitting or the buildup of foreign substances, the lessee must clear or repair the meter tube and conduct a detailed meter tube inspection under paragraph (h) of this section; or

(iv) Submit a written request to the Superintendent for an extension of the 30-day corrective action timeframe, justifying the need for the extension and specifying the length of the extension requested.

(h) *Detailed meter tube inspection.* If a detailed meter tube inspection is required under paragraph (g)(2)(iii) of this section, the lessee must measure and inspect the meter tube to determine whether it complies with Subsections 5.1 through 5.4 of API 14.3.2 (incorporated by reference, see § 226.0). If the meter tube does not comply with the required standards, the lessee must repair or replace the meter tube and bring into compliance.

(i) *Documentation of meter tube inspections.* The lessee must document all inspections and make such documentation available to the Superintendent upon request. The documentation must include:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) The date and time of the inspection;

(5) The type of equipment used to perform the inspection;

(6) For a basic meter tube inspection, a description of findings, including the location and severity of pitting, obstructions, and buildup of foreign substances; and

(7) For detailed meter tube inspections, information demonstrating that the meter tube complies with Subsection 5.1 through 5.4 of API 14.3.2 (incorporated by reference, see § 226.0) and showing all required measurements.

(j) *Advance notice of inspections.* The lessee must notify the Superintendent at least 72 hours in advance of performing an inspection under paragraphs (d), (g), and (h) of this section or submit a monthly or quarterly schedule of inspections at least 15 calendar days prior to the date of the first inspection scheduled.

(k) *Other inspections.* The lessee must conduct additional inspections at the Superintendent's request.

(l) *Thermometer well.* Thermometer wells used for determining the flowing temperature of the gas and verification (test well), must be located in compliance with Subsection 6.5 of API 14.3.2 (incorporated by reference, see § 226.0). Where multiple thermometer wells have been installed in a meter tube, the flowing temperature must be measured from the thermometer well closest to the primary device. Thermometer wells used to measure or verify flowing temperature must contain a thermally conductive liquid.

(m) *Sampling probe.* The sampling probe must be located as specified in § 226.130.

§ 226.122 Mechanical recorder (secondary device).

(a) Mechanical recorders may be used as a secondary device on low- and very-low-volume FMPs only.

(b) Chart recorders used in conjunction with differential-type meters are approved for low- and very-low-volume FMPs only.

(c) Very-low-volume FMPs are exempt from the standards and requirements set forth paragraphs (e), (f), and (g) of this section.

(d) The connection between the pressure taps and the mechanical recorder must meet the following requirements:

(1) Gauge lines must:

(i) Have a nominal diameter of not less than $\frac{3}{8}$ inch;

(ii) Be sloped upwards from the pressure taps at a minimum pitch of one inch per foot of length with no visible sag;

(iii) Have the same internal diameter along their entire length; and

(iv) Be no longer than 6 feet.

(2) Valves, including the valves in manifolds, must have a full-opening internal diameter of not less than $\frac{3}{8}$ inch;

(3) There must not be any tees except for the static-pressure line; and

(4) There must be no connections to any other devices or more than one differential-pressure bellows and static pressure element.

(e) The differential-pressure pen must record at a minimum reading of 10 percent of the differential-pressure bellows range for the majority of the flowing period. This requirement does not apply to inverted charts.

(f) The flowing temperature of the gas must be continuously recorded and used in the volume calculations.

(g) The following information must always be maintained at the FMP in a legible condition and accessible to the Superintendent:

(1) The differential-pressure-bellows range;

(2) The static-pressure-element range;

(3) The temperature-element range;

(4) The relative density (specific gravity) of the gas;

(5) The static-pressure units of measure (psia or psig);

(6) The elevation of, or atmospheric pressure at, the FMP;

(7) The reference inside diameter of the meter tube;

(8) The primary device type;

(9) The orifice-bore or other primary device dimensions necessary for device verification, Beta or area ratio determination, and gas volume calculation;

(10) The location of isolating flow conditioners, if used;

(11) The location of the downstream end of the 19-tube-bundle flow straighteners, if used;

(12) The date of last primary device inspection; and

(13) The date of last meter verification.

(h) The differential pressure, static pressure, and flowing temperature elements must be operated between the lower- and upper-calibrated limits of the respective elements.

§ 226.123 Verification and calibration of mechanical recorder.

(a) *Verification following installation or repair.*

(1) Prior to performing any verification of a mechanical recorder, the lessee must perform a leak test. The test must be conducted in a manner that will detect leaks in all connections and fittings of the secondary device, including meter manifolds and verification equipment, isolation valves, and equalizer valves. If leaks are detected, the lessee must repair the leaks before proceeding with verification.

(2) The lessee must adjust the time lag between the differential- and static-pressure pens, if necessary, to be $\frac{1}{96}$ of the chart rotation period measured at the chart hub.

(3) The meter's differential pen arc must be able to duplicate the test chart's time arc over the full range of the test chart and must be adjusted if necessary.

(4) The as-left values must be verified, in the following sequence, against a certified pressure device for the differential- and static-pressure elements (if the static-pressure pen has been offset for atmospheric pressure, the static-pressure element range is in psia):

(i) Zero (vented to atmosphere);

(ii) 50 percent of element range;

(iii) 100 percent of element range;

(iv) 80 percent of element range;

(v) 20 percent of element range; and

(vi) Zero (vented to atmosphere).

(5) The following as-left temperatures must be verified by placing the temperature probe in a water bath with a certified test thermometer:

(i) Approximately 10 °F below the lowest expected flowing temperature;

(ii) Approximately 10 °F above the highest expected flowing temperature; and

(iii) At the expected average flowing temperature.

(6) If any of the readings required in paragraph (a)(4) or (5) of this section vary from the test device reading by more than the following tolerance levels, the lessee must replace and verify the element for which readings were outside the applicable tolerances before returning the meter to service:

(i) Differential pressure element, +/−0.5 percent;

(ii) Static pressure element, +/−1.0 percent; and

(iii) Temperature element, +/−2 °F.

(7) If the static-pressure pen is offset for atmospheric pressure, the atmospheric pressure must be calculated in accordance with Appendix A to this part and the pen must be offset prior to obtaining the as-left verification values required in paragraph (a)(4) of this section.

(b) *Routine verification frequency.* The differential pressure bellows, static pressure element, and temperature element must be verified according to the requirements in this section at the following frequencies:

(1) Once every 6 months for very-low-volume FMPs; and

(2) Once every 3 months for low-volume FMPs.

(c) *Routine verification procedures.* (1) Prior to performing any verification required in this subpart, the lessee must perform a leak test in the manner specified in paragraph (a)(1) of this section.

(2) No adjustments to the pens or linkages may be made until an as-found verification is obtained. If the static pen has been offset for atmospheric pressure, the static pen must not be reset to zero until the as-found verification is obtained.

(3) The lessee must obtain and verify the as-found values of differential and static pressure against a certified pressure device at the readings listed in paragraph (a)(4) of this section, subject to the following additional requirements:

(i) If there is sufficient data on-site to determine the point at which the differential and static pens normally operate, the lessee must also obtain an as-found value at those points;

(ii) If sufficient data is not available on-site, the lessee must also obtain as-found values at 5 percent and 10 percent of the element range; and

(iii) If the static pressure pen has been offset for atmospheric pressure, the static-pressure element range is in units of psia.

(4) The as-found value for temperature must be taken using a certified test thermometer placed in a test thermometer well if there is flow through the meter and the meter tube is equipped with such a well. If there is no flow through the meter, or if the meter is not equipped with a test thermometer well, the temperature probe must be verified by placing it in an insulated water bath along with a test thermometer.

(5) The element undergoing verification must be calibrated according to manufacturer specifications if any of the as-found values determined under paragraph (c)(3) or (4) of this section are not within the tolerances specified in paragraph (a)(6) of this section, when compared to the values applied by the test equipment.

(6) The lessee must adjust the time lag between the differential- and static-pressure pens, if necessary, to be 1/96 of the chart rotation period, measured at the chart hub.

(7) The meter's differential pen arc must be able to duplicate the test chart's time arc over the full range of the test chart and must be adjusted if necessary.

(8) If any adjustment to the meter was made, the lessee must perform an as-left verification on each element adjusted using the procedures in paragraphs (c)(3) and (4) of this section.

(9) If, after an as-left verification, any of the readings required by paragraphs (c)(3) and (4) of this section vary by more than the tolerances set forth in paragraph (a)(6) of this section when compared with the test device reading, the lessee must replace and verify any element which has readings outside of the applicable tolerances under this section before returning the meter to service.

(10) If the static-pressure pen is offset for atmospheric pressure:

(i) The atmospheric pressure must be calculated in accordance with Appendix A to this part; and

(ii) The pen must be offset prior to obtaining the as-left verification values required in paragraph (c)(3) of this section.

(d) The lessee must retain documentation of each verification and make such documentation available to the Superintendent upon request. The documentation must include:

(1) The date and time of the verification;

(2) The date of the prior verification;

(3) Primary device data (reference inside diameter of the meter tube and differential-device size and Beta or area ratio) if the orifice plate is pulled and inspected;

(4) The type and location of taps (flange or pipe, upstream or downstream static tap);

(5) The atmospheric pressure used to offset the static-pressure pen, if applicable;

(6) Mechanical recorder data (differential pressure, static pressure, and temperature element ranges);

(7) The normal operating points for differential pressure, static pressure, and flowing temperature;

(8) The verification points (as-found and applied) for each element;

(9) The verification points (as-left and applied) for each element if a calibration is performed; and

(10) The name and contact information for each individual who performed or witnessed the verification, if applicable.

(e) *Notification of verification.* (1) For verifications performed after installation or following repair, the lessee must notify the Superintendent at least 72 hours before conducting the verification.

(2) For routine verifications, the lessee must notify the Superintendent at least 72 hours before conducting the verification or must submit a monthly or quarterly verification schedule to the Superintendent in advance.

(f) *Correction of reported volumes.* If during the verification, the combined errors in as-found differential pressure, static pressure, and flowing temperature taken at the normal operating points tested resulted in a flow-rate error greater than 2 percent and 2 Mcf/day, the volumes reported to ONRR must be corrected beginning with the date that the inaccuracy occurred. If such date is unknown, the volumes must be corrected beginning with the production month that includes the date that is halfway between the date of the last verification and the date of the current verification. Corrected reports must be submitted to ONRR within 30 calendar days of discovery of the error in the reported volumes.

(g) *Test equipment certification.* Test equipment used to verify or calibrate elements at an FMP must be certified at least once every two years. Documentation of the recertification must be available on site during all verifications and must show the:

(1) Test equipment serial number, make, and model;

(2) Date that recertification took place;

(3) Test equipment measurement range; and

(4) Uncertainty determined or verified as part of the recertification.

§ 226.124 Integration statements.

(a) The lessee must retain an unedited integration statement and make such statement available to the Superintendent upon request. The integration statement must contain the following:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) The name of the company performing the integration;

(5) The month and year to which the integration statement applies;

(6) The reference inside diameter of the meter tube (inches);

(7) The orifice bore diameter (inches) or Beta or area ratio and discharge coefficient, as applicable, and any other information necessary to calculate flow rate;

(8) The relative density (specific gravity);

(9) The CO_2 content (mole percent);

(10) The Dinitrogen (N_2) content (mole percent);

(11) The heating value calculated under § 226.140 (Btu/standard cubic feet);

(12) The atmospheric pressure or elevation at the FMP;

(13) The pressure base;

(14) The temperature base;

(15) The static-pressure tap location (upstream or downstream);

(16) The chart rotation (hours or days);

(17) The differential-pressure bellows range (inches of water);

(18) The static-pressure element range (psi); and

(19) For each chart integrated:

(i) The date and time on, and date and time off;

(ii) The average differential pressure (inches of water)

(iii) The average static pressure;

(iv) The static-pressure units of measure (psia or psig);

(v) The average temperature (°F);

(vi) The integrator counts or extension;

(vii) The hours of flow; and

(viii) The volume (Mcf).

(b) The volume for each chart integrated must be determined as follows:

$$V = IMV \times IV$$

Where:

V = reported volume, Mcf
IMV = integral multiplier value, as calculated under this section
IV = the integral value determined by the integration process (also known as the ''extension,'' ''integrated extension,'' and ''integrator count'')

(1) If the primary device is a flange-tapped orifice plate, a single IMV must be calculated for each chart or chart interval using the following equation:

$$IMV = 7709.61 \frac{C_d Y d^2}{\sqrt{1 - \beta^4}} \sqrt{\frac{Z_b}{G_r Z_f T_f}}$$

Where:

C_d = discharge coefficient or flow coefficient, calculated under API 14.3.3 or Section 5 of AGA Report No. 3 (both incorporated by reference, see § 226.0)

β = beta ratio

Y = gas expansion factor, calculated under Subsection 5.6 of API 14.3.3, or Section 5 of AGA Report No. 3 (both incorporated by reference, see § 226.0)

d = orifice diameter, in inches

Z_b = supercompressibility at base pressure and temperature

G_r = relative density (specific gravity)

Z_f = supercompressibility at flowing temperature and pressure

T_f = average flowing temperature, in degrees Rankine

(2) Variables that are functions of differential pressure, static pressure, or flowing temperature (*e.g.,* C_d, Y, Z_f) must use the average values of differential pressure, static pressure, and flowing temperature as determined from, and reported on, the integration statement for the chart or chart interval integrated. The flowing temperature must be the average flowing temperature reported on the integration statement for the chart or chart interval being integrated.

(c) Atmospheric pressure used to convert static pressure in psig to static pressure in psia, must be determined in accordance with Appendix A to this part.

§ 226.125 Electronic gas measurement (secondary and tertiary device).

(a) All electronic gas measurement systems (EGMs) must meet the requirements set forth in Section 9 and Subsection 4.4.5 of API 21.1 (incorporated by reference, see § 226.0).

(b) Very-low-volume FMPs are exempt from the standards and requirements set forth in paragraphs (c), (f), and (g) of this section.

(c) The connection between pressure taps and the secondary device must meet the following requirements:

(1) If gauge lines are used, they must:

(i) Have a nominal diameter of not less than ⅜ inch;

(ii) Be sloped upwards from the pressure taps at a minimum pitch of one inch per foot of length, with no visible sag;

(iii) Have the same internal diameter along their entire length; and

(iv) Be no longer than 6 feet.

(2) Valves, including the valves in manifolds, must have a full-opening internal diameter of not less than ⅜ inch;

(3) There must not be any tees, except for the static pressure line; and

(4) There must be no connections to any other devices or more than one differential pressure and static pressure transducer, except that where the lessee is employing redundancy verification, two differential pressure and two static pressure transducers may be connected.

(d) Each FMP must include a display that:

(1) Is readable without the need for data collection units, laptop computers, a password, or any special equipment;

(2) Is on-site and in a location that is accessible to the Superintendent;

(3) Includes the units of measure for each required variable;

(4) Displays the previous day's volume and the following variables consecutively:

(i) Current flowing static pressure with units (psia or psig);

(ii) Current differential pressure (inches of water);

(iii) Current flowing temperature (°F);

(iv) Current flow rate (Mcf/day or scf/day); and

(5) Displays an hourly or daily QTR no more than 31 calendar days old and shows the following information:

(i) The previous period (for this section, previous period means at least 1 day prior, but no longer than 1 month prior) average differential pressure (inches of water);

(ii) The average static pressure with units (psia or psig); and

(iii) The average flowing temperature (°F).

(e) The lessee must always maintain the following at the FMP in legible condition and accessible to the Superintendent:

(1) The unique meter identification number;

(2) The relative density (specific gravity);

(3) The elevation of, or the atmospheric pressure at, the FMP;

(4) Primary device information, such as orifice bore diameter (inches) or Beta or area ratio and discharge coefficient, as applicable;

(5) The reference inside diameter of meter tube;

(6) The make, model, and location of isolating flow conditioners, if used;

(7) The location of the downstream end of 19-tube-bundle flow straighteners, if used;

(8) The upper calibrated limit for each transducer;

(9) The location of the static-pressure tap (upstream or downstream);

(10) The date of last orifice plate inspection;

(11) The date of last meter tube inspection; and

(12) The date of last secondary device inspection.

(f) The differential pressure, static pressure, and flowing temperature transducers must be operated between the upper and lower calibrated limits of the transducer.

(g) The flowing temperature of the gas must be continuously measured and used in the flow-rate calculations in accordance with Section 4 of API 21.1 (incorporated by reference, see § 226.0).

§ 226.126 Verification and calibration of electronic gas measurement systems.

(a) *Transducer verification and calibration after installation or repair.* (1) Prior to performing any verification required in this section, the lessee must perform a leak test in the manner set forth in § 226.123(a)(1).

(2) The lessee must verify the points listed in Subsection 7.3.3 of API 21.1 (incorporated by reference, see § 226.0), by comparing the values from the certified test device with the values used by the flow computer to calculate flow rate. If any of these as-left readings vary from the test equipment reading by more than the tolerance calculated using Subsection 8.2.2.2, Equation 24 of API 21.1 (incorporated by reference, see § 226.0), the transducer must be replaced and tested under this paragraph.

(3) For absolute static pressure transducers, the value of atmospheric pressure used when the transducer is vented to atmosphere must be calculated in accordance with Appendix A to this part, measured by a NIST-certified barometer with a stated accuracy of +/−0.06 psi (±4 millibars) or better, or obtained from an absolute pressure calibration device.

(4) Prior to putting the meter into service, the differential pressure transducer must be tested at zero with full working pressure applied to both sides of the transducer. If the absolute value of the transducer reading is greater than the reference accuracy of the transducer, expressed in inches of water column, the transducer must be re-zeroed.

(b) *Routine verification frequency.* (1) If redundancy verification under

paragraph (d) of this section is not used, the differential pressure, static pressure, and temperature transducers must be verified in accordance with the procedures set forth in paragraph (c) of this section at the following frequencies:

(i) Once every 24 months for low-volume and very-low-volume FMPs;

(ii) Once every 6 months for high-volume and very-high-volume FMPs.

(2) If redundancy verification under paragraph (d) of this section is used, the differential pressure, static pressure, and temperature transducers must be verified in accordance with the procedures set forth therein. In addition, the temperature transducers must be verified in accordance with the procedures set forth in paragraph (c) of this section at least once a year.

(c) *Routine verification procedures.* Verifications must be performed in accordance with Subsection 8.2 of API 21.1 (incorporated by reference, see § 226.0), subject to the following exceptions, additions, and clarifications:

(1) Prior to performing any verification required under this section, the lessee must perform a leak test in the manner set forth in § 226.123(a)(1).

(2) An as-found verification for differential pressure, static pressure, and temperature must be conducted at the normal operating point of each transducer.

(i) The normal operating point is the mean value taken over a previous time period that is not less than one day, or greater than one month, prior. Acceptable mean values include means that are weighted based on flow time and flow rate.

(ii) For differential and static pressure transducers, the pressure applied to the transducer must be within five percentage points of the normal operating point.

(iii) For the temperature transducer, the water bath or test thermometer well must be within 20 °F of the normal operating point for temperature.

(3) If a transducer is calibrated, the as-left verification must include the normal operating point of that transducer, as defined in paragraph (c)(2) of this section.

(4) The as-found values for differential pressure obtained with the low side vented to atmospheric pressure must be corrected to working pressure values using Annex H, Equation H.1 of API 21.1 (incorporated by reference, see § 226.0).

(5) The verification tolerance for differential and static pressure is calculated using Subsection 8.2.2.2, Equation 24 of API 21.1 (incorporated by reference, see § 226.0). The verification tolerance for temperature is equivalent to the uncertainty of the temperature transmitter or 0.5 °F, whichever is greater.

(6) All required verification points must be within the applicable verification tolerance before returning the meter to service.

(7) Prior to putting a meter into service, the differential pressure transducer must be tested at zero with full working pressure applied to both sides of the transducer. If the absolute value of the transducer reading is greater than the reference accuracy of the transducer, as expressed in inches of water column, the transducer must be re-zeroed.

(d) *Redundancy verification procedures.* Redundancy verification must be performed as required under Subsection 8.2 of API 21.1 (incorporated by reference, see § 226.0), subject to the following exceptions, additions, and clarifications:

(1) The lessee must identify which set of transducers is used for reporting on the Form ONRR–4054 (the primary transducers) and which set of transducers is used as a check (the check set of transducers);

(2) For every calendar month, the lessee must compare the flow-time linear averages of differential pressure, static pressure, and temperature readings from the primary transducers with those from the check transducers; and

(3) If for any transducer the difference between the averages exceeds the tolerance defined by the equation below, the lessee must verify both the primary and check transducer under paragraph (c) of this section within the first five days of the month following the month in which the redundancy verification was performed. For example, if the redundancy verification for March reveals that the difference in flow-time linear averages of differential pressure exceeded the verification tolerance, both the primary and check differential-pressure transducers must be verified under paragraph (c) of this section by April 5th.

$$Tolerance = \sqrt{A_P^2 + A_C^2}$$

Where:

A_P is the reference accuracy of the primary transducer and

A_C is the reference accuracy of the check transducer

(e) *Documentation of verifications.* The lessee must retain documentation of each verification and make such documentation available to the Superintendent upon request. The documentation must include the following:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) The date and time of verification, and date of the last verification;

(5) Primary device information (reference inside diameter of the meter tube and orifice plate or differential device size, and Beta or area ratio);

(6) The type and location of taps (flange or pipe, upstream or downstream, static tap);

(7) The upper calibrated limit for each transducer;

(8) The normal operating points for differential pressure, static pressure, and flowing temperature;

(9) The atmospheric pressure;

(10) The verification points (as-found and applied) for each transducer;

(11) The verification points (as-left and applied) for each transducer if calibration was performed;

(12) The differential device date of inspection and condition (*e.g.,* clean, sharp edge, or surface condition);

(13) The verification equipment make, model, range, accuracy, and date of last certification; and

(14) The name(s) and contact information for individuals that performed or witnessed the verification, if applicable.

(f) *Notification of verification.* (1) The lessee must notify the Superintendent at least 72 hours before conducting verifications after installation or following repair.

(2) The lessee must notify the Superintendent at least 72 hours before conducting routine verifications or provide the Superintendent with a monthly or quarterly verification schedule in advance.

(g) *Correction of reported volumes.* If during the verification, the combined errors in as-found differential pressure, static pressure, and flowing temperature taken at the normal operating points tested result in a flow-rate error greater than 2 percent and 2 Mcf/day, the volumes reported to ONRR must be corrected beginning with the date that the inaccuracy occurred. If that date is unknown, the volumes must be corrected beginning with the production month that includes the date that is halfway between the date of the last verification and the date of the present verification. Corrected reports must be submitted to ONRR within 30 calendar days of discovery of the error in the reported volumes.

(h) *Certification of test equipment.* Test equipment used to verify or calibrate transducers at an FMP must be

certified at least once every two years. Documentation of the certification must be on-site and available to the Superintendent during all verifications. Such documentation must show the:

(1) Test equipment serial number, make and model;

(2) Date that recertification took place;

(3) Test equipment measurement range; and

(4) Uncertainty determined or verified as part of the recertification.

(i) *Accuracy standards for test equipment.* Test equipment used to verify or calibrate transducers at an FMP must meet the following accuracy standards:

(1) The accuracy of the test equipment, stated in actual units of measure, must be no greater than 0.5 times the reference accuracy of the transducer being verified, also stated in actual units of measure; or

(2) The equipment must have a stated accuracy of 0.10 percent of the upper calibrated limit of the transducer being verified.

§ 226.127 Flow rate, volume, and average value calculation.

(a) For flange-tapped orifice plates, the flow rate must be calculated under:

(1) Sections 4 and 5 of API 14.3.3 (incorporated by reference, see § 226.0); and

(2) AGA Report No. 8 (incorporated by reference, see § 226.0), for supercompressibility.

(b) Atmospheric pressure used to convert static pressure in psig to static pressure in psia must be determined using Appendix A of this part.

(c) Hourly and daily gas volumes, average values of the live input variables, flow time, and integral value or average extension required under § 226.128 must be determined using Section 4 and Annex B of API 21.1 (incorporated by reference, see § 226.0).

§ 226.128 Logs and records.

(a) The lessee must retain, and make available to the Superintendent upon request, the original, unaltered, unprocessed, and unedited daily and hourly QTRs, which must contain the information identified in Subsection 5.2 of API 21.1 (incorporated by reference, see § 226.0), subject to the following additions and clarifications:

(1) The QTRs must contain the lessee's name, lease number, and well or facility name and number;

(2) The volume, flow time, and integral value or average extension must be reported to at least five significant digits;

(3) The average differential pressure, static pressure, and temperature, as calculated in § 226.127(c), must be reported to at least three significant digits; and

(4) The QTRs must include a statement indicating whether the lessee submitted the integral value or average extension.

(b) The lessee must retain, and make available to the Superintendent upon request, the original unaltered, unprocessed, and unedited configuration log, which must contain the information specified in Subsection 5.4 (including the flow-computer snapshot report in Subsection 5.4.2) of API 21.1 and Annex G of API 21.1 (both incorporated by reference, see § 226.0), as well as the following:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) For very-low-volume FMPs only, the fixed temperature, if not continuously measured (°F); and

(5) The static-pressure tap location (upstream or downstream).

(c) The lessee must retain, and make available to the Superintendent upon request, the original, unaltered, unprocessed, and unedited event log. The event log must comply with the requirements set forth in Subsection 5.5 of API 21.1 (incorporated by reference, see § 226.0), and must have sufficient capacity to be retrieved and stored at intervals that will maintain a continuous record of events for the required six-year retention period or the life of the FMP, whichever is shorter.

(d) The lessee must retain, and make available to the Superintendent upon request, an alarm log. The alarm log must comply with the requirements set forth in Subsection 5.6 of API 21.1 (incorporated by reference, see § 226.0).

§ 226.129 Gas sampling and analysis.

(a) Samples must be taken using one of the following methods:

(1) Spot sampling under §§ 226.131, 226.132, and 226.133;

(2) Flow-proportional composite sampling under § 226.134; or

(3) On-line gas chromatograph under § 226.135.

(b) At all times during the sampling process, the minimum temperature of all gas sampling components must be the lesser of:

(1) The flowing temperature of the gas measured at the time of sampling; or

(2) 30 °F above the calculated hydrocarbon dew point of the gas.

§ 226.130 Sampling probe and tubing.

(a) *Exemptions.* Very-low-volume FMPs are exempt from the standards and requirements set forth in this section.

(b) *Location of sample probe.* (1) The sampling probe must be located as specified in Subsection 6.4.2 of API 14.1 (incorporated by reference, see § 226.0) and must be the first obstruction downstream of the primary device.

(2) The sample probe must be exposed to the same ambient temperature as the primary device. The lessee may accomplish this by physically locating the sample probe in the same ambient temperature conditions as the primary device (such as in a heated meter house) or by installing insulation and/or heat tracing along the entire meter run.

(c) *Sample probe design and type.* (1) Sample probes must be made from stainless steel.

(2) If a regulating type of sample probe is used, the pressure-regulating mechanism must be inside the pipe or maintained at a temperature of at least 30 °F above the hydrocarbon dew point of the gas.

(3) The sample probe length must be the shorter of the:

(i) Length necessary to place the collection end of the probe in the center one-third of the pipe cross-section; or

(ii) Recommended probe length in Subsection 6.4, Table 1 of API 14.1 (incorporated by reference, see § 226.0).

(4) The use of membranes, screens, or filters at any point in the sample probe is prohibited.

(d) *Sample tubing type.* Sample tubing connecting the sample probe to the sample container or analyzer must be made of stainless steel or nylon 11.

§ 226.131 Spot samples—general requirements.

(a) *Sampling while flowing.* The FMP must be flowing when a gas sample is taken. If an FMP is in non-flowing status on the date that a sample is due under § 226.133, no sample is required. The lessee must take a sample within 15 calendar days of the date that flow to the FMP is reinitiated. For purposes of this section, non-flowing status means there has been no flow through the FMP for at least 30 consecutive days. Non-flowing status does not apply to meters at FMPs that flow intermittently on a daily or weekly basis.

(b) *Notice of spot samples.* The lessee must provide the Superintendent with at least 72 hours' advance notice before obtaining a spot sample or submit a monthly or quarterly sampling schedule to the Superintendent in advance of taking samples.

(c) *Sample cylinder requirements.* Sample cylinders must:

(1) Comply with the requirements set forth in Subsection 9.1 of API 14.1 (incorporated by reference, see § 226.0);

(2) Have a minimum capacity of 300 cubic centimeters; and

(3) Be cleaned prior to sampling in accordance with Appendix A of GPA 2166–17 (incorporated by reference, see § 226.0) or an equivalent method. The lessee must maintain documentation of cleaning, have the documentation on-site during sampling, and provide the documentation to the Superintendent upon request.

(d) *Spot sampling using portable gas chromatographs.* (1) If used, sampling separators must be:

(i) Constructed of stainless steel;

(ii) Cleaned prior to sampling in accordance with Appendix A of GPA 2166–17 (incorporated by reference, see § 226.0) or an equivalent method. The lessee must maintain documentation of cleaning, have the documentation on-site during sampling, and provide the documentation to the Superintendent upon request; and

(iii) Operated under Appendix B.3 of GPA 2166–17 (incorporated by reference, see § 226.0).

(2) The sample port and inlet to the sample line must be purged using the gas being sampled before completing the connection between them.

(3) The portable gas chromatograph must be operated, verified, and calibrated as set forth in § 226.136 and documentation of such verification and calibration must be available for inspection by the Superintendent at the time of sampling.

(4) The documentation of verification or calibration required in § 226.136(e) must be available for the Superintendent's inspection at the time of sampling.

(5) The minimum number of samples and analyses is as follows:

(i) For low-volume and very-low-volume FMPs, at least three samples must be taken and analyzed;

(ii) For high-volume FMPs, samples must be taken and analyzed until the difference between the maximum and minimum heating values calculated based on three consecutive analyses is less than or equal to 16 Btu/scf; and

(iii) For very-high-volume FMPs, samples must be taken and analyzed until the difference between the maximum and minimum heating values calculated based on three consecutive analyses is less than or equal to 8 Btu/scf.

(6) Unless the Superintendent approves an alternative method of calculation, the heating value and relative density used for reporting to ONRR must be either the mean or median heating value and relative density calculated from the three analyses required in paragraph (d)(5) of this section.

§ 226.132 Spot samples—allowable methods.

(a) Spot samples must be obtained using one of the following methods:

(1) *Purging—fill and empty method.* Samples taken using this method must comply with the requirements set forth in Section 9.1 of GPA 2166–17 (incorporated by reference, see § 226.0);

(2) *Helium ''pop'' method.* Samples taken using this method must comply with the requirements set forth in Section 9.5 of GPA 2166–17 (incorporated by reference, see § 226.0). The lessee must maintain documentation demonstrating that the cylinder was evacuated and pre-charged before sampling and make such documentation available to the Superintendent upon request;

(3) *Floating piston cylinder method.* Samples taken using this method must comply with the requirements set forth in Sections 9.7.1 and 9.7.3 of GPA 2166–17 (incorporated by reference, see § 226.0). The lessee must maintain documentation of the seal material and type of lubricant used and make such documentation available to the Superintendent upon request;

(4) *Portable gas chromatograph.* Samples taken using this method must comply with § 226.136; or

(5) *Alternative methods.* Other methods the Superintendent approves.

(b) If the lessee uses the sampling methods in paragraph (a)(1) or (2) of this section and the flowing pressure at the sample port is less than or equal to 15 psig, the lessee may also employ a vacuum gathering system. Samples taken using a vacuum-gathering system must comply with the requirements set forth in Subsection 11.10 of API 14.1 (incorporated by reference, see § 226.0) and the samples must be obtained from the discharge of the vacuum pump.

§ 226.133 Spot samples—frequency.

(a) Spot samples must be taken and analyzed at the following frequencies:

(1) Once every 12 months for very-low-volume FMPs;

(2) Once every 6 months for low-volume FMPs;

(3) One every 3 months for high-volume FMPs; and

(4) Once a month for very-high-volume FMPs.

(b) The Superintendent may change the required sampling frequency for high- and very-high-volume FMPs if a determination is made that the frequency under paragraph (a) of this section does not achieve the heating value uncertainty levels required in § 226.120(b).

(1) The Superintendent may change the sampling frequency no sooner than [two years from effective date of final rule].

(2) The new sampling frequency will remain in effect until the heating value variability justifies a different frequency.

(3) The Superintendent may not change the sampling frequency to more than once every two weeks or less than once every six months.

(c) The time between any two spot samples must not exceed:

(1) 18 calendar days, if the required sampling frequency is every two weeks;

(2) 45 calendar days, if the required sampling frequency is once a month;

(3) 105 calendar days, if the required sampling frequency is once every 3 months;

(4) 195 calendar days, if the required sampling frequency is once every 6 months; and

(5) 380 calendar days, if the required sampling frequency is once every 12 months.

§ 226.134 Composite sampling methods.

(a) Composite samplers must be flow-proportional.

(b) Samples must be collected using a positive-displacement pump.

(c) Sample cylinders must be sized to ensure the cylinder capacity is not exceeded within the normal collection frequency.

§ 226.135 On-line gas chromatographs.

(a) On-line gas chromatographs must be installed, operated, and maintained in accordance with, Appendix D of GPA 2166–17 (incorporated by reference, see § 226.0), and the manufacturer's specifications, instructions, and recommendations.

(b) On-line gas chromatographs must comply with the verification and calibration requirements set forth in § 226.136. The lessee must maintain documentation of verifications and calibrations and make such documentation available to the Superintendent upon request.

§ 226.136 Gas chromatographs.

(a) All gas chromatographs must be installed, operated, and calibrated in accordance with GPA 2261–20 (incorporated by reference, see § 226.0).

(b) Gas chromatographs must be verified under the requirements in paragraph (c) of this section not less than once every seven calendar days.

(c) Verifications must be performed in accordance with 2261–20 (incorporated by reference, see § 226.0), with the following additions and clarifications:

(1) All gases used for verification and calibration must meet the standards of Sections 3 and 4 of GPA 2198–16 (incorporated by reference, see § 226.0);

(2) All new gases used for verification and calibration must be authenticated prior to verification or calibration in accordance with Section 6 of GPA 2198–16 (incorporated by reference, see § 226.0);

(3) The gas used to calibrate a gas chromatograph must be maintained in accordance with Section 5 of GPA 2198–16 (incorporated by reference, see § 226.0);

(4) If the composition of the gas used for verification as determined by the gas chromatograph varies from the certified composition of the gas used for verification by more than the reproducibility values in Section 10 of GPA 2261–20, the gas chromatograph must be calibrated in accordance with Section 6 of GPA 2261–20 (both incorporated by reference, see § 226.0); and

(5) If the gas chromatograph is calibrated, it must be re-verified under paragraph (c)(4) of this section.

(d) Samples must be analyzed until the un-normalized sum of the mole percent of all gases analyzed is between 97 and 103 percent.

(e) The lessee must retain documentation of the verifications and make such documentation available to the Superintendent upon request. The documentation must include:

(1) The components analyzed;

(2) The response factor for each component;

(3) The peak area for each component;

(4) The mole percent of each component as determined by the gas chromatograph;

(5) The mole percent of each component in the gas used for verification;

(6) The difference between the mole percentages determined in paragraphs (e)(4) and (5) of this section, expressed in relative percent;

(7) Evidence that the gas used for verification and calibration:

(i) Meets the requirements of paragraph (c)(2) of this section, including a unique identification number of the calibration gas used, the name of the supplier of the calibration gas, and the certified list of the mole percent of each component in the calibration gas;

(ii) Was authenticated under paragraph (c)(3) of this section prior to verification or calibration, including the fidelity plots; and

(iii) Was maintained under paragraph (c)(4) of this section, including the fidelity plot made as part of the calibration run;

(8) The chromatograms generated during the verification process;

(9) The time and date the verification was performed; and

(10) The name and affiliation of the person performing the verification.

§ 226.137 Components to analyze.

(a) Low- and very-low-volume FMPs are exempt from the standards and requirements set forth in paragraphs (c), (d), and (e) of this section.

(b) Gas must be analyzed for the following components:

(1) Methane;

(2) Ethane;

(3) Propane;

(4) Isobutane;

(5) Normal Butane;

(6) Pentanes;

(7) Hexanes + (C_6+);

(8) Carbon dioxide; and

(9) Nitrogen.

(c) When the concentration of C_6+ exceeds 0.5 mole percent, hexanes, heptanes, octanes, and Nonanes-plus (C_9+) must also be analyzed.

(d) In lieu of testing each sample for the components required under paragraph (c) of this section, the lessee may periodically test for these components and adjust the assumed C_6+ composition to remove bias in the heating value. The adjusted C_6+ composition must be applied to the mole percent of C_6+ analyses until the next analysis is done under paragraph (c) of this section.

(e) The minimum analysis frequency for components listed in paragraph (c) of this section is:

(1) Once every 12 months, for high-volume FMPs; and

(2) Once every 6 months, for very-high-volume FMPs.

§ 226.138 Gas analysis report requirements.

(a) The gas analysis report must contain the following information:

(1) The lessee's name;

(2) The lease number;

(3) The well or facility name and number;

(4) The date and time the sample or spot samples were taken or, for composite samples, the date the cylinder was installed and date it was removed;

(5) The date and time of the analysis;

(6) For spot samples, the effective date, if other than the date of sampling;

(7) For composite samples, the effective start and end dates;

(8) The name of the laboratory where the analysis was performed, if applicable;

(9) The device used for analysis (*i.e.,* gas chromatograph, calorimeter, or mass spectrometer);

(10) The make and model of the analyzer;

(11) The date of the last verification or calibration of the analyzer;

(12) The flowing temperature at the time of sampling;

(13) The flowing pressure at the time of sampling, including units of measure (psia or psig);

(14) The flow rate at the time of sampling;

(15) The ambient air temperature at the time of sampling;

(16) Whether or not heat trace or any other method of heating was used;

(17) The type of sample (*i.e.,* spot-cylinder, spot-portable gas chromatograph, composite);

(18) The sampling method if spot-cylinder (*e.g.,* fill and empty, helium pop);

(19) A list of the components tested;

(20) The total un-normalized mole percent of the components tested;

(21) The normalized mole percent of each component tested, including a summation of those mole percentages;

(22) The ideal heating value (Btu/scf);

(23) The real heating value (Btu/scf), dry basis;

(24) The hexanes-plus heating value (Btu/scf), if applicable;

(25) The pressure base and temperature base;

(26) The relative density; and

(27) The name of company obtaining the gas sample.

(b) Components that are listed on the analysis report but are not tested must be annotated as such.

(c) The heating value and relative density must be calculated using API 14.5 (incorporated by reference, see § 226.0).

(d) The base supercompressibility must be calculated using AGA Report No. 8 (incorporated by reference, see § 226.0).

(e) The lessee must submit all gas analysis reports to the Superintendent within 14 calendar days after the due date for the sample as specified in § 226.133.

§ 226.139 Effective date of a spot or composite gas sample.

(a) Unless otherwise specified in the gas analysis report, the effective date of a spot sample is the date on which the sample was taken. The effective date of a spot sample may be no later than the first day of the production month following the lessee's receipt of the laboratory analysis of the sample.

(b) Unless otherwise specified in the gas analysis report, the effective date of a composite sample is the first day of the month in which the sample was removed.

§ 226.140 Calculation of heating value and volume.

(a) *Heating value of sample.* The heating value of gas sampled must be calculated as follows:

(1) Gross heating value is defined in Subsection 3.7 of API 14.5, and must be calculated using Subsection 7.1 of API 14.5 (incorporated by reference, see § 226.0); and

(2) Real heating value must be calculated by dividing the gross heating value of the gas calculated under paragraph (a)(1) of this section by the compressibility factor of the gas at 14.73 psia and 60 °F.

(b) *Average heating value.* (1) If a lease has more than one FMP, the average heating value for the lease for a reporting month must be the volume-weighted average of heating values, calculated as follows:

$$\overline{HV} = \frac{\sum_{i=1}^{i=n} (HV_i \times V_i)}{\sum_{i=1}^{i=n} V_i}$$

Where:

$\overline{HV}$ = the average heating value for the lease for the reporting month, in Btu/scf

HV_i = the heating value for FMP_i during the reporting month (see § 226.140(a)(2), if an FMP has multiple heating values during the reporting month), in Btu/scf

V_i = the volume measured by FMP_i during the reporting month, in Btu/scf

i = each FMP for the lease

n = the number of FMPs for the lease

(2) If the effective date of a heating value for an FMP is other than the first day of the reporting month, the average heating value of the FMP must be the volume-weighted average of heating values, determined as follows:

$$HV_i = \frac{\sum_{j=1}^{j=m} (HV_{i,j} \times V_{i,j})}{\sum_{j=1}^{j=m} V_{i,j}}$$

Where:

HV_i = the heating value for FMP_i, in Btu/scf

$HV_{i,j}$ = the heating value for FMP_i, for partial month j, in Btu/scf

$V_{i,j}$ = the volume measured by FMP_i, for partial month j, in Btu/scf

i = represents each FMP for the lease

j = represents a partial month for which heating value $HV_{i,j}$ is effective

m = the number of different heating values in a reporting month for an FMP

(c) *Calculation of volume.* The volume must be determined under § 226.124(b) and (c) (mechanical recorders) or § 226.125(c) (electronic gas measurement systems).

§ 226.141 Reporting of heating value and volume.

(a) *Reported gross and real heating values.* The gross heating value and real heating value, or average gross heating value and average real heating value, as applicable, derived from all samples and analyses must be reported to ONRR in units of Btu/scf under the following conditions:

(1) Containing no water vapor (''dry''), unless the water vapor content has been determined through actual on-site measurement, included in heating value calculations, and reported on the gas analysis report. The heating value may not be reported based on assumed water vapor content. Acceptable methods of measuring water vapor are chilled mirror and other methods the Superintendent approves;

(2) Adjusted to a pressure of 14.73 psia and a temperature of 60 °F; and

(3) For samples analyzed under § 226.137(a), notwithstanding any provision of a contract between the lessee and purchaser or transporter, the composition of hexanes + must have a heating value of not less than:

(i) 5,129 Btu/scf (equivalent heating value of 60 percent hexanes, 30 percent heptanes, and 10 percent octanes); or

(ii) The heating value of the C_9+ composition determined under § 226.137(c).

(b) *Reported volume.* The volume for royalty purposes must be reported to ONRR in units Mcf, as follows:

(1) The volume must not be adjusted for water-vapor content or any other factors that are not included in calculations required in § 226.124(b) and (c) or § 226.127; and

(2) The volume must match the monthly volume(s) shown in the unedited QTR(s) or integration statement(s) unless edits to the data are documented under paragraph (c) of this section.

(c) *Edits and adjustments to reported heating value or volume.* (1) If there are measurement errors stemming from an equipment malfunction that results in discrepancies in the calculated heating value or volume of the gas, the heating value or volume reported during the period in which the error persisted must be estimated.

(2) All edits made to the data before the report is submitted to ONRR must be documented and include verifiable justifications for the edits made. Such documentation must be available to the Superintendent and ONRR upon request.

(3) All values on daily and hourly QTRs that have been changed or edited must be clearly identified and cross referenced to the justification required in paragraph (c)(2) of this section.

(4) The volumes reported to ONRR must be corrected beginning with the date that the inaccuracy occurred. If the date is unknown, the volumes must be corrected beginning with the production month that includes the date that is halfway between the date of the previous verification and the date of the most recent verification. Corrected reports must be submitted to ONRR within 30 calendar days of discovery of the error in the reported volumes.

Subpart L—Tribal and Royalty-Free Use of Production

Tribal Use of Gas Production

§ 226.142 Use of gas by the Osage Nation and Tribe members.

(a) Gas from any well must be furnished to any Tribally-owned building or enterprise at a rate not to exceed the rate set forth in § 226.40, subject to the Superintendent's determination that the lease is producing gas in excess of the lessee's requirements for operations and that no waste will result. The Osage Nation must furnish all labor and materials necessary for connection with the lessee's gas system. The Osage Nation uses gas under this section at its own risk.

(b) Any member of the Osage Nation who resides in Osage County outside of an incorporated city is entitled to use a maximum of 400,000 cubic feet of gas per calendar year for their primary residence at a rate not to exceed the rate set forth in § 226.40, subject to the Superintendent's determination that the lease is producing gas in excess of the lessee's requirements and that no waste will result. The Tribe member must furnish all labor and materials necessary for connection with the lessee's gas system and must maintain their own lines. Tribal members use gas under this section at their own risk.

(c) The lessee may not stop furnishing gas pursuant to paragraphs (a) and (b) of this section without Superintendent's approval. To obtain such approval, the lessee must submit a request to the Superintendent, in writing, providing justification for terminating the Tribe member's use of gas from the lessee's well.

§ 226.143 Royalty on gas furnished for Tribal use.

The lessee must pay royalty on all gas furnished to Tribally owned buildings and enterprises and Tribe members in accordance with §§ 226.39 and 226.40.

Royalty-Free Use of Lease Production

§ 226.144 Production on which no royalty is due.

To the extent specified in §§ 226.145 and 226.146, royalty is not due on:

(a) Oil and gas produced from a lease and used for operations or production purposes (including placing the oil and gas in marketable condition) on the same lease without being removed therefrom; or

(b) Oil and gas produced from a unit and used for operations or production purposes (including placing the oil and gas in marketable condition) on the same unit, under the same cooperative agreement, without being removed therefrom.

§ 226.145 Uses of production on a lease or unit that do not require the Superintendent's prior approval of royalty-free treatment.

(a) The following uses of oil and gas for operations or production purposes do not require the Superintendent's prior approval to be royalty-free:

(1) Use of fuel to generate power or operate combined heat and power;

(2) Use of fuel to power equipment, including artificial lift equipment, equipment used for enhanced recovery, drilling rigs, and completion and workover equipment;

(3) Use of gas to actuate pneumatic controllers or operate pneumatic pumps at production facilities;

(4) Use of fuel to heat, separate, or dehydrate production;

(5) Use of gas as a pilot fuel or as assist gas for a flare, combustor, thermal oxidizer, or other control device;

(6) Use of fuel to compress or treat gas to place it in marketable condition;

(7) Use of oil to clean the well and improve production (*e.g.,* hot oil treatments). The lessee must document removal of the oil from the tank or pipeline in accordance with § 226.99;

(8) Use of oil as a circulating medium in drilling operations if such use is part of an approved drilling plan;

(9) Injection of gas for the purpose of conserving gas or increasing the recovery of oil or gas if the Superintendent ordered or approved such injection; and

(10) Injection of gas that is cycled in a contained gas-lift system.

(b) The volumes of oil and gas treated as royalty-free under this section must not exceed the amount of fuel necessary to perform the operation using equipment of appropriate capacity.

§ 226.146 Uses of production on a lease or unit that require the Superintendent's prior approval of royalty-free treatment.

(a) The following uses of oil and gas for operations or production purposes require the Superintendent's prior approval of royalty-free treatment to ensure that accountability is maintained:

(1) Use of oil or gas the lessee removes from the pipeline at a location downstream of the FMP;

(2) Use of gas that has been removed from the lease or unit for treatment or processing because the physical characteristics of the gas require it to be treated or processed prior to use, where the gas is returned to, and used on, the same lease or unit from which it was produced; and

(3) Any other uses of produced oil and gas for operations and production purposes that are not set forth in § 226.145.

(b) The lessee must submit a request to conduct activities under paragraph (a) of this section to the Superintendent, in writing, to obtain approval of royalty-free treatment for the volumes of oil and gas used. Such request must include the information required by § 226.151. If the Superintendent approves a request for royalty-free treatment under this section, the effective date of such approval will be the date the Superintendent received the lessee's request. If the Superintendent denies a request for royalty-free treatment under this section, the lessee must pay royalties on all volumes utilized to conduct activities under paragraph (a) of this section.

(c) The lessee must measure the volumes of oil and gas used to conduct activities under paragraph (a)(1) of this section in accordance with subparts J and K, as applicable. The lessee must measure the volume of gas returned to the lease or unit following removal under paragraph (a)(2) of this section in accordance with subpart K.

§ 226.147 Uses of production moved off the lease or unit that do not require the Superintendent's prior approval of royalty-free treatment.

Oil and gas moved off the lease or unit may be treated as royalty-free without the Superintendent's prior approval if the use meets the criteria in § 226.145 and:

(a) The oil or gas is transported from one area of the lease or unit to be used at another area of the same lease or unit and no oil or gas is added to, or removed from, the pipeline while crossing lands that are not part of the lease or unit from which the oil or gas was produced; or

(b) A well is directionally drilled, the wellhead is not located on the producing lease or unit, and the oil or gas is being used on the same well pad for operations or production purposes for that well.

§ 226.148 Uses of production moved off the lease or unit that require the Superintendent's prior approval of royalty-free treatment.

(a) Except as provided in § 226.147(b) and paragraph (b) of this section, royalty is owed on all oil and gas used in operations conducted off the lease or unit from which it is produced.

(b) The Superintendent may grant prior approval of royalty-free treatment of oil or gas used in operations conducted off the lease or unit if the:

(1) Use is among those listed in §§ 226.145(a) or 226.146(a);

(2) Equipment or facility in which the operation is conducted is located off the lease or unit for engineering, economic, resource protection, or physical accessibility reasons; and

(3) Operations are conducted upstream of the FMP.

(c) The lessee must submit a request to the Superintendent, in writing, to obtain approval of royalty-free treatment of the volumes of oil and gas used. Such request must comply with the requirements set forth in § 226.151. If the Superintendent approves a request for royalty-free treatment under this section, the effective date of such approval will be the date the Superintendent received the lessee's request. If the Superintendent denies a request for royalty-free treatment under this section, the lessee must pay royalties on all volumes used.

(d) If equipment or a facility located on a particular lease treats oil or gas produced from the lease as well as oil or gas produced from properties that are not unitized with the lease, the lessee may only report as royalty-free that portion of the oil or gas used as fuel that is properly allocated to the share of production contributed by the lease or unit upon which the equipment or facility is located.

§ 226.149 Measurement or estimation of royalty-free volumes of oil or gas.

(a) The lessee must measure or estimate the volumes of royalty-free gas used upstream of the FMP.

(b) The lessee must measure the volume of gas that is removed from the product stream downstream of the FMP and used royalty-free pursuant to §§ 226.145 through 226.148.

(c) The lessee must measure the volume of oil that is used royalty-free pursuant to §§ 226.145 through 226.148. The lessee must also document the removal of such oil from the tank or pipeline.

(d) If the lessee removes oil or gas downstream of the FMP and it is used

royalty-free pursuant to §§ 226.145 through 226.148, the lessee must notify the Superintendent, in writing, and obtain an approved FMP under § 226.86 to measure the production removed for use.

(e) The lessee must use the best available information when estimating gas volumes.

(f) The lessee must report each of the volumes required to be measured or estimated under this subpart to ONRR in accordance with §§ 226.45 and 226.87.

§ 226.150 Ownership of equipment and facilities.

The lessee is not required to own or lease the equipment or facility that uses oil or gas royalty-free under this subpart. The lessee is responsible for obtaining required authorizations, measuring and reporting production, and all other applicable requirements.

§ 226.151 Requesting approval of royalty-free treatment for volumes used.

The lessee must submit a request to the Superintendent, in writing, for approval of royalty-free use of production under this subpart. Such requests must include the following information:

(a) A complete description of the operation to be conducted, including the location of all equipment and facilities involved in the operation and the location of the FMP;

(b) The volumes of oil and gas the lessee expects will be used to conduct the operation and the method used to measure or estimate such volumes;

(c) If the volume of gas expected to be used is estimated, the basis for the estimate (*e.g.,* equipment manufacturer's published consumption or usage rates); and

(d) The proposed disposition of the oil and gas used (*e.g.,* whether gas used would be consumed as fuel, vented through use of a gas-activated pneumatic controller, returned to the reservoir, or used in some other way).

Subpart M—Venting and Flaring

§ 226.152 General requirements.

(a) No venting or flaring of gas is permitted without the Superintendent's prior approval, except as defined in § 226.156.

(b) The lessee must notify the Superintendent by email or facsimile at least three business days prior to conducting approved venting or flaring operations.

(c) For purposes of this subpart, all flares or combustible devices must be equipped with an automatic ignition system.

§ 226.153 Gas-well gas.

Gas-well gas may not be vented or flared except where it is unavoidably lost under § 226.91(c).

§ 226.154 Oil-well gas.

Oil-well gas may be vented or flared in accordance with §§ 226.155, 226.156, and 226.157.

§ 226.155 Limitations on venting gas.

(a) The lessee must flare, rather than vent, any gas that is not captured, except when:

(1) Flaring the gas is technically infeasible, such as when the gas is not readily combustible, or the volumes are too small to flare;

(2) There are emergency conditions, as defined in § 226.156(d), and the loss of gas is uncontrollable, or venting is necessary for safety reasons;

(3) Gas is vented through normal operations of a natural gas-activated pneumatic controller or pump;

(4) Gas vapor is vented from a storage tank or other low-pressure production vessel, unless the Superintendent determined that recovery of the gas vapors is warranted;

(5) Gas is vented during downhole well maintenance or liquids unloading activities;

(6) Venting is necessary to allow the performance of non-routine facility and pipeline maintenance, such as when the lessee must occasionally blow-down and depressurize equipment to perform maintenance or repairs; or

(7) A release of gas is unavoidable under § 226.91(c) and flaring is prohibited by Federal law.

(b) Venting of gas that has an H_2S content of 100 ppm or greater is prohibited.

§ 225.156 Authorized venting and flaring of gas.

(a) *Initial production testing.* Gas flared during the initial production test of each completed interval in a well is royalty-free until one of the following occurs:

(1) The lessee obtains adequate reservoir information;

(2) It has been 30 calendar days since the beginning of the production test, unless the Superintendent approves a longer test period; or

(3) The lessee has flared 50 MMcf of gas.

(b) *Subsequent well tests.* Gas flared during well tests after the initial production test is royalty-free for a period not to exceed 24 hours unless the Superintendent approves or requires a longer test period.

(c) *Downhole well maintenance and liquids unloading.* Gas vented during downhole well maintenance and well purging is royalty-free for a period not to exceed 24 hours per event, provided that the requirements in paragraphs (c)(1) through (3) of this section are met. Gas vented from a plunger lift system or automated well control system is royalty-free, provided that the requirements in paragraphs (c)(1) and (2) of this section are met. For purposes of this section, ''well purging'' means blowing accumulated liquids out of a wellbore using reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, times, or other well data, where gas is vented to the atmosphere. The term ''well purging'' does not apply to wells equipped with plunger lift systems.

(1) The lessee must minimize the loss of gas associated with downhole well maintenance and liquids unloading consistent with safe operations.

(2) For wells equipped with a plunger lift system or automated well control system, minimizing the loss of gas under paragraph (c)(1) of this section includes optimizing operation of the system to minimize gas losses to the maximum extent possible, consistent with removing liquids that would inhibit proper function of the well.

(3) For any liquids unloading by manual well purging, the lessee must ensure that the person conducting the well purging remains on-site throughout the operation so he can end the operation as soon as practical, thereby minimizing venting to the atmosphere to the maximum extent possible.

(d) *Emergencies.* (1) Gas vented or flared during an emergency is royalty-free for a period not to exceed 24 hours, unless the Superintendent determines that emergency conditions exist that necessitate venting or flaring for a longer period.

(2) For purposes of this subpart, an ''emergency'' is a temporary, infrequent, and unavoidable situation in which the loss of oil or gas is uncontrollable or necessary to avoid the risk of immediate and substantial adverse impacts on public health, safety, or the environment and that is not the result of lessee negligence or non-compliance.

(3) The following do not constitute emergencies for the purpose of royalty assessment:

(i) Failure to install appropriate equipment with sufficient capacity to accommodate the production conditions;

(ii) Failure to limit production when the production rate exceeds the capacity of the necessary equipment, pipeline, or gas plant or exceeds sales contract volumes of oil or gas;

(iii) Scheduled maintenance;

(iv) Situations caused by lessee negligence or non-compliance, including equipment failures; and

(v) Situations on a lease or unit that has experienced three or more emergencies within the past 30 days unless the Superintendent determines that the occurrence of such emergencies within the 30-day period could not have been anticipated and was beyond the lessee's control.

(4) The lessee must notify the Superintendent of all emergencies in writing, by email or facsimile, immediately upon discovery, but not later than the next calendar day.

(5) The lessee must estimate and report the volumes vented or flared beyond the timeframe specified in paragraph (c)(1) of this section within 45 calendar days of the date the emergency started.

§ 226.157 Measurement and reporting of volumes of gas vented or flared.

(a) The lessee must estimate or measure all volumes of oil and gas avoidably and unavoidably lost from wells, facilities, and equipment on a lease or unit and report such volumes to ONRR in accordance with §§ 226.45 and 226.87.

(b) The lessee may:

(1) Estimate the volume of gas vented or flared based on the results of a regularly performed GOR test and measured values for the volumes of oil production and gas sales to allow the Superintendent to independently verify the volume, rate, and heating value of the flared gas; or

(2) Measure the volume of the flared gas.

(c) The Superintendent may require the installation of additional measurement equipment whenever it is determined that the existing methods are inadequate to meet the purposes of this subpart.

(d) The lessee may combine gas from multiple leases or units for the purpose of venting or flaring at a common point but must allocate the quantities of the vented or flared gas to each lease or unit using a method the Superintendent approves.

Subpart N—Assessments and Penalties

Lease Management Assessments and Civil Penalties

§ 226.158 Remedies for violations of lease or permit terms and conditions, regulations, orders, and notices.

Violation of, or non-compliance with, the terms and conditions of any lease or permit, the regulations in this part, or orders and notices the Superintendent issues, may result in:

(a) Assessments;

(b) Civil penalties for each day such violation continues;

(c) Shut-in action; and

(d) Cancellation of the lease or permit and bond forfeiture.

§ 226.159 Immediate assessments for violations of certain operating regulations.

The Superintendent will issue immediate assessments upon discovery of the violations identified in Table 1. Assessments will be issued in the specified amounts per violation, per inspection. Imposition of these assessments does not preclude other appropriate enforcement action and civil penalties.

TABLE 1 TO § 226.159—VIOLATIONS SUBJECT TO AN IMMEDIATE ASSESSMENT

Violation	Assessment amount per violation ($)
1. Failure to post signs and install flags and wind indicators as required by § 226.70(d)(4) through (8)	$250
2. Failure to properly identify wells, tanks, and facilities as required by § 226.75	250
3. Failure to seal an appropriate valve on an oil storage tank as required by § 226.94	1,000
4. Failure to seal an appropriate valve or component on an oil metering system as required by § 226.95	1,000
5. Failure to properly measure oil before removal from storage for use on a different lease or unit as required by § 226.99(b)	1,000
6. Failure to retain records necessary to determine the quality and quantity of production as required by § 226.88	1,000
7. Missing or non-functioning FMP LACT system components as required by § 226.110	1,000
8. Missing or non-functioning FMP CMS components as required by § 226.111	1,000
9. Failure to meet the proving frequency requirements for an FMP as set forth in § 226.113	1,000
10. Failure to obtain the Superintendent's approval prior to using any oil measurement method other than tank gauging, LACT system, or CMS at an FMP as required by § 226.115	1,000
11. Failure to conduct new FMP orifice plate inspections as required by § 226.121(c)	1,000
12. Failure to conduct routine FMP orifice plate inspections as required by § 226.121(d)	1,000
13. Failure to conduct basic meter-tube inspections as required by § 226.121(g)	1,000
14. Failure to conduct detailed meter-tube inspections as required by § 226.121(h)	1,000
15. Failure to conduct an initial mechanical recorder verification as required by § 226.123(a)	1,000
16. Failure to conduct routine mechanical recorder verifications as required by § 226.123(b)	1,000
17. Failure to conduct an initial EGM system verification as a required by § 226.126(a)	1,000
18. Failure to conduct routine EGM system verifications as required by § 226.126(b)	1,000
19. Failure to take spot samples for FMPs as required by § 226.133	1,000
20. Failure to construct and maintain pits as required by § 226.77	2,500
21. Failure to install and maintain H_2S detection equipment as required by § 226.70(d)(2)	2,500

§ 226.160 Other assessments.

If a lessee fails to commence or perform an operation within five calendar days after the Superintendent orders such operation in writing, or such other time as may be specified in the order, the Superintendent may enter upon the lease and perform the operation, or have a third-party perform the operation, at the sole risk and expense of the lessee. The Superintendent will issue an assessment for the actual cost of performance plus an additional 25 percent of such amount for all operations performed by or through the Superintendent due to the lessee's non-compliance.

§ 226.161 Civil penalties with a period to correct.

(a) If a lessee or permittee violates the terms and conditions of the lease or permit, the regulations in this part, or

orders and notices the Superintendent issues, the Superintendent may issue a NONC informing the lessee or permittee of the violation and specifying what actions, if any, must be taken to correct the non-compliance and avoid the assessment of civil penalties and cancellation of the lease or permit. Upon completion of the required corrective actions, the lessee must submit a Self-Certification for Correction of Lease Violations form to the Superintendent.

(b) If the violation is corrected within 20 calendar days of the NONC, or such longer period for correction specified in the NONC, the Superintendent will not assess a civil penalty or cancel the lease or permit but will consider the violations part of the lessee's or permittee's history of non-compliance for future penalty assessments.

(c) If the violation is not corrected within 20 calendar days of the NONC, or such longer period for correction specified in the NONC, the lessee or permittee will be liable for a civil penalty of up to $1,198 per violation for each day such violation continues, commencing with the date of the NONC.

(d) If the violation is not corrected within 40 calendar days of the notice, or such longer period for correction specified in the NONC, the lessee or permittee will be liable for a civil penalty of up to $11,995 per violation for each day such violation continues, commencing with the date of the NONC.

(e) If the Superintendent agrees to an extension of the time to take corrective action exceeding 20 calendar days, the date of the NONC will be deemed to be 20 calendar days prior to the end of the extended period for the purpose of civil penalty calculation.

(f) Any amount imposed and paid as assessments under § 226.159 will be deducted from penalties under this section.

§ 226.162 Civil penalties without a period to correct.

(a) The Superintendent may assess civil penalties for the violations identified in paragraphs (b) and (c) of this section without prior notice or an opportunity to correct the violation. The Superintendent will inform lessees, permittees, and other persons of violations resulting in civil penalties without a period to correct by issuing an ILCP identifying the violation and the amount of the civil penalty. For purposes of this section, civil penalties begin to accrue on the day the violation is committed.

(b) Any person is liable for a civil penalty of up to $23,989 per violation for each day such violation continues, if such person:

(1) Fails or refuses to permit the Superintendent's lawful entry or inspection pursuant to § 226.60; or

(2) Knowingly or willfully commences drilling, recompletion, or reentry operations, or causes surface disturbance preliminary thereto, without the Superintendent's prior approval in accordance with § 226.61.

(c) Any person is liable for a civil penalty of up to $59,973 per violation for each day such violation continues, if such person:

(1) Knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other documents and information required by this part;

(2) Knowingly or willfully removes, transports, uses, or diverts any oil or gas from any lease or unit without valid legal authority to do so;

(3) Tampers with or bypasses any measurement device, component of a measurement device, or the measurement process;

(4) Purchases, accepts, sells, transports, or conveys oil or gas to any other person knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a lease or unit of the Osage Mineral Estate.

§ 226.163 Penalty amount.

(a) The Superintendent will determine the amount of the penalty to assess by considering:

(1) The severity of the violation; and

(2) The lessee's or permittee's history of non-compliance.

(b) The Superintendent may compromise or reduce a civil penalty assessed under this subpart.

§ 226.164 Shut-in actions.

(a) The Superintendent may take immediate shut-in action, without notice, when necessary for compliance; when operations are commenced or conducted without the required approval; or where continued operations could result in immediate adverse impacts on public health and safety, natural resources, the environment, production accountability, or royalty income.

(b) The Superintendent may take shut-in action in situations other than those identified in paragraph (a) of this section only after providing written notice to the lessee or permittee.

§ 226.165 Lease or permit cancellation.

(a) The Superintendent may issue a Notice of Cancellation for a lease or permit if a lessee or permittee:

(1) Is determined to have obtained the lease or permit by collusion, fraud, or misrepresentation;

(2) Fails to comply with the terms and conditions of the lease or permit, the regulations in this part, or other applicable laws;

(3) Fails to timely comply with, or respond to, an order or notice the Superintendent or ONRR issues;

(4) Fails to timely correct a violation under § 226.161;

(5) Fails to pay civil penalties in full on or before the date the Superintendent or ONRR specifies;

(6) Knowingly and willfully commits a violation that results in immediate adverse impacts on public health and safety, natural resources, or the environment, production accountability, or royalty income; or

(7) Has a history of non-compliance.

(b) The Notice of Cancellation will inform the lessee or permittee of the violation, set forth the reasons why cancellation is warranted, and specify what actions, if any, may be taken to avoid cancellation of the lease or permit and bond forfeiture.

(c) Cancellation of a lease or permit does not relieve the lessee or permittee of any continuing obligations under the lease, permit, or regulations in this part.

(d) Upon cancellation of a lease, the Osage Minerals Council may take immediate possession of the leased lands and all permanent improvements and surface equipment necessary for operation of the lease.

§ 226.166 Payment of assessments and civil penalties.

(a) The lessee or permittee must remit payment for civil penalties and immediate assessments set forth in this subpart within 10 business days of receipt of the notice of collection from the Superintendent by certified mail unless a different date is specified therein.

(b) Failure to timely pay civil penalties will result in the assessment of an interest charge on all unpaid or underpaid penalty and assessment amounts. Interest will be charged at the IRS underpayment rate pursuant to 26 U.S.C. 6621(a)(2), or such other rate as the Superintendent may prescribe. The IRS underpayment rate is posted quarterly and is available online at *https://www.irs.gov.* Interest will only be charged on the amount of the payment not received and for the number of days the payment is late.

(c) Payments made pursuant to subpart N of this part do not relieve the lessee or permittee of compliance with the terms and conditions of the lease or permit or the regulations in this part,

nor do they relieve the lessee or permittee of liability for waste, surface damages, or any other damages that may be occasioned. A waiver, compromise, or reduction of any penalty must not be construed as precluding or limiting the imposition of penalties for any other violations or acts of non-compliance at that time or any other time.

Royalty Management Assessments and Civil Penalties

§ 226.167 Remedies for violations of lease or permit terms and conditions, regulations, orders, and notices.

Violation of the terms or conditions of a lease, permit, or the regulations in this part relating to royalty payment and reporting, production reporting, or non-compliance with any orders ONRR issues, may result in:

(a) Assessments;

(b) Civil penalties for each day such violation or non-compliance continues;

(c) Shut-in or cancellation of the lease and bond forfeiture under §§ 226.164 and 226.165; and

(d) The transfer of delinquent debts to the U.S. Department of Treasury for collection.

§ 226.168 Assessments for incorrect or late reports and failure to report.

(a) ONRR may issue assessments of up to $10 per day for each report it does not receive by the designated due date and for each report submitted that is incorrectly completed.

(b) ONRR will periodically establish the amount of the assessments imposed under paragraph (a) of this section based on its experience with costs and improper reporting. ONRR will publish notice of the assessment amount in the **Federal Register**.

§ 226.169 Assessments for failure to submit payment amount indicated on a form or bill document or to provide adequate information.

(a) ONRR may issue an assessment of up to $250 when the amount of a payment a reporter or payor submits is not equivalent in amount to the total of individual line items on the associated form or bill document, unless ONRR authorized the difference in amount.

(b) ONRR may issue an assessment of up to $250 for each payment a reporter or payor submits that cannot be automatically applied to the associated form or bill document because the reporter or payor submitted inadequate or erroneous information.

(c) For purposes of this section, the term ''applicable forms'' include Form ONRR–2014, Form ONRR–4054, and any other forms ONRR requires under this part.

(d) For purposes of this section, the term ''bill document'' means any invoice that ONRR issues for assessments, late-payment interest charges, or other amounts owed. A payment document is defined as a check or wire transfer message.

(e) For purposes of this section, ''inadequate or erroneous information'' is defined as an:

(1) Absent or incorrect payor-assigned document number the reporter or payor is required to identify in Block 4 on Form ONRR–2014 (document 4 number), or the reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period;

(2) Absent or incorrect bill document invoice number (to include the three-character alpha prefix and the nine-digit number) or the payor-assigned document 4 number the reporter or payor is required to be identify on the associated payment document, or reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period;

(3) Absent or incorrect name of the administering BIA agency or office or the Tribe name on payment documents remitted. If the payment is made by EFT, the reporter or payor must identify the Tribe on the EFT message by a pre-established five-digit code;

(4) Absent or incorrect ONRR-assigned payor code on a payment document; or

(5) Absent or incorrect identification on a payment document.

(f) ONRR will periodically establish the amount of the assessment to be imposed under paragraphs (a) and (b) of this section. The amount of the assessment for each violation will be based on ONRR's experience with costs and improper reporting. ONRR will publish notice of the assessment amount in the **Federal Register**.

§ 226.170 Civil penalties with a period to correct.

(a) If a reporter or payor violates the terms and conditions of the lease, the regulations in this part or any order relating to royalty and production reporting and payment requirements, ONRR may issue a NONC informing the reporter or payor of the violation and specifying what actions, if any, must be taken to correct the violation and avoid the assessment of civil penalties.

(b) If the violation is corrected within 20 calendar days of the NONC, or such longer period for correction specified in the NONC, ONRR will not assess a civil penalty or request that the Superintendent shut-in or cancel the lease or permit but will consider the violations part of the reporter's or payor's history of non-compliance for future penalty assessments.

(c) If the violation is not corrected within 20 calendar days after the date on which the NONC is served, or within 20 days following the expiration of any longer period for correction specified in the NONC, ONRR may issue an FCCP.

(1) The FCCP will state the amount of the penalty. The penalty will:

(i) Begin to run on the day the NONC is served; and

(ii) Continue to accrue for each violation identified in the NONC until it is corrected.

(2) The penalty may be up to $1,368 per day for each violation identified in the NONC that has not been corrected.

(d) If the violation is not corrected within 40 calendar days from the date the NONC is served, or within 20 calendar days following the expiration of any longer correction period specified in the NONC, the reporter or payor will be liable for a penalty of up to $13,693 per day for each day the violation identified in the NONC that has not been corrected. The increased penalty will:

(1) Begin to run on the 40th day after the day the NONC was served or on the 20th day after the expiration of any longer correction period in the NONC; and

(2) Continue to accrue for each violation identified in the NONC until it is corrected.

§ 226.171 Civil penalties without a period to correct.

(a) ONRR may assess a penalty for a violation identified in paragraphs (b) and (c) of this section without prior notice or an opportunity to correct the violation. ONRR will inform reporters and payors of violations without a period to correct by issuing an ILCP explaining the violation and the amount of the civil penalty. The penalty will begin to run on the day the violation is committed.

(b) A reporter or payor is liable for a civil penalty of up to $27,384 per violation for each day the violation continues if they:

(1) Fail or refuse to permit lawful entry, inspection, or audit, including refusal to keep, maintain, or produce documents; or

(2) Knowingly or willfully fail to make any royalty payment by the date specified in the lease, regulations in this part, or any applicable order.

(c) A reporter or payor is liable for a civil penalty up to $68,462 per violation for each day the violation continues if they knowingly or willfully prepare, maintain, or submit false, inaccurate, or

misleading reports, notices, affidavits, records, data, or other information to ONRR.

(d) ONRR may use any information as evidence that a reporter or payor knowingly or willfully committed a violation including, but not limited to:

(1) Any acts, or failures to act, by a reporter's or payor's employee or agent;

(2) An email indicating the reporter's or payor's concurrence with an issue;

(3) An order that the reporter or payor failed to appeal an order, NONC, or ILCP for which no further appeal is available; and

(4) Any oral or written communication that identifies a violation that the reporter or payor:

(i) Acknowledges as true and fails to correct;

(ii) Fails to appeal, or cannot further appeal, and fails to correct; or

(iii) Corrects, but the reporter or payor subsequently commits the same violation.

§ 226.172 Penalty amount.

(a) ONRR will determine the amount of the penalty to assess by considering the:

(1) Severity of the violation;

(2) History of non-compliance; and

(3) Size of the reporter's or payor's business. To determine business size, ONRR may consider the number of employees in the reporter's or payor's company, parent company or companies, and any subsidiaries or contractors.

(b) ONRR will not consider the royalty consequence of the underlying violation when determining the amount of the civil penalty for a violation under §§ 226.170, 226.171(b)(1), and 226.171(c).

(c) FCCP and ILCP assessment matrices and adjustments thereto are posted on ONRR's website.

(d) Penalties ONRR assesses under this subpart are in addition to interest owed on any underlying payments or unpaid debts and are supplemental to, not in derogation of, any other penalties or assessments for non-compliance set forth in this part or other applicable laws and regulations.

(e) ONRR may compromise or reduce a civil penalty assessed under this subpart.

§ 226.173 Payment of assessments and civil penalties.

(a) The reporter or payor must remit payment for the civil penalties and assessments set forth in §§ 226.168 through 226.171 on or before the due date identified in the bill accompanying the FCCP or ILCP.

(b) Failure to timely pay civil penalties and assessments will result in the reporter or payor owing late-payment interest on all unpaid or underpaid penalty and assessment amounts. Interest will be charged in accordance with § 226.166(b) beginning on the day the payment was due and continuing until all debts are paid in full.

§ 226.174 Collection of unpaid civil penalties.

If a reporter or payor fails to pay a civil penalty amount on or before the date it is due, ONRR may use all available means to collect the penalty including, but not limited to:

(a) For an amount owed by a lessee, requiring the lease surety to pay the penalty;

(b) Deducting the amount of the penalty from any sum the United States may owe the reporter or payor; or

(c) Referring the debt to the U.S. Department of the Treasury (Treasury) for collection in accordance with § 226.175.

§ 226.175 Debt collection and administrative offset.

(a) ONRR will transfer any past due, legally enforceable non-tax debt to Treasury within 180 days from the date the debt becomes past due so that Treasury may take appropriate action to collect the debt or terminate the collection action 26 U.S.C. 6402(d)(1)–(2); 31 U.S.C. 3711, 3716, and 3720A; Federal Claims Collection Standards (31 CFR parts 900 through 904); and 31 CFR 285.2 and 285.5.

(b) If ONRR determines that a person owes, or may owe, a legally enforceable debt to ONRR, it will send a written notice to the debtor advising that ONRR intends to refer the debt to Treasury. The notice will inform the debtor of the:

(1) Amount, nature, and basis of the debt;

(2) Methods of offset that ONRR or Treasury may use;

(3) Opportunity to inspect and copy Agency records related to the debt;

(4) Opportunity to enter into a written agreement with ONRR to repay the debt;

(5) ONRR's policy regarding interest and administrative costs, including a statement that ONRR will make such assessments unless it determines otherwise under the criteria of the Federal Claims Collection Standards and this part;

(6) Date by which payment must be remitted to avoid additional late charges and enforced collection; and

(7) Name, address, and phone number of an ONRR representative who is available to discuss the debt.

(c) Debtors that receive a notice issued pursuant to paragraph (b) of this section may not appeal unless the notice specifically provides for such opportunity because the debtor did not previously receive a notice of the order, decision on appeal, or any other notice or decision that is the basis of the debt that ONRR intends to refer to Treasury and for which the debtor may be liable in whole or in part under applicable law. Debtors may not dispute matters related to delinquent debts that were the subject of a final order or appeal decision of which they were the recipient or a party thereto and that are the basis of the delinquent debt. The requirements under this paragraph apply whether the debtor appealed the order, demand, NONC, or assessment.

(d) ONRR will issue an initial assessment of $436 for administrative costs incurred because of a debtor's failure to pay a delinquent debt. ONRR will publish notice of any increases in administrative costs in the **Federal Register**. ONRR may also assess an additional $436 for administrative costs that continue to accrue during any appeal process if:

(1) The notice issued under paragraph (b) of this section grants the right to appeal and the debtor exercises that right; and

(2) The appeal is denied and ONRR refers the delinquent debt to Treasury.

(e) ONRR will apply a partial or installment payment made on a delinquent debt sent to Treasury in the following order: outstanding penalty assessments, administrative costs, accrued interest, and outstanding debt principal.

(f) The Director of ONRR may waive collection of all or part of the administrative costs under paragraph (d) of this section if they determine that collection of this charge would be against equity and good conscience or the Federal Government's best interest. The Director's decision to collect or waive administrative costs is the final decision for the Department and is not subject to administrative review.

(g) The Director of ONRR may recommend that the Superintendent revoke a debtor's ability to engage in the leasing of any trust or restricted lands or the granting of easements, permits, or rights-of-way if the debtor inexcusably or willfully fails to pay a debt. Any such recommendation will remain in effect until such time as the debt is paid in full or otherwise resolved to ONRR's satisfaction.

(h) ONRR may refer any past due, legally enforceable debt to Treasury to collect through administrative offset or tax refund offset at least 60 calendar days after it issues notice under paragraph (b) of this section if the debt

is at least $250 or such other base amount as may be established by Treasury.

(i) ONRR may refer debts reduced to judgment to Treasury for tax refund offset at any time.

Criminal Penalties

§ 226.176 Penalties for filing fraudulent reports.

Any person who knowingly and willfully files fraudulent reports or information under the regulations in this part is subject to criminal penalties under 18 U.S.C. 1001.

Subpart O—Appeals

Appeals of BIA Decisions

§ 226.177 Procedure for filing an administrative appeal of a decision, order, or notice of the Superintendent.

(a) Any party adversely affected by a decision, order, or notice the Superintendent issues by virtue of the regulations in this part may appeal pursuant to 25 CFR part 2.

(b) If an appeal is not timely filed with the Regional Director under 25 CFR part 2 and subsequently with the IBIA under 43 CFR part 4, subpart D (where required):

(1) The subject decision, order, or notice will be final for the Department; and

(2) The affected party will be barred from contesting the validity or merits of the decision, order, or notice in subsequent administrative or judicial proceedings due to failure to exhaust administrative remedies.

Appeals of ONRR Decisions

§ 226.178 Procedures for filing and administrative appeal of an order from ONRR.

(a) Any party adversely affected by an order ONRR issues by virtue of the regulations in this part may appeal to the Director of ONRR as set forth in this section.

(b) For purposes of this section, the term ''order'' means any document ONRR issues that contains language mandating or directing the recipient to report, compute, or pay royalties or other obligations; report production; or provide any other information.

(1) An order includes, but is not limited to:

(i) An Order to Pay or Order to Perform a Restructured Accounting;

(ii) A decision from ONRR denying a lessee's, reporter's, or payor's written request and that imposes an obligation on the lessee, reporter, or payor (a denial); and

(iii) A NONC, FCCP, or ILCP.

(2) An order does not include:

(i) A non-binding request, information, or guidance, such as a policy determination or guidance on how to report or pay, including a valuation determination, unless it contains language indicating that an action is mandatory or expressly orders the recipient(s) to take a certain action;

(ii) A subpoena;

(iii) An order that ONRR issues to a refiner or other person involved in disposition of royalty taken in-kind;

(iv) A ''Dear Lessee,'' ''Dear Payor,'' or ''Dear Reporter'' letter, unless it explicitly includes the right to appeal; or

(v) Any other correspondence from ONRR that does not include the right to appeal.

(c) A lessee or designee may appeal an order to the Director of ONRR by filing a Notice of Appeal in the office of the official that issued the order within 30 calendar days from the date the order was received. If a designee is filing an appeal, they must concurrently serve the Notice of Appeal on all lessees for the lease(s) identified in the order by certified mail—return receipt requested. Within the same 30-day period, the lessee or designee must file a Statement of Reasons setting forth any factual and legal arguments justifying reversal or modification of the order. No extension of time will be granted for filing the Notice of Appeal.

(d) A lessee may join an appeal filed by a designee within 30 calendar days from the date the lessee receives the Notice of Appeal by filing a Notice of Joinder with the office of the official that issued the order. If a lessee joins an appeal, they are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this section and 43 CFR part 4, subpart E. Lessees may not file pleadings separately from the designee.

(1) If a lessee does not appeal, or join the designee's appeal, the designee's actions with respect to the appeal and any decisions therein are binding on the lessee.

(2) If a designee decides to discontinue participation in an appeal, they must serve written notice at least 30 calendar days before the next pleading is due. The notice must be served on:

(i) All lessees who joined the appeal under this section;

(ii) The office or officer with whom subsequent pleadings must be filed; and

(iii) All other parties to the appeal.

(e) Any party adversely affected by a decision the Director of ONRR issues under this section may appeal the decision to the IBLA pursuant to 43 CFR part 4, subpart E.

(f) If an order is neither paid, nor appealed to the Director of ONRR under this section and, subsequently, to the IBLA under 43 CFR part 4, subpart E:

(i) The order is the final decision of the Department; and

(ii) The affected party will be barred from contesting the validity or merits of the order in subsequent administrative or judicial proceedings, including enforcement proceedings.

§ 226.179 Suspension of compliance with an ONRR order.

(a) For purposes of this subpart, ''ONRR-specified surety instrument'' means an ONRR-specified administrative appeal bond, an ONRR-specified irrevocable letter of credit, or a financial institution book-entry certificate of deposit.

(b) Subject to paragraph (d) of this section, if an affected party appeals an order regarding the payment or reporting of royalties and other payments due from leases of the Osage Mineral Estate:

(1) If the amount under appeal is less than $1,000, or does not require payment, the appellant's obligation to comply with the order is suspended while the appeal is pending. ONRR will use the performance bond posted with the BIA as collateral for the obligation.

(2) If the amount under appeal is $1,000 of more, ONRR will suspend the appellant's obligation to comply with the order if they submit an ONRR-specified surety instrument under this subpart within 60 calendar days of the date they receive the order or Notice of Order.

(c) Nothing in this subpart prohibits an appellant from paying any demanded amount or otherwise complying with any other requirement pending resolution of their appeal. Voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is available under the regulations does not create a final agency action subject to judicial review under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, ONRR may inform an appellant that it will not suspend their obligation to comply with the order under paragraph (a) of this section because suspension would harm the interests of the United States or Osage Nation.

§ 226.180 Requirements for posting a bond or other surety on behalf of an appellant.

Any person, including a designee, payor, or affiliate, may post a bond or

surety instrument under this subpart on behalf of an appellant. If you assume an appellant's responsibility to post a bond or other surety instrument, you:

(a) Must notify ONRR in writing that you are assuming the appellant's responsibility under this subpart;

(b) May not assert that you are not otherwise liable for royalties or other payments under the lease, or any other theory, as a defense if ONRR collects your bond or other surety instrument; and

(c) May end your voluntarily assumed responsibility for posting a bond or other surety instrument only after the appellant pays or posts a bond or other surety instrument.

§ 226.181 Suspension of the obligation to comply with an ONRR order due to judicial review in federal court.

(a) If an appellant seeks judicial review of an IBLA decision or another final action of the Department of the Interior regarding an ONRR order, ONRR will suspend the appellant's obligation to comply with that order pending judicial review if they continue to meet the requirements of this subpart.

(b) Notwithstanding paragraph (a) of this section, ONRR may decide that it will not suspend an appellant's obligation to comply with an order. ONRR will notify the appellant in writing of such decision and the reasons for it.

§ 226.182 ONRR's collection of bonds and other surety instruments.

(a) This section applies to you if you maintain a bond or an ONRR-specified surety instrument on your own behalf or on another person's behalf for an appeal of an order under this subpart.

(b) ONRR may initiate collection of your bond or other surety instrument if:

(1) The Director of ONRR decides the appeal adversely to you and you do not pay the amount due or appeal the decision further to the IBLA under 43 CFR part 4, subpart E;

(2) The IBLA, Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides the appeal adversely to you and you do not pay the amount due or pursue judicial review within 90 calendar days of the decision;

(3) A court of competent jurisdiction issues a final non-appealable decision adverse to you and you do not pay the amount due within 30 calendar days of the decision;

(4) You do not increase the amount of your bond or other surety instrument as required under § 226.185(c), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the ONRR order within 30 calendar days of receipt of the notice from ONRR under § 226.185(c); or

(5) The obligation to comply with an order or decision is not suspended and you do not pay the amount required under the order or decision.

§ 226.183 ONRR bond-approving officer's determination of surety amount not subject to appeal.

Any decision regarding the amount of the surety due under this subpart is final and not subject to appeal.

§ 226.184 Standards for ONRR-specified surety instruments.

(a) An ONRR-specified surety instrument must be in a form identified in ONRR's instructions. ONRR will provide written information and standards forms for ONRR-specified surety instrument requirements.

(b) ONRR will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company that Treasury approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to ONRR with a minimum one-year period of coverage subject to automatic renewal up to five years.

§ 226.185 ONRR's determination of bond or surety instrument amount.

(a) The ONRR bond-approving officer may approve an appellant's surety if they determine that the amount is adequate to guarantee payment. The amount of the appellant's surety may vary depending on the form of the surety and how long the surety is effective.

(b) The amount of the ONRR-specified surety instrument must include the principal amount owed under the order plus any accrued interest ONRR determines is owed plus projected interest for a one-year period.

(c) If an appeal is not decided within one year from the date of filing, the appellant must increase the surety amount to cover additional estimated interest for another one-year period. The appellant must continue to increase the surety amount annually on the date of filing for the duration of the appeal. ONRR will determine the additional estimated interest and notify the appellant of the amount so it can amend your surety instrument.

(d) The appellant may submit a single surety instrument that covers multiple appeals. The appellant may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in their favor or that they have paid if they:

(1) Amend the single surety instrument annually on the date they filed their first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until they amend the instrument to cover the new appeals.

Appendix A to Part 226—Table of Atmospheric Pressures

Elevation (ft msl)	Atmos. pressure (psi)	Elevation (ft msl)	Atmos. pressure (psi)	Elevation (ft msl)	Atmos. pressure (psi)
0	14.70	**4,000**	12.70	**8,000**	10.92
100	14.64	4,100	12.65	8,100	10.88
200	14.59	4,200	12.60	8,200	10.84
300	14.54	4,300	12.56	8,300	10.80
400	14.49	4,400	12.51	8,400	10.76
500	14.43	4,500	12.46	8,500	10.72
600	14.38	4,600	12.42	8,600	10.68
700	14.33	4,700	12.37	8,700	10.63
800	14.28	4,800	12.32	8,800	10.59
900	14.23	4,900	12.28	8,900	10.55
1,000	14.17	**5,000**	12.23	**9,000**	10.51
1,100	14.12	5,100	12.19	9,100	10.47
1,200	14.07	5,200	12.14	9,200	10.43
1,300	14.02	5,300	12.10	9,300	10.39
1,400	13.97	5,400	12.05	9,400	10.35

Elevation (ft msl)	Atmos. pressure (psi)	Elevation (ft msl)	Atmos. pressure (psi)	Elevation (ft msl)	Atmos. pressure (psi)
1,500	13.92	5,500	12.01	9,500	10.31
1,600	13.87	5,600	11.96	9,600	10.27
1,700	13.82	5,700	11.92	9,700	10.23
1,800	13.77	5,800	11.87	9,800	10.19
1,900	13.72	5,900	11.83	9,900	10.15
2,000	13.67	**6,000**	11.78	**10,000**	10.12
2,100	13.62	6,100	11.74	10,100	10.08
2,200	13.57	6,200	11.69	10,200	10.04
2,300	13.52	6,300	11.65	10,300	10.00
2,400	13.47	6,400	11.61	10,400	9.96
2,500	13.42	6,500	11.56	10,500	9.92
2,600	13.37	6,600	11.52	10,600	9.88
2,700	13.32	6,700	11.48	10,700	9.84
2,800	13.27	6,800	11.43	10,800	9.81
2,900	13.22	6,900	11.39	10,900	9.77
3,000	13.17	**7,000**	11.35	**11,000**	9.73
3,100	13.13	7,100	11.30	11,100	9.69
3,200	13.08	7,200	11.26	11,200	9.65
3,300	13.03	7,300	11.22	11,300	9.62
3,400	12.98	7,400	11.18	11,400	9.58
3,500	12.93	7,500	11.13	11,500	9.54
3,600	12.89	7,600	11.09	11,600	9.50
3,700	12.84	7,700	11.05	11,700	9.47
3,800	12.79	7,800	11.01	11,800	9.43
3,900	12.74	7,900	10.97	11,900	9.39

Calculated as:

$Palm = 14.696 \times (1 \times 0.00000686E)^{525577}$

From: U.S. Standard Atmosphere, 1976, U.S. Government Printing Office, Washington, DC 1976.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–28098 Filed 1–12–23; 8:45 am]

BILLING CODE 4337–15–P

Reader Aids

Federal Register

Vol. 88, No. 9

Friday, January 13, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — **202–741–6000**

Laws — **741–6000**

Presidential Documents

Executive orders and proclamations — **741–6000**

The United States Government Manual — **741–6000**

Other Services

Electronic and on-line services (voice) — **741–6020**

Privacy Act Compilation — **741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–288 3
289–738 4
739–948 5
949–1132 6
1133–1322 9
1323–1496 10
1497–1972 11
1973–2174 12
2175–2500 13

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
3474 95

3 CFR

Proclamations:
10510 739
10511 741
10512 743

5 CFR

532 1133
2634 1139
2636 1139

6 CFR

27 2175

Proposed Rules:
19 2395

7 CFR

9 1862
701 1862
760 1862
1400 1862
1416 1862
1437 1862
1450 1862

Proposed Rules:
16 2395
920 16
985 18
3560 1149

8 CFR

270 2175
274a 2175
280 2175

Proposed Rules:
103 ..... 402, 1172
106 ..... 402, 1172
204 ..... 402, 1172
212 ..... 402, 1172
214 ..... 402, 1172
240 ..... 402, 1172
244 ..... 402, 1172
245 ..... 402, 1172
245a 402, 1172
264 ..... 402, 1172
274a 402, 1172

9 CFR

Proposed Rules:
1 1151
2 1151
3 1151

10 CFR

2 ..... 2187, 2188
13 2188
72 949
207 2190
218 2190
429 2190
431 2190
490 2190
501 2190
601 2190
810 1973
820 2190
824 2190
851 2190
1013 2190
1017 2190
1050 2190

Proposed Rules:
30 25
40 25
50 25
70 25
72 ..... 25, 1010
430 ..... 790, 1638
431 1722
1021 2029

12 CFR

19 289
109 289
201 2194
204 2195
263 1497
622 2197
747 1323
1083 1

Proposed Rules:
1610 1154

14 CFR

13 1114
39 ..... 1981, 1983, 1984, 2199, 2202
71 ..... 1987, 2204, 2205
97 1988
383 1114
406 1114

Proposed Rules:
5 1932
21 1932
39 ..... 1520, 2029, 2032, 2035, 2273, 2276, 2279, 2283, 2286, 2292, 2295
91 1932
119 1932
121 1932
135 1932
61 34
63 34
65 34

15 CFR

6 3
922 953

16 CFR

Ch. II 2206

1.....1499
305.....1135
Proposed Rules:
456.....248

17 CFR

143.....1501

18 CFR

250.....1989
385.....1989
Proposed Rules:
240.....128
242.....128

19 CFR

4.....2175

20 CFR

10.....974
401.....1326
403.....1326
422.....1326
423.....1326
429.....1326
655.....2210
702.....2210
725.....2210
726.....2210

21 CFR

1.....1503
101.....6
172.....745
870.....975
874.....977
876.....8
882.....749, 2222
888.....751, 753, 979
890.....981, 983

22 CFR

35.....1505
103.....1505
127.....1505
138.....1505
Proposed Rules:
205.....2395

24 CFR

Proposed Rules:
5.....321, 2395
1006.....328

25 CFR

Proposed Rules:
226.....2430

26 CFR

301.....755, 756

27 CFR

5.....2224
16.....2228
Proposed Rules:
6.....1171
8.....1171
10.....1171
11.....1171

28 CFR

Proposed Rules:
16.....1012
38.....2395
545.....1331

29 CFR

5.....2210
500.....2210
501.....2210
503.....2210
530.....2210
570.....2210
578.....2210
579.....2210
801.....2210
810.....2210
825.....2210
1903.....2210
4071.....1991
4302.....1991
Proposed Rules:
2.....2395

30 CFR

100.....2210

31 CFR

501.....2229
510.....2229
535.....2229
536.....2229
539.....2229
541.....2229
542.....2229
544.....2229
546.....2229
547.....2229
548.....2229
549.....2229
551.....2229
552.....2229
553.....2229
560.....2229
561.....2229
566.....2229
570.....2229
576.....2229
578.....2229
583.....2229
584.....2229
588.....2229
589.....2229
590.....2229
591.....1507
592.....2229
594.....2229
597.....2229
598.....2229
Proposed Rules:
208.....1336

32 CFR

199.....1992
269.....2239

33 CFR

27.....2175
100.....291
147.....1511
165.....756, 1141, 1145, 2002, 2241
401.....1114
Proposed Rules:
165.....35, 1528
203.....1340
334.....1532

34 CFR

Proposed Rules:
75.....2395
76.....2395
685.....1894

36 CFR

Proposed Rules:
13.....1176

38 CFR

36.....985
42.....985
Proposed Rules
17.....2038
50.....2395
61.....2395
62.....2395

39 CFR

111.....758
233.....1513
273.....1513
Proposed Rules:
111.....2046, 2047

40 CFR

19.....986
52.....291, 773, 1515, 2243, 2245
81.....775, 1515
180.....990
Proposed Rules:
49.....2298
52.....1341, 1454, 1533, 1537, 2050, 2303
61.....2057
63.....805, 2057
81.....1543
180.....38
721.....41

41 CFR

50-210.....2210
105-70.....2247

42 CFR

405.....297
410.....297
411.....297
412.....297
413.....297
416.....297
419.....297
424.....297
485.....297
489.....297

43 CFR

Proposed Rules:
10.....1344
2800.....2304
2860.....2304
2880.....2304
2920.....2304

45 CFR

3.....1134
1149.....2004
1158.....2004
1302.....993
Proposed Rules:
87.....2395
88.....820
2525.....1021
2526.....1021
2527.....1021
2528.....1021
2529.....1021
2530.....1021

46 CFR

221.....1114
307.....1114
340.....1114
356.....1114
506.....1517
Proposed Rules:
8.....1547
197.....1547

47 CFR

1.....783
54.....2248
73.....10
Proposed Rules:
54.....1035, 2305
73.....42, 1038

49 CFR

107.....1114
171.....1114
190.....1114
209.....1114
213.....1114
214.....1114
215.....1114
216.....1114
217.....1114
218.....1114
219.....1114
220.....1114
221.....1114
222.....1114
223.....1114
224.....1114
225.....1114
227.....1114
228.....1114
229.....1114
230.....1114
231.....1114
233.....1114
234.....1114
235.....1114
236.....1114
237.....1114
238.....1114
239.....1114
240.....1114
241.....1114
242.....1114
243.....1114
244.....1114
272.....1114
386.....1114
578.....1114
1002.....299
1011.....700
1022.....2268
1108.....700
1111.....299
1114.....299
1115.....299,700
1244.....700
1503.....2175
Proposed Rules:
386.....830
387.....830

50 CFR

17.....2006
218.....604
635.....786

648 .....11, 788, 2271
679.....789, 2271

Proposed Rules:
217.....916

223.....1548
224.....1548

660.....1171, 2061

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 10, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__*layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.